Appendix A. Comment Letters

Ohio EPA Responsiveness Summary for Public Comments Received Regarding the Proposed State Water Quality Management Plan, including updates to the State and Areawide Agency 208 Plans

September 2006

prepared by
Division of Surface Water
Ohio Environmental Protection Agency

OHIO EPA - DSW
2006 APR 25 AM 10: 15

VILLAGE OF JOHNSTOWN

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Kevin Riffe
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Robert Burrell
Joyce Evans
Cletus Beam
Sharon Hendren

April 21, 2006

Sent via email and U.S. Mail

Dan Dudley
Ohio Environmental Protection Agency
Division of Surface Water
P.O. 1049
Columbus, OH 43216-1049

Mr. Dudley:

The Village of Johnstown has reviewed the Ohio EPA's Draft State Water Quality Management Plan including Section 208 Area-wide Waste Management Plans and have the following comments:

- With regard to Prescription #25-P3, the Village objects to boundary adjustments for the Columbus RFPA into Licking County beyond the current boundaries. The Village of Johnstown requests Prescription #25-P3 be amended to exclude the last statement, "RFPA boundary adjustments, with or without a petition, may also be proposed by the State when the 208 plan is updated."

- It is the intent of the Village of Johnstown to service Monroe Township in Licking County with water and sewer services. Therefore, the proposed Prescription of Columbus should be revised to reflect this intention.

If you require additional information or need further verifications, please do not hesitate to call.

Sincerely,

Sarah Phillips

Sarah Phillips
Village Manager

UNION COUNTY ENGINEER

STEVE A. STOLTE, PE/PS

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Assistant County Engineer

MARY A. SAMPSEL, PE
Assistant County Engineer

6

OHIO EPA - DSW
2006 APR -7 AM 10: 17

April 4, 2006

Dan Dudley, Manager
Standards & Technical Support
Division of Surface Water
Ohio EPA
PO Box 1049
Columbus, Ohio 43216-1049

Dear Dan:
I have reviewed the draft Union County 208 plan and have the following comments:

1. Table pg 86 Crottinger Estates should be listed as a treatment facility in Jerome Township that is owned by the Union County Commissioners. WC, WT
2. 80-C2, 80-P1 The sewer infrastructure in Jerome Township that is treated at the city of Marysville was sold to the city of Marysville on Feb 1, 2006. The Union County Commissioners are no longer owners of these sewers and pump stations.
3. The treatment facilities owned by the Union County Commissioners will be phased out of commission when a city of Marysville public sewer becomes available. This concept was agreed to as part of the February 1, 2006 sales agreement between the city of Marysville and the Union County Commissioners.

The Union County Commissioners would like to involve the surrounding management agencies and develop a map showing sewer and water service boundaries for the incorporated and unincorporated areas of Union County.

Sincerely,

Steve A. Stolte, PE/PS
Union County Engineer

Clark County Department of Utilities

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Dave Hasting, *Field Services Supervisor*

April 21, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio EPA
PO Box 1049
Columbus OH 43216-1049

Re: Comments on State Water Quality Management Plan
CWA Sections 208 and 303

Dear Mr. Dudley:

Clark County thanks you and your staff for tackling the difficult task of updating the State WQM Plan. Much difficulty relates to "turf" battles of service area and/or annexation. Here are a few comments on the draft revisions to the State WQM Plan.

1. At the Public hearing, some municipal representatives urged that the "200 feet" rule for determining availability of sewers should not apply within municipal corporate boundaries. I support that comment for applicability within municipal limits.

2. Outside of municipal limits, the "200 feet" rule now pertains to decisions on sewer availability for an existing single family home. The 200 feet rule should not be used to determine whether sewer is available, for example, for a proposed 100+ home subdivision, however. A development of this relative magnitude should be required connect to sewers, if it is at all economically feasible.

3. I have wrestled with the proposal to "sweep away" the old Facilities Planning boundaries. This proposal may be beneficial in some parts of the County and detrimental in other parts of the County. The old boundaries have some value due to their general alignment with watershed boundaries. The act of eliminating the current boundaries puts pressure on High Priority County Management Agencies to convene to update their specific plan.

Thank you for considering these comments.

Yours truly,

Alice Godsey

Alice Godsey, P.E.
Director of Utilities

(8)

O·H·I·O
ENVIRONMENTAL
COUNCIL
KEEP WATCH, TAKE ACTION, MAKE CHANGE

April 17, 2006

Mr. Dan Dudley, Manager
Ohio EPA, Division of Surface Water
Standards & Technical Support Section
P.O. Box 1049
122 S. Front Street
Columbus, Ohio 43216-1049

Re: State Water Quality Plan (WQMP)

~~Dear Mr.~~ Dudley, Dan

2006 APR 24 AM 10:48
OHIO EPA - DSW

The Ohio Environmental Council is a statewide non-profit, non-government organization of over 100 member groups and several thousand individual members. We appreciate the opportunity to comment on the subject WQM Plan. We also appreciate the efforts by the Division of Surface Water in producing such a comprehensive document. The following comments identify a few subject areas that OEC encourages the OEPA to strengthen in the final document. In general the materials presented are excellent and consistent with the strong water quality protection philosophy evident within the Surface Water Division and OEPA.

1.03 Wastewater Facility Planning at the local level

New development patterns are referenced in this section and mention is made to the variety of ways depending upon the situation, that sewage disposal needs can be met. A reference to newly drafted Household Sewage Treatment System (HSTS) rules may be appropriate in this section. While the HSTS rules will not be implemented immediately, they will be prior to the next WQMP. Therefore reference to the new mandated citing and treatment standards seems warranted in this section.

2.03 Narrative "Free Froms"

These water quality criteria apply to "... substances that are harmful to human, animal, or aquatic life, and nutrients in concentrations that may cause algal blooms." Nutrient pollution causing noxious algal and cyanobacterial blooms have become common in some water bodies. The Grand Lake St. Mary's, the source water for Celina's drinking water, can serve as an example for better utilization of the "free from" requirements. Considerable and regular algal blooms are contributing to a degradation of this drinking source for Celina residents. In addition to the excess nutrient content producing increasing algal blooms, the nutrient and algal blooms contribute to increases in trihalomethanes (THMs) produced by the water treatment chlorination process. Metabolic wastes produced by algae add to the precursor load that causes elevated THMs. Efforts should be made to heighten identification of the sources of nutrient loads through surrogate testing, such as source tracking of bacterial loads. Finding the sources of nutrient and bacterial loads can begin the process of reducing them. The dominant bacterial sources are also the dominant nutrient sources. The "free from" narrative criteria should be applied toward resolution of this example case study and used for other similarly polluted surface waters.

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2.07 Ohio's TMDL Process

OEPAs efforts to comply with Section 303(d) of the Clean Water Act are laudable. The draft WQMP references a bench marking process conducted with USEPA and other states. The resulting 12-step process identifies a logical series of actions or steps that together create a coherent TMDL program. A few of the action steps are notable and are commented on in the following:

The TMDL process "...builds upon existing monitoring, modeling, permitting and grant programs and works within our 'five-year monitoring strategy.'" Ohio's biological monitoring is a nationally recognized premier monitoring program. The five year schedule serves as the backbone of this process. We encourage the OEPA to develop support for sufficient resources for building capacity in the bioassessment unit necessary to maintain this monitoring commitment.

The Overview of the TMDL Project Process has some the following opportunities for broad collaboration. In Step 1, "Examine external information..." we are hopeful that not only officially recognized credible data be reviewed but also caveat studies that can help identify potential polluted "hotspots". In addition Step 2 provides the same opportunity in to evaluate external ambient data.

In Steps 4, 9, and 10 reference is made to "Identify...stakeholder involvement, resources for actions, and implementing parties." This step recognizes the shared vision in Ohio to have healthy local watershed organizations for water quality protection and restoration led by professional watershed coordinators. Resources are necessary both at the state level and locally to assure the success of this vision. We are concerned that state level support is contracting and that the benefit gained through past support will contract as well. We encourage OEPA to further the dialog with state level governmental and non-government partners to meet the funding demand that continues to grow. The benefits of a sustainable watershed program for the OEPA WQMP and TMDL implementation success is obvious and documented in the 12 Step Process.

4.02 Ohio Nonpoint Source (NPS) Program

The WQMP documents the process that OEPA is undergoing to streamline funding Clean Water Act 319 NPS projects. We agree that the process to fund NPS projects that restore Ohio water resources has been moving in a positive direction. We encourage OEPA to continue to provide public participation in the project selection process; furthermore we believe that a stronger linkage between NPS impairments that are documented in a TMDL assessment is warranted. Projects that are proposed and are aligned with TMDL implementation priorities should receive stronger consideration.

4.04 Watershed Action Planning and Implementation and State Endorsed Watershed Action Plans

The endorsement process for watershed action plans (WAP) has under gone some changes to create a more responsive process however steps should be taken to further streamline the process. The WAP is a heroic effort by the watershed coordinator and their supporting group. Rather than circulating the WAP to a large list of multiple agency officials for general comments, the process should better control the opportunity for general editorial comments by a wide list of reviewers. The Area Assistance Team should work more closely with the group

and their draft WAP and act to funnel comments from colleagues in their respective organizations prior to WAP submittal. The experience of a watershed group that has spent considerable time and energy in developing their WAP and then receiving the aggregate of many general comments from many reviewers who may be looking at the document for the first time can be exasperating. The guidelines for the WAP document referred to as the Appendix 8 checklist are useful but the Area Assistance Team members have the responsibility to help watershed groups produce an endorsable plan while the WAP is in the development stages. This can reduce the editorial "piling on" that has happened on WAP reviews in the past.

7 Groundwater and 7.01 Future Needs

Reference is made in the draft WQMP to the lack of connectivity to groundwater protection in the original provisions of the Clean Water Act of 1972. Subsequent amendments to the CWA in 1986 and 1996 have sought to protect source water from both groundwater and surface water sources. Additionally OEPA continues to explore opportunities within the CWA for designating drinking water sources with a beneficial use designation. We strongly encourage OEPA to continue with these efforts because the benefit of additional protection for drinking water sources using CWA provisions is needed in Ohio.

Comments are made in the 7.01 Future Needs section that additional up to date information about interaction of ground waters is needed in certain areas of the state. Karst regions the Mad River Valley and the Big Darby watershed are noted. While there is agreement with these specific regions, other areas need better understanding of the interaction between groundwater and surface water as well. For example in northwest portion of the state the counties with abundant glacial and bedrock groundwater are seeing unprecedented expansion of very large scale dairy development. Livestock facilities in excess of the 1000 animal unit category (which qualify them as a concentrated animal feeding facility) are the new organizational standard. The liquid manure disposal standard used on these facilities requires vast quantities of groundwater to act as carrier for the wastes produced onsite. Furthermore liquid wastes are then disposed of at high rates back on nearby land potentially recharging groundwater sources with manure contamination.

The permitting and management of these facilities is under the purview of the Ohio Department of Agriculture however the responsibility to protect groundwater quality remains primarily an OEPA responsibility. Modeling of the interaction of groundwater and the potential for either negative impacts from excessive withdrawal and the potential for groundwater contamination from manure laden recharge back to local aquifers is an important present need and the OEPA is encouraged to study this emerging issue and make appropriate recommendations for protecting Ohio's groundwater.

Appendix 8-2, Scioto River Basin

3.02 Summary of Water Conditions

"Very marked improvement in the condition of the Scioto River has been well documented in the past" and further that improvements are attributed to waste water treatment upgrades. These upgrades have not yet been recognized by

OEPA in the form of updated use designations. If the Scioto River segment in central Ohio qualifies as exceptional warmwater use designation then we urge OEPA to make the appropriate changes.

Additional comments regarding high quality and impaired quality of Scioto Basin tributaries are noted. Specifically comment is made regarding the Blacklick Creek. Efforts by OEPA to support in basin mitigation for construction activities that effect headwater streams, riparian corridor protection and reduction in wetland losses is recommended as conditions for 401 permits in the Blacklick Creek sub-basin.

Appendix 9-3 Big Darby Creek Watershed

Comments are made to OEPA Division of Surface Water on the consistent effort to use the requirements of the Clean Water Act, the WQMP, and other mechanisms to provide a level of protection appropriate for this exceptional water resource. In the future as development changes the landscape in the Darby watershed we look forward to seeing the benefits of the efforts by OEPA and others.

In conclusion, the Division of Surface is congratulated on the excellent draft WQMP for Ohio. Continuation of these efforts and adherence to the framework provided can greatly improve the chances of Ohio meeting the goal of 80% restored waters by 2010.

Sincerely,

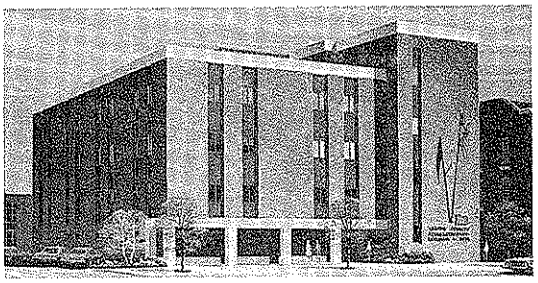
Dan Binder

Dan Binder, Director of Watershed Programs

OHIO EPA - DSW

Licking County Board of Commissioners

Timothy E. Bubb
Marcia J. Phelps
Doug Smith



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April 20, 2006

Dan Dudley
Ohio Environmental Protection Agency
Division of Surface Water
PO Box 1049
Columbus, Ohio 43216-1049

Re: Draft State Water Quality Management Plan

Dear Mr. Dudley:

The Licking County Commissioners have reviewed the Ohio EPA's Draft State Water Quality Management Plan including Section 208 Areawide Waste Management Plans and have the following comments:

- With regard to Generic Prescription #7, the County requests further clarification regarding the County Commissioners' responsibilities associated with unsanitary conditions emanating from multiple lots/land owners in unincorporated areas of the county. Further, please clarify who will be responsible for addressing mobile home parks and similar semi-public facilities that are not in compliance with NPDES requirements and subdivisions with failing septic systems in unincorporated areas.
- With regard to Prescription #25-P3, the County objects to boundary adjustments for the Columbus RFPA into Licking County beyond the current boundaries. Licking County requests Prescription #25-P3 be amended to exclude the last statement, "RFPA boundary adjustments, with or without a petition, may also be proposed by the State when the 208 plan is updated."

Please contact us at (740) 670-5110 if you have any questions regarding our comments from the Draft State Water Quality Management Plan.

Sincerely,

Timothy E. Bubb

Marcia J. Phelps

Doug Smith

cc: Village of Johnstown
Monroe Township Trustees
Jersey Township Trustees

Richard C. Pfeiffer, Jr.
CITY ATTORNEY

CITY ATTORNEY'S OFFICE • COLUMBUS, OHIO

(10)

OHIO EPA - DSW
2006 APR 25 AM 8:41

April 21, 2006

Dan Dudley, Manager
Standards and Technical Support Section
Division of Surface Water
122 South Front Street
Columbus, Ohio 43215

Re: Comments On Draft State Water Quality Management Plan Update

Dear Dan:

The City of Columbus appreciates the opportunity to submit the following comments on the draft Water Quality Management Plan Update.

Appendix 9-1

Generic Prescription 2: We do not believe that the last sentence of this prescription is a full and accurate statement of law. Moreover, for purposes of this plan, whether a service agreement exists should be irrelevant, a management agency should be allowed to serve any property within its area.

Generic Prescription 6: The reference should be to city or county health departments.

25-P2: We do not believe Ohio EPA has the legal authority to prevent a municipality from serving its own citizens, as a municipality's right to serve its citizens is preserved by the Ohio Constitution. We therefore believe the "opt out" and "lock in" petition processes should be clarified. We see the lock in petition as a way for non-municipal providers to preserve territory; but this must be on a non-exclusive basis. Anytime territory is annexed, the municipality is allowed to serve it. See our letter to Dan Dudley, regarding the Southwest Licking Community Water and Sewer District's Lock In Petition (July 8, 2005). In addition, the opt-out petition should include the formal involvement of any existing management agencies in the area.

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25-P3: We are concerned with how Ohio EPA intends to interpret the language in this prescription regarding facility planning. Specifically, we anticipate that small boundary adjustments will continue to occur for our area, and we do not believe that additional facilities planning should be required. We propose adding the following after the third sentence (the sentence that begins "Further, all applicable . . ."): "However, small adjustments to the boundary of the RFPA may be made without additional facilities planning, as long as the entity requesting the adjustment is able to demonstrate that the facilities have adequate capacity."

25-P6: As we discussed in our meeting, concerns have been raised regarding how this prescription will impact non-traditional treatment plants in the Darby area. We read this as allowing an existing or new management agency to establish a new treatment plant by following the opt-out process. We further read this as allowing the City of Columbus an opportunity (as the existing management agency) to be involved in the decision about whether such a petition should be granted. It is important that the 208 plan not be an impediment to the implementation of the Big Darby Accord.

25-P7: We suggest that the last two sentences of this paragraph be rewritten as follows:

> The City of Columbus or any of the satellite communities may extend sewer collection systems anywhere within the Columbus sub-regional FPA (map 25-2). If a management agency has been granted a lock in request, then no other management agency may extend a collection system into the locked in territory unless: 1) the management agency that is extending service has a contract authorizing the service with the management agency that has the lock in; or 2) the management agency that is extending the service has annexed the territory to be served.

25-P12: The second paragraph of this prescription should be deleted. Prescription 25-P1 already adequately covers this.

This last sentence of the third paragraph conflicts with our contract with Reynoldsburg, and is unnecessary. Please delete it.

Appendix 9-3

Areal Extent: On page 8 of Appendix 9-3, the last paragraph appears to open the door to a developer changing the flow on a piece of property to escape the requirements of this section. We object to this language and ask that it be removed. It is inconsistent with the City's stormwater drainage manual, and good stormwater management practices.

Criteria 2a: We suggest that the last sentence be rewritten as follows: "A drainage way along side a road shall generally not be considered a stream. A naturally occurring stream that is parallel to a road for a short distance shall still be considered a stream."

Criteria 2b: The formula under 3b appears to be in error. The formula should be:

Where DA is greater than 16 miles squared
W = 87 DA 0.43 + 100

Criteria 2C, Item 1d: This should state: "Distance from edge of the stream: Minimum 125 feet, unless developed as a spur to a main trail to provide river access."

Consensus recommendations: In addition to the recommendation in footnote 1 of Appendix 9-3, there are two other consensus recommendations that are missing. The first is found on page 45 of the ESDA recommendations, and relates to stormwater enforcement. The second is on page 13, and relates to ownership of riparian corridors.

Map Issues

At our meeting, we provided you with several map adjustments that we would like to see for the RFPA territory. Language in the plan will need to be changed to reflect these updates; for instance, in Appendix 9-1, under the Franklin county discussion, it lists the changes to the FPA boundary.

In addition, we are in the process of negotiating new territory for Reynoldsburg, and would like to see the map changed to reflect the new territory. A map of the requested change is attached.

Appendix 8-2

As we discussed at our meeting, there are items in this appendix that need to be updated. We will submit editing suggestions within the next week.

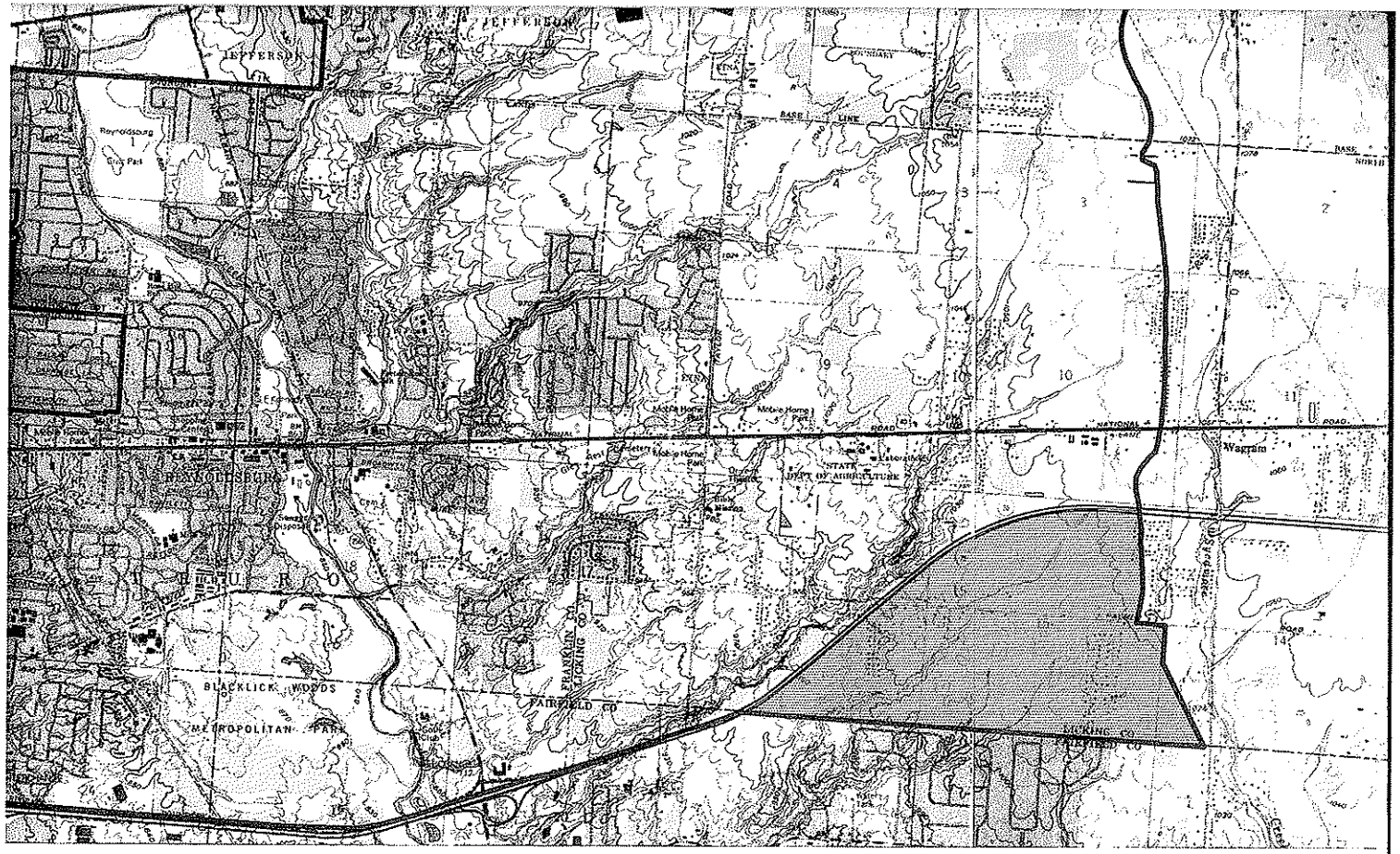
We appreciate the opportunity to comment on this document. If you have any questions, please let us know.

Sincerely,

Susan E. Ashbrook

Susan E. Ashbrook
Assistant City Attorney

c: Steve Salay, Sewers and Drains
Ann Aubry, Sewers and Drains
Frances Beasley, Public Utilities
Dan Hanket, Public Utilities



ɔR WATER AND SEWER

N

AREA AND BOUNDARY MAP FOR SEWA
AGREEMENT BETWEEN THE CITY OF C
OHIO AND THE CITY OF REYNOLDSBU

SCALE: 1"=2000'

(11)

CLEAN WATER PLAN
OHIO RIVER BASIN 208 UPDATE
May 19, 2005 DRAFT

NEFCO
180 E. South Street
Akron, Ohio 44311-2035

Public comments **6 July 2005**

A. **Appendix 3- 20**: The original FPA as laid out has been modified. There is no known or discoverable reason that said modification has happened. The boundary change appears to be against original engineering estimates of feasibility to service this area. Have not discovered any notices of, or engineering studies that would substantiate said changed boundaries. There have been no public meetings concerning these changes.

B. Does the original federally sponsored POTW plan on servicing the area or only its internal political boundaries and influence? Will primary DMA allow a SPSDS to provide service to balance of area? The last paragraph is confusing in that, does it refer to area inside of Barberton or total area. If total area, the first question is answered in that any sewer can be extended to Plant from area.

C. **Appendix 3-21**: The map appears to be greatly changed from original bounds as discussed in public meetings in 1977. The Stark County portion has fully disappeared. The East end has been severely truncated. While private developers have extended pumped sewers into this area at their own cost with out objection from governmental agencies, there has been no further feasibilities studies conducted by DMA to service the original area. The DMA has not built plants, extended or upgraded any systems in the original area. The DMA has no financial interest in the safety and well-being of this area as noticed by the subdivision of the **Stark-Summit Service Area** (SSSA) **(cross hatched).** In 1996 a PUCO certificate of need survey was conducted of this drainage basin with a 80% response rate (356residents, businesses.) And again without any engineering or public input the area was subdivided by DMA without any hope of the area known as Greensburg Heights to be serviced, which is most polluted area in Summit County. Public money was given by County to upgrade the Mt Pleasant private pump station but no objection could be had at time through ERAC because DMA did not upgrade with public money [in violation of Plan.] Don't know what money was actually used for. Present Franklin Green Facility Plan (FGFP) policy is that there is no restriction on private treatment or sewer expansions as long as **no public money is expended**. Proposed May 19 draft policy of SSSA is that all commercial must be connected to existing plants. There are no plants in FGFP area, so all must be pumped into other drainage basins. This is ridiculous in that this area has a built out capacity of at least 10 million gallons and a feasible system can be built and maintained at half the cost of this mandatory pumping regimen. The SSSA had a multi-developer paid-for system 30 years ago but the DMA threw it away. The DMA also lost large Federal monies for this area. Yet now they propose not to allow any SPSDS to service this area (SPSDS would not need any governmental funding.) If the need was great in 1978, then the need is greater now. What is to the public interest when this FGFP area could have a sewer within 400 meters of every house within ten years at no governmental infrastructure cost compared to existing DMA that's had thirty years to do nothing? The FPA as altered from 1978 is not acceptable.

D. **Appendix 3-22:** In public hearings in 1980's the people objected strongly to the second phase of this FP expansion. This draft will take away the Portage Lakes area from Barberton Plan and the balance of North Western Quadrant of Green from the FGFP. This represents a 45% increase in Summit County Springfield FPA with no engineering or feasibility studies. This 'land grab' will seriously erode the feasibility of the Franklin-Green area that has ten-year need of 3 million and 40 year of 7 million (build out 10.5M.) The FGFP people will accept a properly engineered system at half the cost of the proposed pump–pump-pump-pump system as proposed by DMA (PUCO survey.) The Springfield WWP only has a 4 Million gallon capacity; conserve it for its original territory before expanding at $50,000

subsidy each for a dozen houses off Knollwood area (note existing and draft plan call for only developer paid extensions while Attorney General is presently defending against an expansion 50% subsidized by government that **violates** both area and financing of this plan.)

E. Why is SSSA also included in this plan as well as 3-21?

F. As a property owner in the FGFP original area, I object strongly to the arbitrary boundary changes and policies. The people should have the chance to choose. One model shows that the Green's segment will pay out up to 100 million more than other scenarios with the present direction over the next thirty years.

G. **Appendix 3-21:** The area East of Silver creek not optioned by Doylestown should have the option to choose a SPSDS to service them. This area was included in FGFP feasibility study of 1996 by NWWTCo. This area is not critical to NWWTCo feasibility, but only to offer total coverage below Barberton and north of Nimisila Creek to Canton Akron airport. It's a natural in picking up all of Clinton to also service this area as needed.

H. As can be seen, the convenient administrative changing of FP boundaries without any feasibility studies or public input exposes the population to great excessive expenses later on with forced governmental financing just because no one did **basic engineering and financial strategy** to begin with. Therefore, the proposed quickie modification approach that NEFCO and partners request, is not acceptable. The DMA should be required to show implications of feasibility of proposed changes and the continuing public involment as had in original 201 plans. At no time can the Public be left out as the basic of law and administrative action comes only through public acceptance. There is no Public Law 92-500 without that ingredient.

I. Recommendation 4-2d-1 seems to be in conflict with 4-2d-4

J. Recommendation 4-7 requires licensed installers. Plants can be quite engineering specific; question any licensing that goes beyond a warrantee purpose.

K. Pg 4-14 last paragraph – typo reference to Lake Erie Basin 208.

L. Appendix 4-1 Why was no input from Wayne, Stark, and clayish Portage East included?

M. Appendix 5-1 Where can these be seen without extensive search?

N. Recommendations 5-5 & 5-6 are obsolete and resolved

O. Table 5-1 typo mi^2

P. Recommendations 6-4 & 6-5 should not be limited to URW & SDWS

Q. Recommendations 6-3, 6-3a, 6-3b, and 6-3c are not proper for inclusion in 208 update.

R. Recommendation 6-1 should refer to all, not just regionally important water resources.

S. Recently objected to a mitigation project and asked for a public meeting. EPA said no. The fact that offsite wetlands would be drained because of hydraulic effects of this mitigation had no bearings on the legal issuance of this permit. [water flowed to URW] The drainage of 3 hector offsite wetlands was facilitated by local governmental 'standard engineering practice'.

T. Chapter 6 II A 1 f vi & 2 b iv are out of place and no relevance to topic

U. Chapter 6 II A f ii,iii, iv presently regulated by agency or insurance; further demands excessive vs. return value.

V. Chapter 6 II A 1 f v included in basic riparian protection – not dumping drainage into stream but side channel or stream terrace

W. Chapter 6 II A 2 d i The practice of just dumping no matter temperature doesn't exist anymore. The science of grit/temp/salt/brine/$/safety now makes this a non-issue.

X. Chapter 6 II A 2 c ii & 3 d i Summit County Joint Health District proposed a 5-year $4.9million program that in open meetings the citizens strongly objected to. None of those objecting though, objected to a similar 20-month $1.1 million program by consortium of private haulers to do the same documentation, sight evaluation, base testing, and public education. Without this basic information, the DMA and other agencies cannot make their proposed prescription for the area based on fact, economics, and public health. The Health Department board ignored this offer and initiated a useless program focused on maybe ⅓ of actual non point source pollution from HSTS.

Y. Chapter 7 Noticeable lack of reference to: 1994 Canadian initiative for "Adaptive Management of Stream Corridors" which strives to provide an institutional framework for an ecosystem approach for both watershed planning and stream works (both management and design). Another similar effort was the Interagency Working Group "Stream Corridor Restoration: Principles, Processes and Practices" released in 1998 by USDA, USEPA, US Dept of Interior, Corp of Engineers and others. That document is "a result of an unprecedented cooperative effort among fifteen Federal agencies and partners to produce a common reference on stream corridor restoration." Center for Applied River Science at the River Institute

Z. Strategy 7-1 should end with . . . and offer support to those other streams that may benefit.

AA. Chapter 7 challenges us to use the 201 Process to evaluate and accept urban water resource restoration but note that the other chapters bury this process. **The comprehensive 201 process should be continued in all aspects to this 208 Plan.**

BB. Recommendations 7-1 through 7-3 do not belong in 208 Plan

CC. Recommendation 8-2b has conflict of interest when local public management agency are the source of problem. [remember this will have effect of law when approved]

DD. Recommendation 8-4 assumes cooperation with other agencies to secure funding.

EE. Chapter 9 60-day comment period?? Library only 77, 78, 79; none other available. Summit Co-Website- Home & Engineers no?

FF. Chapter 10 How will NEFCO evaluate a non-member proposal and proceed with adjudication process? [how does it co-evaluate Plan Cohesion projects without a means to charge non-member a supporting fee to do so]

GG. Policy 10-2, 10-4, 10-7 language would limit SPSDS from becoming DMA 10-21. The word consistency is given legal term in relation to loans and grants, but then in content is given a generalized form that implies that SPSDS have no place in planning process.

a. Policy 10-9 'will provide' This is objectionable were the SPSDS total business plan is based on management plan. This language would preclude any outside force to provide plan or solution.

HH. Chapter 11 A. Plan development has been lacking in step 1&2 and limited time wise with step 3. Had the test for local government included open meetings, the above might have happened, but **only** government stakeholders were able to participate.

II. Introduction or Chapter 1 should include reference to partial update of 201 areas and mention that due to age and office moves that original 1981 documents are not available for public reading and comparison and legal defense of 208 challenges.

JJ. Introduction Vision 5 development: As worded, implies that what agencies have drawn up are 'the law' without any possibility of public interdiction.

KK. Introduction AREA 3 #6: question if this should be in plan – advertise a program that might not be available. There are no known SSO & CSO in this 208 area – delete reference to

LL. Figure 2-1 or 2-2 should include 8+3 digit water codes for simple legal reference [or someplace]

MM. Table 2-4 should include 1980 to 2000 as historical perspective on past planning.

NN. Chapter 3 Introduction: Consistency review for funding assistance sets up a procedure for changes in 201 Planning areas and solutions. This policy has been apparently extended to any political or developers whim with only neighboring governments being notified. This policy is not consistent with original 201 process that demands feasibility studies and public support. Therefore, it is not acceptable as it effectively disinchansises the publics input and can and has impeded progress for public health improvements.

OO. Chapter 3 II: Language is such that a SPSDS cannot be primary or secondary DMA, even in FPA were the DMA has not built any plants.

PP. Chapter 3 footnote 3: Object to change boundaries solution that have not followed 201 procedure of feasibility, alternatively grading and public review. The process of accepting all changes with a wave of the hand since 1970s plans that did included public input is not acceptable.

QQ. Policy 3-3: comments above

RR. Policy 3-3 2: The threat of connection definitely prohibits expansion of sewers into areas where they are needed. There are other nuisance legislation that will effect the same result, although slightly more restrictive in enforcing. The good of the whole requires this to be removed.

SS. Policy 3-3 3: With removal of 3-3 2 this becomes a non-issue. As noted: boundary and solutions are **preferences** of local officials and should not carry the weight of law.

TT. Policy 3-6: Object to process unless it mirrors 201 original feasibility and public review process. Handshake between local governments is not to be allowed.

UU. There seems to be a serious problem where the DMA for an area squashes solutions to betterment of health to its constituents. The provisions of this 208 Plan as written by said DMA's should not entrench practices that conflict with constituents' welfare.

VV. These are comments by Joel Helms 4977 Massillon Rd, 44720.1459 after first reading of this Plan revision. There are basically 4 issues with this Draft:

1. The stripping of feasibility justification from the process
2. The stripping of public input out of process until it's too late.
3. The notion of forced hookups, defeating purpose of expanding sewers to be available when needed
4. Generalized language that seems to prohibit SPSDS from participating in DMA processes.

330.563.0034VOICE, 330.815.9930CELL, 330.563.0030FAX

minor issue is that Ohio State Extension Service is not given their place in the future of our Basin Plan.

The above was timely submitted to NEFCO within their 60-day timetable but NEFCO has not responded, therefore all references to a 60 day public response period should be deleted from draft.

Further reference to X: A privately funded proposal to inspect and document all septic systems in the 201 Franklin Green Facility Plan Area was available in February of this year and the Health Department basically refused to share files for digital processing. A further example that nonpoint pollution abatement is talk only.

Enclosed is a 3 April mailing to 5,754 voter households in the Franklin Green Plan area and two replies. It will take a while to develop mailing list of property owners not already sent out.

Please inform me about a week before this issue goes for the Governor's signature so that the balance may be submitted directly to him. Post card enclosed.

Also enclosed is a flyer given to local Health Board for their backing as mandatory hookup is referenced in their revised regulations and a letter to NEFCO which had been ignored.

Joel A. Helms

Joel Helms 4977 Massillon Rd

6 April 06

Landowners and registered voters of Franklin and Green Townships.

A 60 day public response period started 7 February on the Water Quality Management Plans update **(WQM)** (Clean Water Act Sections 208 & 303) **After 60 days this Plan will be signed by our Governor as an element of the Treaty between Ohio EPA and Federal EPA. This is our first time since 1985 to review this plan.**

The State WQM Plan is an encyclopedia of information used to plot and direct actions that abate pollution and preserve clean water. A wide variety of issues are addressed and are framed within the context of applicable law and regulations. CWA Section 208 Regional plan includes our local Franklin & Green Facility 201 Planning area.

THERE ARE MAJOR PROBLEMS WITH THIS DRAFT.

The only rights we have is to comment on this Draft and petition directly to the Governor. The Ohio Constitution prevents us from any initiative petition concerning our health and welfare if it concerns utilities.

Historical perspective: Our first 201 Plan was produced in 1977 and after public input meetings and revisions was made a part of the State plan. In the early 1980's the revolt of the People of the Springfield Phase II project and near fraudulent County money handling problems, the Federal government withdrew over 45 million earmarked for this area. In 1996 a private proposal was made to service this area, that would make maximum use of existing infrastructure and required no governmental money to be feasible. Summit County Environmental Services [SCES], the appointed overview agency, has refused to consider this new technology for nine years. Federal Public Law 92-500 requires them to reevaluate all options for sewerage treatment on a yearly basic. SCES has refused to do this yearly review for over 25 years.

These yearly reviews were to include evaluation of alternate solutions (technologies) and feasibility studies of both cost and environmental impacts. **This 2006 WQM Plan proposes to legitimatize arbitrary administrative annexations of our Planning Area to the detriment of our citizens without any public review allowed**. THE FEDERAL LAW GUARANTEES THE PEOPLE THE RIGHT TO REVIEW AND THEN KNOWLEDGABLY INFLUENCE THIER ELECTED OFFICIALS. Recently the Mayor of Tallmadge suggested that the County review their system and was raped with a 40% rate increase just for speaking up. The Greensburg and Massillon Rd intersection project is being proposed at $19,000 subsidy plus another $3000 hookup cost. The alternative environmentally superior system would only cost $7000 a unit. **What a waste of our taxpayer monies**. The Arlington Rd project to serve a dozen houses to the tune of $56,000 subsidy per needed unit. Where will it stop? Sewer and Water should be self-maintaining. A conventional sewer cannot serve 70% of Franklin; SCES refuses to evaluate or allow alternatives.

Therefore, this petition requests that the Governor appoint another entity not associated to Summit County, to be able to re-evaluate this original area for the Health and welfare of its citizens.

The second issue is mandatory hook-up required when sewer is available. With our unique glacial characteristics, some homeowners may never have their onsite septic system fail. With a voluntary hookup program this area could have unsubsidized sewers within a thousand feet of any house within ten years at the same cost to the homeowner as a conventional septic system. Compared this to **mandatory hookup at 3x$** and about forty years availability. There exists multiple nuisance laws for the landowner that refuses to maintain his system. The **mandatory** concept **inhibits** a **properly engineered system** to the **detriment** of our future **health** and **well-being**. This petition attempts to preserve our right to review our elected and appointed representatives in their decision making.

We the Citizens of The Franklin & Green 201 Facility Planning Area do hereby request that you appoint a new lead agency of this Facilities Planning Area that will serve the Peoples health and welfare as its primary function and to disallow all boundary and service changes (mini-updates) until properly reviewed to federal guidelines.

Furthermore, we demand that the mandatory hookup concept be removed totally from this plan as that is the greatest deterrent to expanding feasible coverage for our future health and well-being.

To facilitate follow up of this survey, please return postcard with a cross through your ~~NAME~~ if you do not wish to sign. If the names are no longer voters at this address, please single line through ~~NAME~~ and return. If you work for any government and feel you can't sign please mark **'Hatch Act'** after your name. Thank you An 80+% response rate is hoped for. Joel Helms jhelms@nwwt.net 330.563.0034

PUBLIC COMMENT TO LOCAL HEALTH BOARD IN REFERNCE TO PROPOSED CHANGES TO ADMINISTRATIVE CODE
9 MARCH 2006

There are two major objections to proposed 3701-29-07 D1 (soil absorption)& G3 (mandatory sewage hookup)

The first proposed rule (D1) would prohibit the **wetland treatments-evapotranspiration model** from the State. A simple example of a three-bedrm ranch with 230m^2 footprint would require a 84m^2 evaporative-treatment wetland, a 164m^3 winter capacity storage, and 2m^2 septic tank. This is based on ability of three-fold wetland plants evapotranspiration where here in Ohio; the average evaporative rate equals rainfall. The actual footprint not including berming and blending horticulture is only twice that of actual building. Secondary benefits are too numerous to expound on. This system would be compatible with either a bedrock or ground-water near the surface of a buildable lot as no dispersion need take place. Your proposed rule prohibits this system to the future detriment of our ecosystem.

The second proposed rule (G3), economically works against the well being of the People as the below example demonstrates. In over a dozen sewer proposals studied, the economic results are similar.

DELETE MANDATORY SEWER HOOK UP.

A proposed 200-benefit system extension in Green:

Trunk line and pump station $1,695,532.50	=>	8480
Facility connection cost (53% subsidized 1980's)	=>	3830
Estimated on-lot cost /re-plumbing	=>	1860
Zone payback to previous developer sponsored trunk/pump system	=>	780
Total cost of sewer	=>	**14,950**

Federal/State facility subsidy	2030	
Green Subsidy	2860	
State Issue II grant	2750	
total tax moneys	**7640**	
Total cost to each home owner after subsidies		**$7,310**

Monthly cost **$43**

Totally **voluntary non-subsidized sewer** would cost each homeowner **$6400** [down to $4050 depending on age] Minimum installation requirement is 3 units per 300meters of trunk line with a build out potential of 7 units per 300m [10-units per 300m in a pump zone.] Monthly cost **$25.80**

With a government subsidy, cost would come down

Example - 5.8% reduced to 1% Issue II loan could drop monthly cost down to **$13.30** or **$40 quarter**

The concept of government forced hook up is obsolete. It is the greatest deterrent to a coordinated central management system to control non-point source pollution.

Joel Helms jhelms@nwwt.net 330.563.0034

It is an absolute waste of our precious infrastructure taxes.

J. A. HOBBS
GREENTREE PLACE
4866 MASSILLON RD #157
GREEN OH
44232-0157

July 11, 2005

NEFCO
180 E South Street
Akron, OH 44311-2035

RE: May 19, 2005 DRAFT/CLEAN WATER PLAN
Public comments:

I presently have an appeal in front of ERAC in relationship to my semi public Wastewater Ttreatment Plant. I have received a copy of your Appendix 3-21 DRAFT. The last segment, Stark-Summit Service Area is of great concern to me.

At a public meeting a few years ago the advantages of a small diameter no solid sewer system was described for this area. The cost of final treatment would be less than I'm presently paying. I also asked "what if a conventional sewer was put through instead" and I was informed because of the ability to use my system for peak shaving that actual cost would be about same as present [31% of standard cost.]

As proposed, the realignment of The Franklin Green Facility Planning Area and its new rules are irrational. It would demand that I abandon my wastewater treatment plant and hook up to the proposed system at a cost of $600,000 and to pay $2000 more per month in operating expenses. There is no logic or environmental savings to this proposed update.

A stream runs through my property and is never below 16,000 coliform level, It's an open sewage pipe from an upland area that's been taken out of the proposed Franklin-Green and Stark-Summit Area. Even if it were included, the rule of forced connection will doom this area from ever being served. ALLOW VOLUNTARY CONNECTIONS. That was part of business plan that guaranteed full sewer coverage for this area.

Therefore, I object strongly to the proposed update for this area.

Secondly, I do not understand the reference to the Stark County Metropolitan Sewer District jurisdiction.

Sincerely,
Jean Hobbs 4/06/2006 -
Jean Hobbs

PLEASE NOTE: Letter originally submitted dated July 11, 2005 to NEFCO.

(12)

Southwest Licking Community Water & Sewer District

Phone 740~927~0410
Fax 740~927~4700

mailing:
P.O. Box 215
Etna, Ohio 43018

69 Zellers Lane
Pataskala, Ohio 43062

2006 APR -5 AM 10: 33

BOARD OF TRUSTEES

Mary Lou Fairall
David W. Goll
Melvin Hite

March 30, 2006

Mr. Dan Dudley
Manager, Division of Surface Water Standards
Ohio Environmental Protection Agency
122 South Front Street – P.O. Box 1049
Columbus, OH 43216-1049

Re: Public Comments of Southwest Licking Community Water & Sewer District to Final Draft of Ohio EPA State Water Quality Management Plan, February 2006

Dear Mr. Dudley:

On behalf of the Southwest Licking Community Water & Sewer District ("District"), I wish to submit our comments on the Final Draft Update of the State Water Quality Management Plan and 208 Areawide Waste Management Plans issued by Ohio EPA in February 2006. The District is pleased to have this opportunity to provide comments and appreciates the efforts you and your staff have made to update and improve the State Water Quality Management Plan and the 208 Water Quality Plan for Central Ohio and surrounding counties.

As you know, the District is a regional water and sewer district established pursuant to O.R.C. § 6119, et seq. The District serves approximately 14,000 people in southwestern Licking County and is projected to serve an additional 8,000 over the next 10 years. This portion of Licking County which abuts Franklin and Fairfield Counties, and is just east of the Columbus metropolitan area, is experiencing considerable growth. The District has constructed a collection and treatment system with over 100 miles of sanitary sewers, 20 miles of force mains and 32 pumping stations. With current upgrades, the waste water treatment plant has a capacity of 2.65 million gallons per day ("MGD").

In August 2004, the District submitted a proposal to "lock in" its current territory in areas that overlap other potential designated management agencies ("DMAs"). Primarily, the District was concerned that expansion through annexation of the City of Reynoldsburg which is a satellite community providing sanitary sewer service under its contract with the City of Columbus to use Columbus sewer treatment, would preclude the District's ability to serve new development in areas that might be better served by the District's existing or planned collection and treatment system. The District would be better able to serve much of this overlapping area from both an environmental and economic perspective. We therefore hoped to create certainty and stability in this area and preserve the District's investment in and ability to serve its customers by locking in its service area. The facility plan submitted in August 2004 and updated in 2005 reflects the District's strength and ability to adequately serve this territory in a manner that is protective of the environment and is economically sound.

The Ohio EPA has responded to the District's lock in request by postponing a decision on the request:

> pending further review by Ohio EPA of objections submitted by the Cities of Reynoldsburg and Columbus.

See Water Quality Management Plan Update, February 2006, Appendix 9-1, Prescription 25-P12. Prescription 25-P12 points out that some of the areas of the Southwest Licking District's jurisdiction that overlap with the Columbus Metropolitan Regional Facility Planning Area ("CMRFPA") should be the subject of cooperative joint planning between the District and the City of Columbus resulting in a contract between the District and the City for the provision of sewer service. Indeed, the Ohio EPA's Draft Update directs the City of Columbus to initiate such discussions within 90 days of the approval of the 208 Update. The District supports efforts to engage in cooperative regional planning and service agreements and has made this offer to the City of Columbus. We do wish to note that the Prescription offers no consequences if the City of Columbus ignores this directive to engage in cooperative planning. We would urge the Ohio EPA to include in this Prescription that failure on the part of the City of Columbus to initiate and participate in good faith, in such negotiations will result in the granting of the District's lock in request.

On the issue of overlapping jurisdictions within the Current 208 Water Quality Management Plan, Prescription P25 -P12 states that:

> Land parcels within the Southwest Licking Sub-regional Planning Area ("SPA") that are annexed by a municipality that is also a satellite community listed in the Plan (e.g., City of Reynoldsburg) may obtain sewer services from that municipality **or** the District.

Id. Prescription 25-P12.

While the District does not take a position against annexation and does not wish to influence or control that process and procedure, we are concerned that sewer service should not be determined solely by changing municipal boundary lines. The District has, with thorough regional sewer planning and sound financing strategies, built infrastructure to serve areas within its jurisdiction. It makes sense from an economic standpoint to give deference to existing infrastructure when determining which entity should be able to provide service. The District's lock in proposal would have clarified this issue for all entities concerned. Leaving this issue on hold subjects the District's customers to considerable uncertainty and financial risk as the cost of existing and planned infrastructure would be borne by fewer customers and not those who were intended to use the service. In addition, the environmental impact of providing such service would be lessened if new, often redundant collection facilities do not have to be constructed.

The possibility of changing municipal boundaries from multiple annexations would so radically change the area that the District was originally intended to serve that it threatens the very existence of this regional water and sewer district and would be detrimental to its current and intended customers. The Ohio EPA should be mindful of the underlying need for such

regional sewer districts and take measures to assist to ensure that they can continue to provide service as intended.

Current case law favors this approach of giving deference to sewer service providers to ensure their continuing ability to plan and maintain needed infrastructure and services. For example the Ohio Supreme Court has settled a dispute about whether a municipality or a County Sewer District would serve an area planned to be annexed to the municipality, by ruling that the County District, which had pending sewer projects, should retain jurisdiction over such service. *Ottawa Cty. Bd. Commers. v. Marblehead* (1999), 86 Ohio St. 3d 43. The Court based its decision on the fact that the County District had passed a Resolution of Necessity for the project in question, reasoning that the financing arrangements for such projects should be protected despite annexation of the land so that the County District would be able to complete the project and operate the services. While this Decision was based on a statutory provision specific to County Sewer Districts established pursuant to ORC Chapter 6103, the same argument applies where a Regional Sewer District such as ours, has passed a Resolution of Necessity and engaged in regional planning and investment to provide the planned service.

The District is recommending that in light of these economic and environmental considerations, the Ohio EPA add a Prescription to its Water Quality Management Plan and 208 Update affecting this planning area to acknowledge that it will give weight to the location of and investment in existing infrastructure in determining whether a DMA should be given priority to provide service in an overlapping jurisdiction. The EPA should give particular weight in a situation where a DMA such as the District has passed a Resolution of Necessity and taken the requisite financial steps to both plan for and construct facilities based on the projections of need. For example, in areas of overlapping jurisdiction, land parcels that are within an area that is tributary to existing infrastructure would be better served by that existing infrastructure of the DMA.

Again, we appreciate the opportunity to provide these comments to the February 2006 Final Draft of the State Water Quality Management Plan and Section 208 Area Wide Management Plans. We respectfully request that you give due consideration to these comments and incorporate our suggestions into the final document when it is issued.

Sincerely,

Mary Lou Fairall

Mary Lou Fairall
Board of Trustees

Copy: District Board of Trustees
Michael A. Frommer, P.E., SWLCWSD
Sarah Lynn, Bailey Cavalieri
Bobbie O'Keefe, District Attorney

(13)

City of Reynoldsburg

7232 EAST MAIN STREET
REYNOLDSBURG, OHIO 43068
(614) 322-6800

ROBERT L. MCPHERSON
MAYOR

OHIO EPA - DSW
2006 APR 21 PM 12: 00

April 20, 2006

Ohio EPA
Attention: Dan Dudley
Ohio EPA Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

RE: Draft State Water Quality Management Plan Including Section 208 Areawide Waste Management Plans

Dear Mr. Dudley:

On behalf of the City of Reynoldsburg, Ohio, I herein submit our comments (enclosed) pertaining to the Draft State Water Quality Management Plan and the Section 208 Areawide Waste Management Plan for Franklin County.

On June 29, 2005, I forwarded comments to Director Koncelik regarding the working draft, the lock-in application submitted by the Southwest Licking Community Water and Sewer District, and the existing CSPU. Those comments are included herein by reference and should be considered as though expressly repeated herein.

In short, the City of Reynoldsburg objects to any and all provisions that attempt to usurp our constitutional authority to provide utility service within out corporate boundaries. We believe that the 208 plan does not go far enough to protect, preserve, and delineate these rights and should be revised accordingly.

Thank you for your serious consideration of our comments. I look forward to a final document that reflects your appreciation for our position on these issues.

Respectfully submitted,

City of Reynoldsburg

Robert L. McPherson, Mayor

Enclosures

Comments on 208 plans for the City of Reynoldsburg

April 6, 2006

A. From Appendix 8-1, it seems clear that the threats to our streams greatly exceed that which can be addressed through sanitary sewers. Dam construction, flow alterations, non-point pollution from agricultural land, stream habitat alterations (for both agricultural and development purposes) appear to be significant contributors to non-attainment. Yet, the largest impact of the 208 plan seems to be its archaic focus on wastewater treatment plants, service areas, planning, and projections. We do not dispute that in the beginning (the 1970's), such a focus was critically important. At that time, it was perceived that poorly performing sanitary sewerage systems were the most significant municipal pollutant contributors and impactors to the streams. Such an approach not only addressed the significant contributor, but assured that limited resources (construction grants) were dispersed efficiently, effectively, and without duplication of effort. However, today, in the absence of the construction grant program, it seems equally clear (in light of the program's huge success that mitigated publicly owned treatment works impacts and unmasked the myriad of other detrimental contributors) that the focus of 208 planning should <u>not</u> be on the definition of service areas, but on the myriad of other contributors. Planning boundaries for MA's are beneficial, but they should not be boundaries that keep a service area from other providers, whether these boundaries are spongy or firm. Simply put, we do not believe that that this is a decision for the State.

B. The State concludes that a "coherent regional plan is needed to address sewage collection and treatment needs" is supported in many of the counties (especially in central Ohio). This seems contradictory to the findings. There is little evidence provided that the observed impacts to the State's streams are the result of insufficient planning. We would argue that the planning is sufficient; it is the resources necessary to undertake the plan that is lacking. Furthermore, we would not necessarily agree with the State's position that additional comprehensive planning is needed in the areas where growth is expected. Based on the information provided in the 208 plans, it appears that, for the most-part, there is adequate planning in these counties. It seems that areas of little growth have little or no planning and perhaps these are the areas to which the State should focus its attention, if failing onsite sewerage systems are a significant cause of non-attainment.

C. It appears clear to us that all of the "comprehensive planning", lock-in requests and opt-out requests are really about land grabs. There are, perhaps, many reasons why an entity might try to grab control of land: taxes; to stop annexation; to control development; to stop competitors (thereby creating a monopoly), etc. We ask that the 208 plans recognize planning boundaries as just that, planning boundaries, and not as hard and fast service territory boundaries that shall not be crossed.

D. Prescription 25-P1 notes that Columbus is responsible for long range planning, design and construction to accommodate wastewater collection and treatment needs for the entire Columbus regional facility planning area. It also notes that wastewater collection and treatment within eight (8) specific sub-regional areas is currently the responsibility of other management agencies identified in the 208 plan (Canal Winchester, Lithopolis, Union County – New California, Southwest Licking Community Water and Sewer District, Pickerington, Franklin County – Darbydale, Fairfield County – Tussing, Sycamore, Little Walnut, and Ohio American Water – Lake Darby, Huber Ridge, Blacklick Estates). These are allowed to continue. We take no exception to this so long as these eight management agencies are not provided supremacy over any service area (we acknowledge the PUCO sanctioned areas of Ohio American Water).

E. Prescription 25-P2 should be eliminated. Among other noteworthy issues, it appears that the allowances of this prescription have only been placed within the Franklin County 208 plan; no others. It would seem that this should be in all or none; we support none.

We believe that the State has no business in creating monopolies for sewer service (through the lock-in petition). The prescription references Section 5.03 of the CSPU. We question this reference since we understand that this "former 208 plan" is replaced by the proposed. Therefore, we would expect that any provisions within the former plan will no longer be applicable once the new 208 plan is certified. We believe that the Agency is capable of evaluating what few opt-outs it might receive and, therefore, the 208 plan does not need to provide entities with a means to block the opt-outs (i.e., through the lock-in). It would seem that an opt-out is only appropriate if the MA is not willing to provide service within a reasonable period of time (side bar: we believe that the State should define "reasonable period of time"). If that is the situation, we would expect the Ohio EPA to modify the service area for that particular MA so as not to cover an area that it is not willing to timely serve. Once that boundary adjustment has been made, a new MA can be formed if it is willing to provide the timely service. This could be accomplished through subsequent 208 plan updates.

It is unclear if annexation over-rides the lock-in. If the lock-in provisions are retained, we would ask that the language clearly articulate that land annexed into a municipality can be served by that municipality regardless of the existence of a lock-in. A city that annexes land must be permitted to serve it and no opt-out, lock-in, or any other provision of a 208 plan should be allowed to prevent it, nor should the 208 plan be so vague as to create doubt. In addition, this ability to provide service within the corporate boundaries should be preserved even if it means extending city services "across" existing utilities owned and operated by other entities.

We would ask that the lock-in applications for Fairfield County, Jefferson Water and Sewer District, and the Southwest Licking Community Water and Sewer District be denied and returned to the respective entities and that no further consideration of such be allowed for within the 208 plan.

F. Prescription 25-P7 seems to imply that satellite communities may extend sewer service anywhere within the Columbus sub-regional FPA, but may not extend into the eight sub-regional areas noted above (in comment D) unless the land is annexed (or there is an agreement for service). It goes on further to suggest that if a lock-in has been obtained, then the annexing community cannot extend sewers (unless the Management Agency obtaining the lock-in agrees). We submit that annexation should be the over-riding concern and that a lock-in cannot prevent a municipality from extending sewers within its corporate limits. We strongly oppose the lock-in provisions of the 208 plan. Should the lock-in provisions remain, we object to any suggestion, inference, or stated prescription that a lock-in would somehow prevent a municipality from serving areas within its corporate limits. We ask that the provisions for lock-in be removed or that it be clearly stated directly within the 208 plan that a municipality may serve lands annexed from territories within a lock-in area.

G. The maps that show Reynoldsburg and the Columbus sub-regional FPA in the vicinity of Reynoldsburg do not clearly show that Reynoldsburg's service area extends south to I-70. To the extent that we could ascertain, these maps include, but are not necessarily limited to, 25-2, 25-4, 25-5, 25-9, 25-10, 25-12, 25-13, 45-2 and 45-6. Attached hereto is a map (labeled Exhibit I) that we believe more clearly delineates Reynoldsburg's service area.

H. We would ask that the Columbus sub-regional FPA include the area within the RFPA that is north of the Licking/Fairfield County line and east of I-70. This area has been in the Columbus RFPA since the 1970's, well before the establishment of the Southwest Licking Community Water and Sewer District or any agreements between Licking and Fairfield Counties for service. This area is shown on the attached map (Exhibit I, referenced in comment G, above) shaded in blue.

I. Prescription 25-P3 states that petitions for boundary adjustments to the Columbus RFPA must include written endorsements of support from each affected management agency. We do not agree with this requirement. The City of Columbus should have the sole authority to determine where its planning boundaries are. "Overlap" should not be considered inappropriate nor unacceptable in the absence of a grants program.

COMMENTS OF THE CITY OF REYNOLDSBURG, OHIO
On

UPDATE OF STATE WATER QUALITY MANAGEMENT PLAN
INCLUDING SECTION 208 AREAWIDE WASTE MANAGEMENT PLANS

Including Comments on

Proposed Lock-In Application for the Southwest Licking Community Water and Sewer District

And

Existing Water Quality Management Plan
Scioto River Basin and Blacklick Creek (December 4, 2002)

I. **Comments on Draft of Water Quality Management Plan for Franklin and Adjacent Counties (including portions of Union, Delaware, Licking, Fairfield and Pickaway counties)**

A. It is unclear from the language of Section 9 of the Draft State Water Quality Management Plan, and Appendix 9-1 thereto, whether satellite suburban contract communities appear to be considered a designated management agency (DMA).The City of Reynoldsburg supports the designation of all suburban municipalities which provide sewage collection services as DMAs, whether or not they provide wastewater treatment services, or contract for those services with the City of Columbus. Service areas should be included for each of these entities. Some of these may include overlapping service areas with Columbus and some may overlap other providers, as well. We do not view this as a conflict. This is important because it establishes standing in the process (for example, in prescription 6, it states that "[a]djustments to the boundaries … may be requested … [and] if granted, will be part of the State of Ohio 208 plan if the petition contains endorsements of support from all affected political jurisdictions…"

B. We support the language of General Prescription No. 2 that municipalities operating satellite collections system within the city of Columbus Planning Area must be allowed to extend sanitary sewers into lands annexed, so long as said extensions are consistent with the agreement between the satellite community and the city of Columbus. We object to any provision that allows for a lock-in, but if such language should remain, then we submit that all lands annexed into a municipality can be served by extensions from that municipality regardless of a lock-in. We disagree with

the last sentence of General Prescription No. 2 that service provided by a municipality beyond its corporate boundaries requires a service agreement with a sewer district established under Chapters 6117 or 6119 of the Ohio Revised Code. There is no such requirement that we are aware of.

C. On page 37 of Appendix 9-1, the draft Plan indicates that the Southwest Licking Community Water and Sewer District (SLCWSD) has submitted a "lock-in" request, which seeks to block the City of Reynoldsburg from providing sewer services to areas contiguous to the municipal boundary of the City, and which may be annexed in the future. The apparent purpose of this "lock-in" request is to to use the provision of sewer services through SWLCWSD to force the City to utilize sewer services provided by SLCWSD, rather than have the City provide these services, as is the City's Constitutional right, and as the City has done for many decades. The proposed "lock-in" request is also inconsistent with General Prescription No. 2 in Appendix 9-1 (p. 3).

II. Comments on Proposed Lock-In Request from Southwest Licking Community Water and Sewer District.

On page 37 of Appendix 9-1 , it is noted that the "lock-n" petition by the Southwest Licking Community Water and Sewer District (SWLCWSD) is "pending further review by Ohio EPA of objections submitted by the Cities of Reynoldsburg and Columbus. The City of Reynoldsburg incorporates by reference in these comments the objections previously submitted in opposition to the SLCWSD "lock-in request," and encloses with these comments a copy of the comments previously provided to Ohio EPA with respect to the SWLCWSD request for a lock-in.

On page 43 of Appendix 9-1, Prescription 25-P12 indicates that the City of Columbus must initiate discussions with the SWLCWSD within 90 days of approval of the plan, and provide an annual status update on progress by June 30 of each year regarding the negotiation of a sewer service agreement to connect District Sewers to the Columbus system. The negotiations which Ohio EPA is attempting to impose through this plan will likely impact the sewage collection system of the City of Reynoldsburg. These negotiations must, therefore, include the City of Reynoldsburg in any case where service is to be provided through the City's collection system. Absent the City of Reynoldsburg's participation, any agreement affecting the Reynoldsburg Collection system will not be binding upon the City of Reynoldsburg.

III. Existing Central Scioto Water Quality Management Plan (Central Scioto Plan Update or "CSPU")

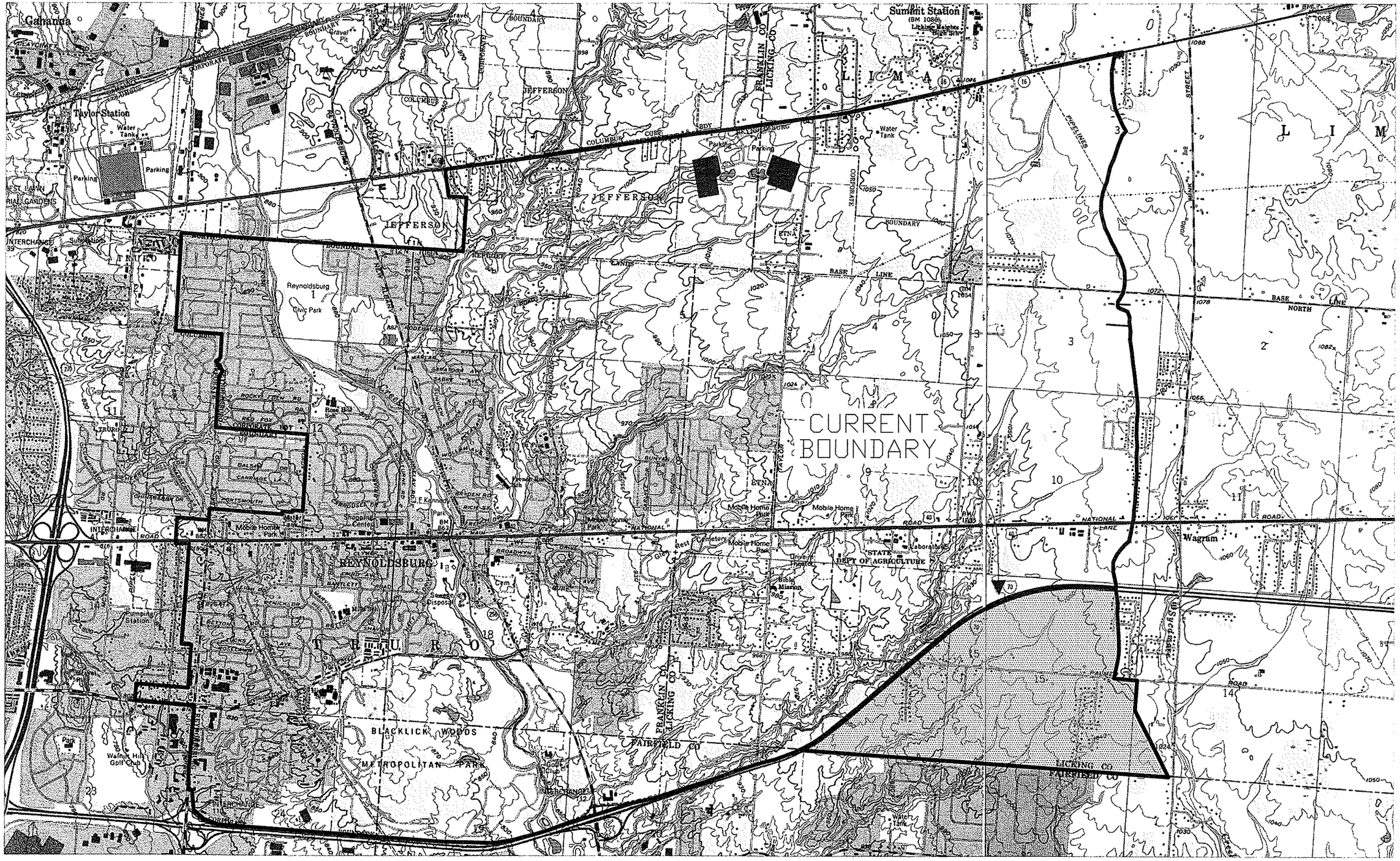
On Page 37 of Appendix 9-1, it is stated that the CSPU was updated in 2002, and approved by the USEPA in 2003. It is then stated that:

> "The information in the CSPU regarding management agencies, their responsibilities and the applicable options for handling wastewater collection and treatment within their respective service areas has been transferred to the following table. This has been done to standardize the format adopted for the entire State-wide 208 plan, and to hopefully clarify the content."

It is unclear from this statement whether the CSPU is being replaced by the entire State-wide Plan, or merely summarized therein, with the CSPU remaining as a controlling document. We request that the final Plan be clarified as to whether the CSPU remains as a controlling document, or is being replaced *in toto* by the proposed Statewide Water Quality Management Plan.

DATE PREPARED: 04/10/06

EXHIBIT I



AREA BOUNDARY FOR WATER AND SEWER

PROPOSED REVISION

N

AREA AND BOUNDARY MAP FOR SEWAGE AGREEMENT BETWEEN THE CITY OF COLUMBUS, OHIO AND THE CITY OF REYNOLDSBURG, OHIO

SCALE: 1"=2000'

Vorys, Sater, Seymour and Pease LLP

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2006 APR 20 PM 1:34
OHIO EPA - DSW

April 19, 2006

VIA HAND DELIVERY

Dan Dudley
Ohio EPA, Division of Surface Water
122 S. Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Jefferson Water and Sewer District;
Comments on the Draft Update to the State Water Quality Management Plan and Central Scioto Plan Update ("208 Plan")

Dear Mr. Dudley:

On behalf of the Jefferson Water and Sewer District ("Sewer District" or "District"), we are pleased to submit comments on the Ohio EPA Draft Update to the State Water Quality Management ("WQM") Plan and Central Scioto Plan Update ("208 Plan"). The District is located in eastern Franklin County, Ohio and is organized and operates under Ohio Revised Code Chapter 6119 as a Regional Water and Sewer District.

I. The Sewer District Supports Generic Prescription No. 3 (Appendix 9-1) regarding Sewer Extensions into Un-annexed Lands

Generic Prescription for Wastewater Treatment No. 3 provides that municipal sewer agencies may extend sewers into annexed areas or to areas beyond their corporate boundaries provided the municipal management agency has adequate capacity to collect and treat all wastewater under the terms of its NPDES Permit. The same paragraph notes that the sewer services may be provided by the municipality itself or under a contract with another management agency. As Ohio EPA knows, many municipal agencies do not own or operate a treatment plant, but do own and operate collection systems, and these "collection system only" agencies would therefore not have an NPDES Permit for the treatment of sewage. The Sewer District interprets this provision to mean that the agency possessing the NPDES Permit and which is under contract to provide treatment would need to have adequate treatment capacity, and the municipal agency

owning the collection system would also have to have adequate collection system capacity. The Agency may want to clarify this provision.

The provision in Generic Prescription No. 3 relevant to the Sewer District is the requirement that when a municipality extends a sewer line beyond the corporate boundaries of the municipality into an area which is within a sewer district established under ORC 6119 or 6117, and the land is not annexed, then the extension of service by the municipality would require a service agreement with the other sewer district. The District, which as mentioned is established under R.C. 6119, supports this requirement to the extent that it means that the Sewer District's consent is required before a sewer line can be extended by a municipality into the Sewer District's established sewer district area that is "un-annexed." County sewer districts under R.C. 6117 and Regional Water and Sewer Districts under R.C. 6119 need to be able to protect their investments in past planning, engineering and construction of sewer systems in the unincorporated areas. The Sewer District assumes that the Ohio EPA opt out procedures (unless the area is locked in) are available in the situation where a County Sewer District or R.C. 6119 sewer district does not provide the requested sewer service to the area or refuses to provide consent to the municipality to extend the line. The Agency may want to clarify this issue.

II. The Director Should Approve the Sewer District's Lock-in Request

The District was created and organized in 1987 by the Franklin County Court of Common Pleas to supply users with sewer and water services within and outside of the District. Over time the District came to own and operate two POTWs, namely the Wengert Road POTW and the Windrush POTW, in addition to lift stations and miles of sewer pipes throughout its service area. In response to growth in the Township, the District submitted a PTI and detailed engineering plans to Ohio EPA to upgrade the Wengert Road POTW and recycle the treated effluent on a nearby golf course. The District also planned to eliminate the Windrush POTW and route the flows to the upgraded Wengert Road POTW.

Over the years, the City of Columbus had filed several appeals challenging permits issued to the District by Ohio EPA. A lawsuit was also filed against Ohio EPA and US EPA by the City of Reynoldsburg involving planning requirements under section 208 of the Clean Water Act and the City of Columbus' sewer Facility Planning Area (FPA). As a result of this lawsuit, Ohio EPA developed under a court imposed deadline, the Blacklick Urban Waste Management Plan ("BUMP") which later was expanded in scope to become the Central Scioto Plan Update ("CSPU") in December 2002 as part of the State WQM Plan. The CSPU is the Clean Water Act section 208 Area-wide Plan for central Ohio.

Ohio EPA included a lock-in procedure in the CSPU at section 5.03.03. The lock-in procedure is intended to allow a service provider to lock in its service area to prevent someone from opting out of the service provider's service area to obtain service from some other entity. Ohio EPA advised the District that it would need to submit information in accordance with CSPU Appendix 12 (Outline for Updating a Facility Plan for Lock-In) to seek a lock-in.

The District, at considerable expense, prepared the required Facility Plans and submitted them to Ohio EPA. The Agency noted the District's Lock-in plans in the final CSPU.

The District and Columbus were able to settle the litigation and entered into a long-term service agreement whereby the District would tie into the Columbus system and in exchange decommission its POTWs and withdraw its PTI for the upgrade to the Wengert Road POTW. The District understood from advice from Ohio EPA that the District's desire to lock in its service area, which is now geographically defined in the Columbus agreement, would still be considered under the CSPU and Appendix 12 criteria. Now years later, Ohio EPA has proposed in the Update to the CSPU that the District's lock-in request not be approved because the request was found to be "inappropriate because there is no potential for other entities to use the opt out petition." The Agency also noted that the District no longer provides wastewater treatment since it entered into an agreement with Columbus to treat the wastewater collected by the District. See, Draft State WQM Plan Appendix 9-1 [Franklin County Information].

The District was never advised that if it eliminated its two POTWs that it would no longer be eligible to lock in its service area. The District is still providing sewer service to its users. The local jurisdiction over zoning and land use planning in the District's service area, Jefferson Township, is supportive of the District's lock-in request. Ohio EPA knew the District and Columbus had entered into an Agreement for treatment services when it finalized the CSPU, and the Agency noted the District's plans to seek a lock-in for its service area. The Agency is changing the criteria for approval of a lock-in request years after the District submitted its Facility Plans and lock-in request under the CSPU criteria.

Ohio EPA should not hold it against the District that the District gave up its POTWs as consideration to enter into an agreement with Columbus and end years of litigation. The fact that the District does not now own or operate a treatment plant is being unlawfully and unreasonably used as criteria in reviewing the District's lock-in request. The lock-in procedures in section 5.03.03 are for "service providers," and there is no requirement that the service provider own or operate the treatment plant. The District is a sewer service provider and qualifies for a lock-in. It has the legal authority, just like a municipality or county, to contract for sewer services for its users. The District continues to plan, permit, operate, maintain and construct sewer facilities. It bills customers on a monthly basis. It has closely worked with the Township to plan for growth and has prepared sewer plans for its entire service area. The District has met all of the criteria for a lock-in of its service area, and Ohio EPA should approve the request.

The Cities of Columbus and Gahanna have submitted comments to Ohio EPA that contain wrong and misleading statements regarding the District's lock-in request. Columbus' letter is dated July 8, 2005. Columbus first states that the lock-in request should be denied because JWSD is not a wastewater treatment service provider. The District is not required to be the owner of a treatment plant to provide waste treatment services. The lock-in procedure in section 5.03.03 is available to "service providers" and that is exactly what the District is. Ohio and federal law allows a political subdivision to provide service by contract, and this method is very common throughout Ohio and the United States. There are many methods to provide waste

treatment services besides being the owner of the treatment plant. All service providers still must perform planning and protect its investment in past planning and infrastructure in the ground.

Columbus also states the District is not a DMA, but in fact the District is a Designated Management Agency ("DMA"). Ohio EPA has identified and designated the District as a DMA in past State WQM Plans certified by the Governor. Under 40 CFR 130.2(n), a DMA is defined as an agency identified by a WQM plan and designated by the Governor to implement specific control recommendations. Furthermore, Section 208 of the Clean Water Act places responsibilities on the District to carry out the applicable portions of the Ohio 208 Plan, such as effective management of waste "treatment works" and related facilities. See, 33 USC 1208(c) (2) (A)-(I). The Act defines "treatment works" very broadly, and includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste…" This definition includes intercepting sewers, outfall sewers, sewage collection systems, and pumping.

The District has responsibility over numerous "treatment works" in its service area which must be planned for and maintained as part of the 208 Plan. The District has planning responsibilities for its service area under the Contract with Columbus. The District is clearly a DMA under the CWA and a management agency under Ohio EPA's new classification system. The District has a vested interest in protecting its service area since it has spent time and money in performing planning, permitting and installing treatment works to serve the area. It is a natural progression for a service provider like the District to lock in its service territory when it has performed the necessary planning.

Columbus states that the District is attempting to alter its contractual relationship with Columbus. The opposite is true. The City of Columbus is attempting to control through Ohio EPA's 208 Plan the District's right and obligations to service the District's customers within the District's service area that the District bargained for in the Contract. Under section 1 of the Contract with Columbus (a copy of which is attached hereto and which is part of the lock-in request), "the District, shall have the right and obligation to discharge all sewage, industrial wastes, water or other liquid wastes from its customers located in the area delineated on exhibit A…..into the sewerage system and sewage treatment works of the City of Columbus…." The District is obligated and has contractual rights to serve the customers in its service area; and therefore should be able to lock in the service area, so that it can fulfill its contractual obligations.

Columbus agreed to the geographical boundaries of the service area. Columbus is contractually bound and cannot come into the District and take the District's facilities or steal the District's customers, even after annexation. Furthermore, it is inconsistent with the District's Contract that Columbus provided the City of Gahanna rights to the exact same service area as Columbus provided in the Contract with the District. Columbus gave up any rights it had to serve customers in the defined service area via the Contract. Columbus does have the right under section 5 of the Contract to enter into the District to construct sewers, but this right is limited to sewers deemed necessary to build up an adequate sewer collector system in the entire area to be

serviced by Columbus and does not include lateral sewer connections to connect individual homes which are to be served by the District.

Contrary to Columbus' position expressed in their letter, for the lock-in procedure to have any effect, the Procedure must "lock out" other service providers. The procedure also prevents someone within the District's service area from opting out to obtain service from some other entity like Columbus or Gahanna. This process is available to any service provider who performs the necessary planning. If the area that is locked in is later annexed, then the sewer service is still provided by the service provider who obtained the lock-in. The annexation can still go forward, but the issue of who provides sewer service is no longer an issue. The District can provide sewer service resolutions and/or commitments to land owners seeking annexation just like a city provides. The lock-in procedure maintains a level playing field and keeps the issue of sewer service from becoming a political issue.

Gahanna's letter dated July 1, 2005 also contains inaccurate and misleading statements. Gahanna is a competitor to Jefferson Township over land development issues. The Township prefers to keep land within the Township while Gahanna wants to annex land into Gahanna. The Sewer District is not directly involved in these issues, but is strongly motivated to protect its sewer service planning area. The Sewer District has worked closely with the Township over land use planning and stream protection. The District's flow projections and planned sewer extensions were developed to be consistent with the Township's long term comprehensive land use plan and stream corridor protection policies.

The City of Gahanna has not approached the District to discuss its needs for sewer service consistent with their future land use planning. Gahanna is permitted under section 6 of their contract with Columbus to annex land and have another entity, like the Sewer District, serve the land with a connection, as long as the sewer is ultimately connected to Columbus' system. This provision anticipates that Gahanna may need to work with the District for sewer service in certain areas, and since both Gahanna and the Sewer District are connected to Columbus, there is no contractual prohibition to such an arrangement, even after the District's lock-in request is granted.

The District is a distinct political subdivision in the State of Ohio from the Township. Also, the District is a DMA under the law on its own accord and its status as a DMA is not dependent on its Contract with Columbus. Furthermore, Gahanna officials have no personal knowledge of the District's reasons why the District decided to enter into a Contract with Columbus. They also have no personal knowledge or understanding of the District's policies and strategies for installing sewer extensions, and it is inappropriate for a public official to make sweeping statements about another political subdivision in such a fashion. The District is financially sound and is perfectly capable of planning, permitting, and constructing sewer service facilities, and has been doing so for over 20 years. The motivation behind Gahanna's statements is to mislead Ohio EPA that the District is somehow unable to provide sewer services which is simply wrong. Ohio EPA should disregard the comments.

Gahanna criticizes the District for planning for lift stations near the City's borders, but yet admits that it will need "forced sewer lines" to serve areas as well. In addition, Gahanna states that it is a DMA because it owns and operates a vast system of sewer lines, but then states the District, which also has a vast system of sewer lines, is not a DMA. The District utilizes both gravity flow and force mains, depending on the engineering requirements of the project. Recently, land was annexed into the City of Gahanna where the District's Facility Plans called for gravity sewers to serve the annexed area, but Gahanna had to rely on force mains and lift stations to serve the area. If the District's service area had been locked in, the area would have been served more efficiently with gravity sewers from the District.

Ohio EPA's Appendix 12 planning criteria for the lock-in are designed to protect water quality and the District's lock-in request meets each criteria. In addition, the lock-in prevents the proliferation of sewer pipes from different entities in the same area. The District, with assistance from the Township, has planned for the sewering and complete build out of the Township that includes a high percentage of open space and riparian corridor protection. There is a higher probability that more land will be protected in open space if it stays in the Township rather than if the land is annexed. Also, as discussed in the District's October 2004 Addendum to the lock-in request, the Township has adopted "Planned Suburban Residential District" zoning, a type of cluster zoning, a concept Ohio EPA encourages. This allows up to 40% of the land to be preserved in Open Space which will protect water quality because it will minimize "hardening" of the watershed. Moreover, the Township's Comp Plan and policies ensures that central sewers are not extended into sparsely populated areas or conservation districts. It appears to the District that the Township's Land Use Plan, zoning and riparian protection policies are more protective of water quality than Gahanna's.

It is not ironic or illogical that the District should be able to lock in its sewer service area. Even if the area overlaps with Columbus' FPA, Columbus has already agreed to give the District the right and obligation to serve the area in exchange for valuable consideration, including but not limited to, abandoning two POTWs. The District also paid the City a substantial sum to tap in. The lock-in procedure was developed by Ohio EPA and is available to any service provider. The lock-in of the Sewer District's service area is the natural extension of the Contract and the result of detailed sewer planning which is strongly encouraged by Ohio EPA. The District's lock-in request should be approved.

III. The Provisions for Determining When a Public Sewer is Available should be adopted in Legislation or a Rulemaking

Appendix 9-1 of the 208 Plan contains a section on determining when a public sewer is available. Several sections of Ohio law address this same issue, including R.C. 6117.51, R.C. 6119.06(Z), OAC 3701-29-02(L) and draft ODH rule OAC 3701-29-07(G) and (H). Some of these laws contain the 200 foot rule for a required connection to a public sewer, but others do not. Ohio EPA's proposal goes well beyond incorporating the 200 foot rule by adding new substantive provisions for a required connection when the building is greater than 200 feet from the sewer line easement. It is inappropriate for Ohio EPA to include new legal requirements into a 208 Plan or

the State WQM Plan. The Agency should survey and review existing state laws governing the requirement to connect to a public sewer and propose a rule or approach the General Assembly to propose a statute addressing this issue.

These Ohio EPA provisions go well beyond the planning requirements under sections 208 and 303 of the Clean Water Act. These requirements are controversial and significantly affect rights of citizens as the Ohio EPA Director may not issue a permit (e.g., NPDES Permit for a Discharge or a sewer line extension Permit to Install [PTI]) which is in conflict with a 208 Plan. 33 USC 1208(e); R.C. 6111.03(J)(2). The Ohio EPA provisions for sewer connection to a public sewer are functionally equivalent to Ohio EPA rules, regulations and standards. They have general and uniform operation and are "rules" as defined by R.C. §119.01(C). By not following the dictates of R.C. Chapter 119 the Director is intentionally circumventing the protections of the rulemaking procedures, including the mandatory review by the Ohio General Assembly Joint Committee on Agency Rule Review ("JCARR"). The Director should remove the public sewer connection requirements from the 208 Plan and State WQM Plan and propose them as rules under Chapter 119 of the Ohio Revised Code or seek a statutory amendment from the Ohio General Assembly.

Very truly yours,

Ted Boggs

Theodore A. Boggs

TAB/tab

CONTRACT
BETWEEN THE CITY OF COLUMBUS,
AND
THE JEFFERSON WATER AND SEWER DISTRICT

SEWER SERVICE AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO this 2nd day of August, 2002 by and between the CITY OF COLUMBUS, OHIO (Columbus), and the JEFFERSON WATER AND SEWER DISTRICT (District), for the discharge, transportation, pumping and treatment of sewage, industrial wastes, water or other liquid wastes from the District to the City of Columbus utilizing the Sewerage System and Sewage Treatment Works of the City of Columbus.

WHEREAS, the City of Columbus has a sewerage system and sewage treatment works; and

WHEREAS, the District has a sewerage system and two sewage treatment plants known as the Windrush Wastewater Treatment Plant and the Wengert Road Wastewater Treatment Plant (hereinafter collectively "the District's WWTPs"); and

WHEREAS, the District desires to abandon the District's WWTPs.

WHEREAS, the City of Columbus is willing to accept the sewage, industrial water, wastewater, liquid wastes and/or water from the District's sewerage system into the Columbus sewerage system for treatment at the Columbus Wastewater Treatment Plants,

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH:

In consideration of the mutual covenants and promises herein contained, and in accordance with the applicable provisions of Chapter 1147, Columbus City Codes, 1959 as amended and of Ordinance No. 1308-02 passed July 29, 2002 by the Council of the City of Columbus, and resolution number 02-15 passed by the Board of Trustees of the District, the parties hereto agree as follows:

Section 1. That, subject at all times to the City of Columbus' right to sell surplus utility services under the provisions of Article XVIII, Section 6, of the Constitution of Ohio, the District, shall have the right and obligation, throughout the effective period of this Agreement, to discharge all sewage, industrial wastes, water or other liquid wastes from its customers located in the area delineated on exhibit A, attached hereto and made a part hereof, into the sewerage system and sewage treatment works of the City of Columbus, provided, however,

(a) The Board of Trustees of the District shall have adopted or passed such measures as may be necessary to authorize the execution of the Agreement.

(b) Whenever, and to the extent that, the Columbus City Codes, Chapter 1145, prohibits or restricts the direct or indirect discharge to the sanitary sewer of sub-foundation building drains from premises within Columbus, such prohibitions or restrictions shall apply with equal force to premises within the District as if same were a part of this Agreement.

(c) The District agrees it will not at any time cause or permit storm water or roof water leaders to be led into or connected with the separate, sanitary system of sewers, or led into or connected with any soil pipe, house drain, or house sewer tributary to the separate sanitary system of sewers.

(d) The District agrees that it shall limit inflow and infiltration to the sewer system in its Service Area. The limitations applying thereto shall be in accordance with a future mutually agreeable modification to this Agreement.

(e) The District agrees that no industrial user, as that term is defined in Chapter 1145 of the Columbus City Codes, may discharge, either directly or indirectly, or both into a sewerage system which is tributary to the City of Columbus, without the express written consent of the Director of the Department of Public Utilities, City of Columbus.

(f) The District agrees that no person shall directly or indirectly use or discharge to any sewer within the District that is tributary to the City of Columbus Sewer System in violation of any applicable provision of the City of Columbus Codes, Chapters 1145 and 1147.

(g) The District agrees that the requirements set forth in this agreement, together with any elaboration, extension, definition or amendment of these requirements as such may be duly elaborated, extended, defined or amended through rules and regulations issued from time to time by the Columbus Director of Public Utilities, or by legislative processes of Columbus, shall be fully applicable to all premises in the District which are or later become tributary directly or indirectly to the Columbus Sewerage System, to the same extent and degree as they apply within Columbus and any violation of these provisions shall be corrected or caused to be corrected at once by the District.

(h) The District agrees that the construction of all mainline sewers, house sewers or service connections within its Service Area shall comply with the provisions of this Agreement, the then current minimum requirements governing such work in Columbus, and conform to the District's rules and regulations. The District shall inspect the construction of mainline sewers, and service line installations and connections. Provided, however, the District may use its planning criteria to estimate flows and pipe sizes for projects within its Service Area. Columbus may request that a sewer line or appurtenance be oversized from the design the District has indicated on plans submitted to Columbus, in which case Columbus agrees to pay for the documented cost difference (if any) between the original

sewer and the oversized sewer, including but not limited to, costs for additional design, engineering or construction,

(i) The District agrees that the design, construction, inspection, operation, use and maintenance of all sanitary sewers, house services and connections within its Service Area including all connections with the Columbus sewerage system, shall be performed at the District's entire expense. The District may require that such expense be borne by its residents, developers, and/or builders.

(j) The District agrees to notify Columbus at least forty-eight (48) hours prior to tapping directly into any Columbus sewer. Any property that taps directly into a Columbus sewer shall be liable for the front footage charge established by the City of Columbus. The District shall be responsible for collecting this charge and forwarding it to Columbus. Front footage charges shall be paid to Columbus on connections into Columbus Trunk sewers prior to the District issuing and/or collecting necessary permits or fees. The front footage charges are only applicable to connections into Columbus' sewers and not to connections into the District's sewers.

(k) The District agrees to establish a system of sewer connection permits and to collect associated capacity fees and shall transmit to Columbus, together with the appropriate associated capacity fees or charges, each month copies of such sewer service permits, which it has issued. The District shall keep and maintain an accurate record of all premises connected to its sewers. This Record shall, upon demand, be made available to Columbus.

(l) The District agrees that, for all properties and premises connected to the Columbus Sewerage System after the effective date of this Agreement, it shall collect a system capacity charge for main trunk sanitary sewer benefit which shall be applicable to any and all such property and premises which are located within the District limits, whenever such property will be tributary directly or indirectly to the Columbus Sewerage System. Such charge shall be determined and collected before or upon the issuance of a permit to connect such property to the sewerage system. The charge so determined shall be equal to 100% of the system capacity charge then assessed to a resident of Columbus for similar properties as established and periodically amended by Ordinances of Columbus. Such capacity charge shall be remitted, in accordance with the then current rate to Columbus monthly. The amount remitted to Columbus shall be 100% of the system capacity charge for a similar property within the City of Columbus. The District may establish such additional District surcharges, capacity fees, or tap charges, as it may deem necessary.

(m) As soon as available, the District agrees to furnish Columbus copies of its location atlas maps showing the overall sanitary sewer system in its Service Area and furnish additional up-to-date copies on a quarterly basis.

Section 2.

(a) Commencing on the effective date of service under this Agreement, Columbus shall have the right and privilege of billing a user charge to the District every three (3) months for sewer service based upon the amount of sewage discharged directly or indirectly into the Columbus Sewerage System as measured by metering device(s) approved by the City of Columbus's Director of Public Utilities. Such metering device(s) shall be installed, owned, maintained and read by the District. The metering devices shall be constructed in accordance with plans submitted to and approved by the City of Columbus' Director of Public Utilities. The metering device(s) shall be calibrated in the presence of City of Columbus personnel before Columbus shall accept the metering device(s). If any individual properties are tied directly into Columbus' sewers without going through a master meter, the District shall be responsible for monitoring those individual properties based on a water meter or well meter (approved by the City of Columbus) and remitting the appropriate user charges based on the sum of the meters for those properties.

(b) The user charge shall be based upon Columbus' current rate for a standard strength Outside City User in existence at the time of discharge in accordance with Chapter 1147 of the Columbus City Codes. Columbus' user charges shall be equal to the user charges applied to any other outside city user, and the District shall be afforded and be favored with any lower rate which Columbus may from time to time charge to other outside city users. Provided, however, any industrial user, which has been approved for service by the City of Columbus, as provided by section 1, paragraph (c) herein, shall be metered and charged separately. Each approved industrial user shall be charged based on the appropriate industrial user strength and/or class in existence at the time of discharge in accordance with Chapter 1147 of the Columbus City Codes. The sewer use charges shall be payable within thirty (30) days after receipt of the bill therefore. The District shall be responsible for billing and collecting usage fees to and from the actual users.

(c) In the event of a malfunction of any of the metering device(s), billing shall occur as follows. For every day during which actual flows are unknown, the District shall be billed for the average daily flow of the previous thirty days during which the meter was operational.

(d) The District shall pay a one-time sewer capacity charge at the time the District connects to the City of Columbus sewers. The District shall calculate the fee pursuant to the number and size of the domestic water service line for each structure that is connected to the District at the time of connection to Columbus. The charge for each structure shall be calculated according to the rates set forth in Columbus City Code 1147.17 at the time the District connects to Columbus. For purposes of the calculation, each single-family home shall be calculated as a ¾" service line. The District shall calculate the sewer capacity charge due to the City of Columbus and provide those calculations, along with the payment due, to Columbus within thirty days of connecting to Columbus system.

Section 2.1. Columbus may administer and enforce Sections 1145.01 – 1145.99 of the Columbus City Codes and all amendments thereto within the District's Service area in order to prohibit or limit the discharge of toxic and other substances into the sewerage system. It is also

agreed that Columbus representatives may enter industrial establishments, perform inspections, and sample waste streams within the District's Service Area for the purpose of enforcing Sections 1145 and 1147 of the Columbus City Code, as amended. The District agrees to adopt, as a regulation applicable to its customers, the requirements of Sections 1145.01 – 1145.99 in order that these requirements shall be applicable to all premises in the District which are or later become tributary directly or indirectly to the Columbus Sewage System to the same extent as they apply to premises within Columbus.

Section 3. The District shall be responsible for the construction of all sanitary sewers, pump stations, service connections and other equipment and facilities necessary to provide sanitary sewer service within the Service Area. Such construction work shall be completed in accordance with detailed plans and specifications which have been approved from an engineering standpoint by the Columbus Director of Public Utilities, provided that such approval, from an engineering standpoint, or disapproval supported by engineering reasons therefore, shall be made by the Columbus Director of Public Utilities within thirty (30) days after said plans and specifications have been submitted for final approval by the District. Absent disapproval as set forth above, the District may proceed with construction in full conformity with such plans and specifications and such engineering supervision and inspection, as may be required by Columbus, and subject to all other provisions of this Agreement and applicable references. In addition to any other requirements, such plans and specifications shall include the following information.

(a) Data and calculations upon which any sewer line is based shall be typewritten on 8-1/2" x 11" paper and shall include the following: (1) average domestic flow in each sewer; (2) I/I flow in each sewer; (3) peak flow in each sewer; and (4) the capacity of each sewer.

(b) A 2' contour topographic map (on a scale of 1"= 200') to show the tributary area.

(c) A proposed lot layout and building types (e.g. residential, apartment, commercial, industrial, etc.).

(d) Proposed sewers sizes, percent of grade and invert elevations.

(e) The location and size of any sewage pump station and force main.

(f) Copy of the PTI from Ohio EPA, or the PTI application if a PTI is not yet issued.

Upon completion of such construction work, and not later than sixty (60) days thereafter, accurate record drawings showing the work as actually constructed shall be filed, by the District, with Columbus for final approval. These record drawings shall show the area of each and every tributary lot and tract computed in accordance with the provisions of this Agreement. When such construction is complete, the District will become the owner thereof and responsible for the operation and maintenance of the same.

Section 3.1. The District shall permanently tie into the planned extension of the Columbus Blacklick Interceptor sewer at or near the intersection of the Blacklick Interceptor with Havens Corners Road, Havens Road, and Clark State Road, and Columbus agrees to provide for such connections in the design of said Interceptor. The District shall be responsible for engineering

and constructing the tie-ins and installing a master meter acceptable to Columbus at each tie-in. Columbus shall notify the District when the Blacklick Interceptor sewer is available for connection at each stated location. The District shall tie into the interceptor at the specific location within six months of receiving such notification from Columbus, unless the District determines that the tie in at that location is not needed. Upon execution of this Agreement, the District may tie into Columbus' system on a temporary basis while the Blacklick Interceptor is being further planned, designed, permitted or constructed, and the location of the temporary connection or connections shall be mutually agreed upon. In the event the Blacklick Interceptor is not extended to Taylor Road, the temporary tie in(s) shall become the permanent tie in to the Columbus system.

Section 4. Except as provided in Section 3 of this Agreement, the District agrees that during the term of this Agreement, it will take no action whatsoever, including funding, preliminary engineering, or other surveying, necessary or incident to plan, design, construct, or operate any sanitary wastewater treatment facility within its service area, and that except as herein provided or as may be subsequently authorized by the Columbus City Council, Columbus shall be the sole and exclusive provider to the District of such services as are provided by the terms of this Agreement. The District further agrees that it shall stop operating the District's WWTPs as soon as practical, but no later than within 6 months after the date when all of the District's flow has been routed to Columbus' system.

Section 5. The District agrees that during the effective period of this Agreement, Columbus employees or agents shall have the right to enter into and within the District's limits, for all purposes of this Agreement, including direct access to the metering device. In addition, Columbus may enter the District for the purpose of construction within the individual design-tributary area of any extensions of the District's sewer system and constructing any other main sewers which, on the basis of sound engineering principles, may be deemed necessary by the Columbus Director of Public Utilities to build up an adequate sewer collector system in the entire area to be serviced by Columbus, including but not limited to the District's area.

Columbus pledges itself to construct such sewer extensions at its own expense and, insofar as possible, to restore disturbed areas to a reasonably equal condition in which they were found prior to such construction. Columbus will and shall have the right to preserve, maintain, operate, replace and repair any such sewers. During the life of this contract, the District shall have the right to connect any main sewers of its own collector system to any such aforementioned sewers, subject to the requirement that the flow from the District's main sewers is not above that designed for and is not from outside the individual tributary-design area of the said main sewers constructed by Columbus. Further, subject to the requirement that such connections shall be made under Columbus' supervision in such manner as approved by Columbus and in full conformity with all other provisions of this Agreement.

Section 6. It is agreed by the parties that in the event the District extends its sewer lines beyond the Service Area, the rates chargeable hereunder shall become ten times those set forth in Section 2 hereof. The District consents to the provisions set forth in this section as a local capital cost recovery system and not as a user charge system, exaction, tax or penalty in the event the conditions imposing this section occur. Further, the District consents and agrees that the provisions in this section are not confiscatory, nor unreasonable.

Section 7. The term of this Agreement will commence on August 2, 2002 and shall remain in full force and effect until midnight of August 2, 2042. Unless written notice is given by either party to the other, at least five years prior to the termination date of this agreement, this Agreement shall remain in effect for any additional three-year period. In the same manner, this Agreement with amendments thereof shall remain in effect from three-year term to three-year term thereafter, subject to termination at the expiration of any such term upon written notice given by either party to the other at the expiration of the previous three-year term. Written notice of the intent to terminate this Agreement must be sent to the office of the Columbus Director of Public Utilities or to the District.

Section 8. Within ninety days of signing this Agreement, Columbus shall dismiss, with prejudice, all of the cases currently pending at the Environmental Review Appeal Commission that Columbus has initiated involving wastewater facilities in the District. Within ninety days of signing this Agreement, the District shall send a letter to the Ohio Environmental Protection Agency withdrawing any prior comment letters regarding Columbus' Permit to Install application for the Blacklick Sanitary Interceptor Capacity Augmentation (PTI No. 90-668). Furthermore, the District shall not oppose or hinder in any way the Blacklick Augmentation project, the Blacklick Interceptor, or any other City of Columbus sewer project in the area.

Section 9. If any portion of this Agreement proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force or effect of any other portion of this Agreement unless it clearly appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid or unconstitutional.

Section 10. That failure on the part of either party to this Agreement to faithfully discharge its obligations and responsibilities hereunder, either in whole or in part, with respect to a material breach of said Agreement, shall vest in the other party to the Agreement the right to terminate same, effective ninety (90) days after written notice of such failure and the intent to terminate is delivered to the offending party, provided that the offending party shall have the right to cure or correct such failure, to faithfully discharge its obligations and responsibilities and upon demonstration thereof such notice of termination shall not be effective and this Agreement shall remain in full force and effect without prejudice to Columbus' right to collect amounts due and owing to Columbus arising under the terms of this Contract prior to notice of termination.

Section 11

(a). This Agreement may not be modified nor amended without the written consent of all parties to the Agreement.

(b). It is further agreed that the boundaries established in Exhibit A shall be reviewed by the parties upon a showing of good cause. Good cause shown includes, but is not limited to, the receipt by the District of a request from Ohio EPA or the Health Department to serve an area outside of the Service Area, or a written request for sewer service from a land owner located outside of the Service Area but within the unincorporated areas of Jefferson Township who is not served by any other sewer service provider.

Section 12. Ohio EPA is currently contemplating an update of the Central Ohio Scioto River Basin and Blacklick Creek water quality plan pursuant to Section 208 of the Clean Water Act. This Agreement is contingent upon Columbus' satisfaction with the Ohio EPA's update. If Columbus is not satisfied with Ohio EPA's update of the Water Quality Management Plan for the Scioto River Basin and Blacklick Creek, or if Ohio EPA fails to update that plan, the parties agree that Columbus may unilaterally terminate this contract. The parties further agree that whether Columbus is satisfied with Ohio EPA's action is left entirely to Columbus' sole discretion. If Columbus is not satisfied with Ohio EPA's update, it shall so notify the District within 30 days of Ohio EPA issuing the update.

IN WITNESS WHEREOF, the parties hereto have set their hands on this 2nd day of August, 2002.

APPROVED:

THE CITY OF COLUMBUS, OHIO

Janet E. Jackson, Esq.
City Attorney

John R. Doutt
Public Utilities Director

JEFFERSON WATER AND SEWER DISTRICT

Trustee

President

Trustee

TRUSTEE

Trustee

Attorney for Jefferson Water and Sewer District

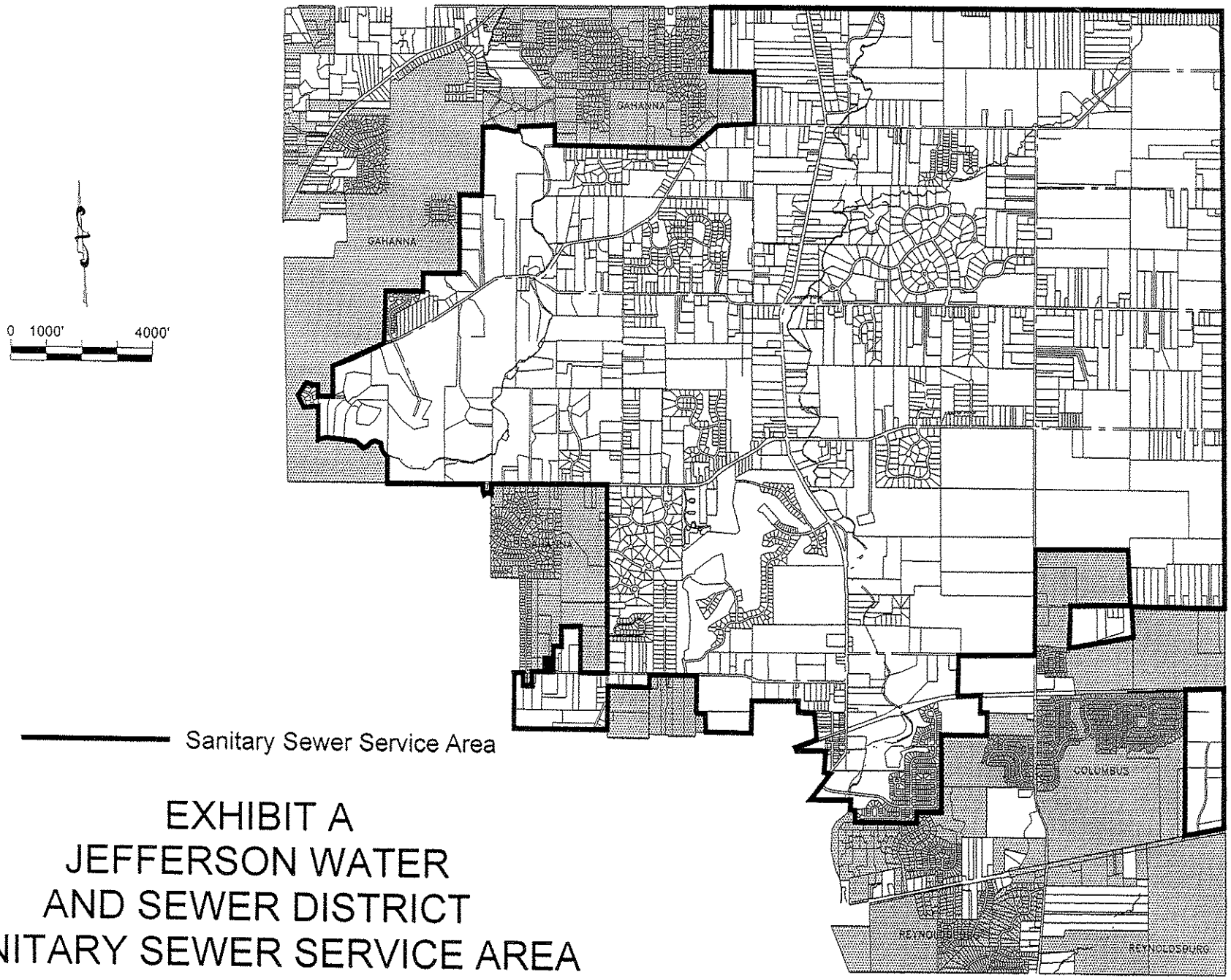


EXHIBIT A
JEFFERSON WATER AND SEWER DISTRICT SANITARY SEWER SERVICE AREA

County Utilities Department
210 E. Main Street Room 302
Lancaster, Ohio 43130-3854
(740) 687-7154
(614) 833-0884
Fax (614) 837-4132

Donald S. Rector, P.E.
Director of Utilities/
Sanitary Engineer

Board of County Commissioners
Mike Kiger
Commissioner
Jon D. Myers
Commissioner
Judith K. Shupe
Commissioner

April 21, 2006

Dan Dudley
Ohio EPA
122 South Front St.
Columbus, OH 43215

Re: 208 Areawide Waste Management Plan Comments

Dear Dan:

This letter sets forth Fairfield County's comments regarding the draft 208 plan for the central Scioto basin. We appreciate the Agency's efforts in involving the stakeholders public participation in the process in creating this plan. However, we feel the shear volume of the plan and appendices to be overwhelming and complex. An effort to reduce and simplify the plan should be evaluated prior to finalization.

Appendix 8-1

There are various inaccuracies in the information provided in Appendix 8-1 as it relates to Fairfield County's current facilities. The attached document outlines the correct information.

Appendix 9-1, 9-2

While Canal, Pickerington and the County continue to move towards a service area agreement, it appears that an agreement between all parties cannot be achieved in the near future. Part of the concept of this plan is to not duplicate services. We believe the overlapping service areas should be reduced and/or revised as much as possible. Where public sanitary services are already provided, the service areas should reflect that infrastructure exists. The existing appendices are not consistent with the concept of the plan.

Map 23-4

We believe there are several errors in this map and request a meeting to determine the correct version prior to submitting full comments.

K:\Gina\DSR\OEPA\208comments.doc

Maps 25-5, 25-10

The Canal/Pickerington expansion area map should be revised to show where County sewers exist so services are not duplicated.

The Columbus FPA area along the southern boundary extending into Fairfield County should be eliminated.

The map does not show Fairfield County service area yet it is described in writing across the map. We are unsure as to the agency's intent or the meaning of the way this information is presented.

Map 25-7

This map is unclear as to what is being projected.

Map 25-12

The word "Caroll" is misspelled.

Thank you for the opportunity to comment on the plans. We would like to reserve the opportunity to meet prior to these issues being finalized. If you have any questions feel free to call me at the numbers listed above.

Sincerely,

Donald S. Rector, P.E.
Director of Utilities

Cc: Don Sherman, FCU

Fairfield County Current Community Wastewater Information

The information provided below is taken from the latest available NPDES Form 2A applications submitted by each facility.

Facility Name	OEPA Permit #	Design Flow (MGD)	Average Daily Flow (MGD)	Year Constructed	Year Modified	% Sanitary Sewer	# Sanitary Lift Stations	% Combined Sewer	# Combined Lift Stations	# Significant Industrial Users	Approved Pretreatment Program?
Amanda WWTP	4PB00021*CD	0.063	0.045	1992	1992	100	2		0	0	N
Baltimore WWTP	4PB00011*HD	0.5	0.4408	1960	1995	100	1			0	N
Bremen STP	4PB00002*FD	0.336	0.28	1956	1986		0	100	0	0	N
~~Easton Village Water Reclamation Facility~~	4PH00011*FD	0.16	0	1974	1979	100	0			0	N
Fairfield Co Commissioners Little Walnut-~~Sycamore~~ WRF	4PJ00101*BD	0.75	0.079	2000		100	0			0	N
Fairfield County Commissioners Pleasant Lea ~~STP~~ WRF	4PG00030*DD	0.04	0.039	1972	1974	100	0				N
~~Huntington Hills Subdiv WWTP~~	4PG00027*DD	0.16	0.11	1974	1978	100	0				N
Lakeside Estates Water Reclamation Facility	4PG00028*FD	0.008	0.013	1964	1964	100	0			0	N
Lancaster WPCF	4PD00001*ID	10	5.52	1939	1997	89	4	11	3	13	Y
Millersport STP	4PB00023*FD	0	0	1962	1987	100	2		0	0	N
Pickerington STP	4PB00017*JD	3.5	1.15	1995	1995	100	4			0	N
Southeastern Correctional Institute	4PP00011*CD	0.4	0.268	1950	1998	100				0	N
Sugar Grove STP	4PA00001*FD	75000	40000			90	1	10		0	N
Walnut Creek Sewer District	4PA00005*FD	0.181	0.1253	1979	2002	100	3				N
Sycamore Creek WRF		0.80	0.125	2002		100	0			0	N
NPR 2002 facility abandoned											
Tussing Road WRF		3.0	1.8	2005		100					
	4PH00004*HD										
			1978								
Fairfield Co. Comm.											

(16)

Village of Canal Winchester
36 South High Street
Canal Winchester, Ohio 43110-1213

OHIO EPA - DSW
2006 APR 26 AM 10: 28

April 21, 2006

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Dan Dudley
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Dudley:

The Village of Canal Winchester wishes to provide comments on the draft update to the State Water Quality Management Plan. The Village thanks the Ohio EPA for the opportunity to provide input through participation in the stakeholder meeting that was held in your office and through this letter.

Our comments to the State Water Quality Management Plan, specifically Appendix 9-1, are listed below.

- Canal Winchester has been approached by landowners who wish to annex properties outside the existing 208 service area boundary, but for which Canal Winchester is the only service provider that has undertaken facilities planning. Therefore, I am attaching a revised 208 Service area Boundary Map to be the new Canal Winchester Sub-regional Facility Planning Area Map, replacing existing Map 25-5. Should properties be annexed into the Village, Canal Winchester will exercise its home rule rights and serve such properties, in accordance with Generic Prescription 2 on page 3 and Prescription 25-P5.
- There is a discrepancy in the Categories of Responsibilities for the Village of Lithopolis. On page 32, Fairfield County Communities, Lithopolis is listed as a WC (wastewater collection) DMA. On page 38, Franklin County Communities, Lithopolis is listed as both a WC DMA and a PWF (planning for wastewater facilities) DMA. It is Canal Winchester's belief that Lithopolis should only be categorized as a WC DMA and not a PWF DMA.
- Canal Winchester supports the language in Prescription 25-C8 on page 40. Along with Pickerington and Fairfield County Utilities, Canal Winchester is working towards a sewer service boundary agreement. However, until the outstanding legal issues have been finalized, Canal Winchester can not, with good conscience, enter into an agreement.
- Generic Prescription 2 on page 3 needs to be revised to correlate with Prescription 25-P5. Generic Prescription 2 states "All management agencies with home rule powers are responsible for sewage collection and treatment within their respective corporate boundaries…Sewer service may be extended to annexed land, and to areas beyond the corporate boundaries, provided the management agency has the capacity to adequately collect and treat all wastewater under the terms of its NPDES permit…" Prescription 25-

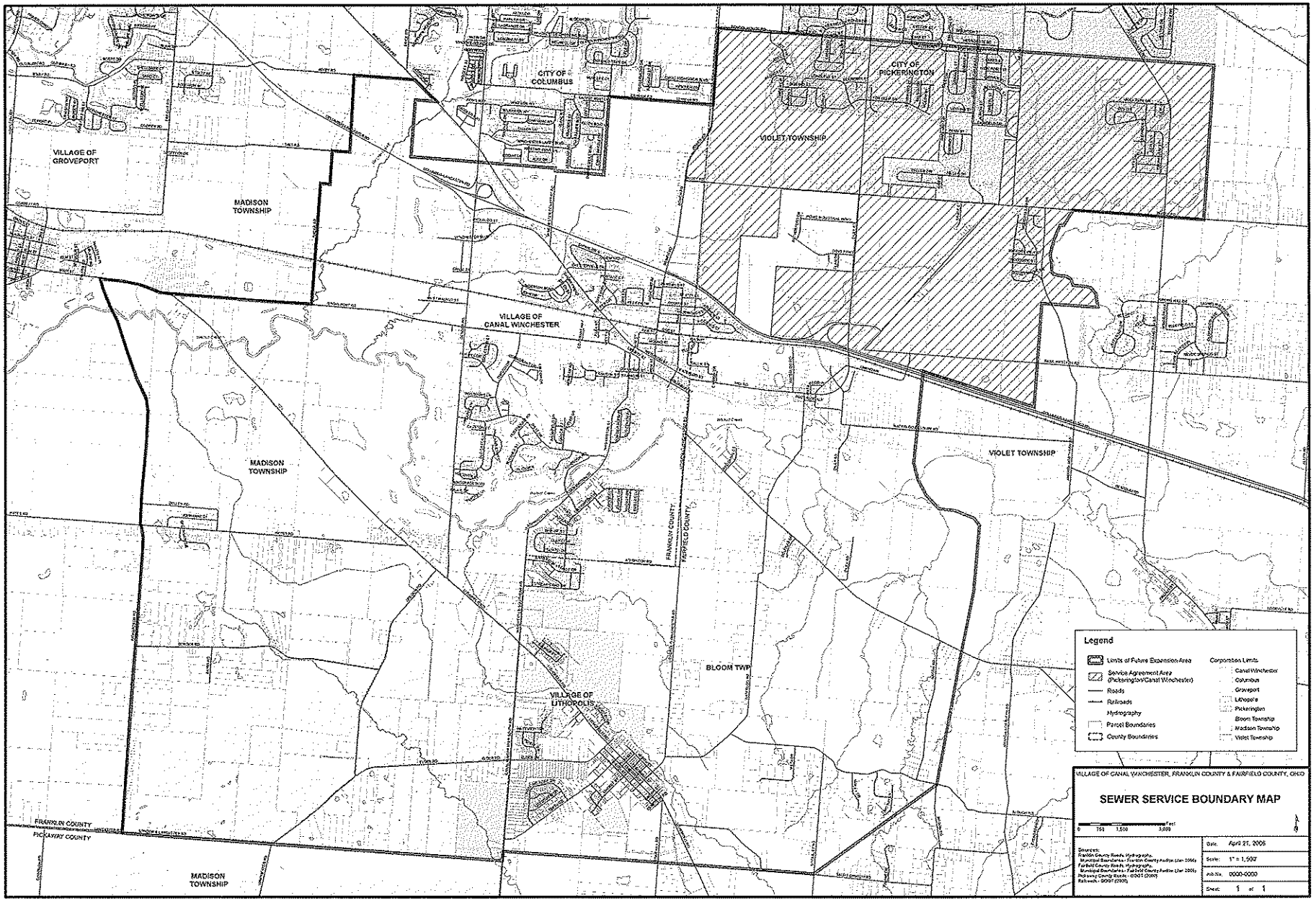
P5 adds a further requirement that states that "...[s]ewer service (collection and treatment) may be extended to annexed land, and to areas beyond the corporate boundaries *provided the area is within the Canal Winchester sub-regional FPA, or the Village of Lithopolis satellite area (map #25-7)*, and there is capacity to adequately collect and treat all wastewater under the terms of the NPDES permit." (Italics added.) Canal Winchester believes that Generic Prescription 2 should be revised to include the additional requirements in Prescription 25-P5. The current language could only add confusion and ambiguity with the additional requirement absent from both prescriptions.

- To clarify prescription 25-P5, it should be confirmed that Canal Winchester is permitted to either expand its existing treatment plant or to construct a new facility to provide for the flows generated from the Canal Winchester FPA, as long as the flows can be treated under the terms of the then effective NPDES permit.
- Canal Winchester would like to verify that the Columbus "string" service area located at the southern boundary of the existing Canal Winchester FPA was a "typographical error" is the mapping as stated in the stakeholders meeting held on 3-6-06.
- In prescription 25-P10, the language regarding the service agreement should read as follows: "A ten year wastewater service agreement between Lithopolis and Canal Winchester was signed in December 2002 and stipulates that **Canal Winchester is the exclusive wastewater provider with a reserve capacity of 250,000 gallons per day.**" This language better reflects the language in the actual agreement.
- Based on the comments at the stakeholders meeting held on 3-6-06, the Village of Lithopolis indicated they would like to see language regarding the cumulative design build out be based on actual flows not design flows. Canal Winchester believes the cumulative flows should in fact be based on the design values as stated in the Ohio EPA Greenbook.
- Prescription 25-P10 should go on further to state "**Once the cumulative design build out of the Lithopolis collection system, as determined by Ohio EPA, exceeds the volume of wastewater stipulated in the service agreement(s) for wastewater treatment, no further expansion of the Lithopolis collection system can occur without an increase in the contracted capacity of wastewater treatment provided through service agreements.**"
- The Village of Lithopolis did not acquire approval from the Canal Winchester, Lithopolis designated service provider, for the revisions to their service area boundary. Canal Winchester should be consulted prior to the revisions of Lithopolis' service area boundary in the existing 208 plan.

Again, the Village of Canal Winchester wishes to thank Ohio EPA for the opportunity to participate in the early stakeholder process and the Village looks forward to reviewing other interested party comments and responding to Ohio EPA questions should they arise. Please feel free to contact me at 837-2254.

Sincerely,

Matthew C. Peoples,
Director of Public Works


CITY OF COLUMBUS
CITY OF PICKERINGTON
VILLAGE OF GROVEPORT
MADISON TOWNSHIP
VIOLET TOWNSHIP
VILLAGE OF CANAL WINCHESTER
MADISON TOWNSHIP
VIOLET TOWNSHIP
FRANKLIN COUNTY
FAIRFIELD COUNTY
BLOOM TWP
VILLAGE OF LITHOPOLIS
FRANKLIN COUNTY
PICKAWAY COUNTY
MADISON TOWNSHIP
Legend
Limits of Future Expansion Area
Service Agreement Area (Pickerington/Canal Winchester)
Roads
Railroads
Hydrography
Parcel Boundaries
County Boundaries
Corporation Limits
Canal Winchester
Columbus
Groveport
Lithopolis
Pickerington
Bloom Township
Madison Township
Violet Township
VILLAGE OF CANAL WINCHESTER, FRANKLIN COUNTY & FAIRFIELD COUNTY, OHIO
SEWER SERVICE BOUNDARY MAP
0 750 1,500 3,000 Feet
Sources:
Franklin County Roads, Hydrography, Municipal Boundaries - Franklin County Auditor (Jan 2006)
Fairfield County Roads, Hydrography, Municipal Boundaries - Fairfield County Auditor (Jan 2006)
Pickaway County Roads - ODOT (2006)
Railroads - ODOT (2006)
Date: April 27, 2006
Scale: 1" = 1,500'
Job No. 0000-0000
Sheet: 1 of 1

VILLAGE of
LITHOPOLIS
EST. 1814

Eric P. Sandine, Mayor
Mark Anderson, Village Administrator
P.O. Box 278
Lithopolis, Ohio 43136
Phone: 614-837-2031
Fax: 614-837-2722

April 20, 2006

Dan Dudley
Ohio Environmental Protection Agency
Division of Surface Water Standards
122 South Front Street
PO Box 1049
Columbus, Ohio 43215-1049

RE: 208 Plan comments

Dear Mr. Dudley,

Under the proposed 208 Plan, several significations portions of developing areas in southeastern Franklin County fall within two and in some instances, three, different service areas. In particular, under the proposed 208 Plan, portions of expansion area C within the Village of Groveport pursuant to its contract with the City of Columbus are covered by parts of the service areas of Canal Winchester and/or Village of Lithopolis.
Overlap, particularly given the complex political situation occasioned by the contractual relationship between Canal Winchester and Lithopolis, will (1) create confusion and potential litigation as the area grows; (2) will not lead to the efficient and economically reasonable delivery of sanitary sewer services in this high growth area; will not lead to rational planning and expenditure of public funds; and (4) may encourage less environmentally sound development on home sewage treatment and disposal systems ("HSTDS") . The Village requests that Ohio EPA exercise its sound discretion and establish definitive service areas that will limit these concerns in the future.

As acknowledged in the Central Scioto Wastewater Quality Management Plan update, as approved by U. S. EPA in 2003, a majority of the increases in population within the Columbus Metropolitan facility planning areas are expected to need centralized sewer service. See, Draft State Water Quality Management Plan, Appendix 8-2, Page 31. In addition, and as the State Water Quality Management Plan notes on page 32 of Appendix 8-2, one of the areas of greatest projected population increases is expected to be in the Village and the areas adjacent to it in southeast Columbus and surrounding unincorporated areas. Although the impacts of development within the Lithopolis municipal boundaries will be tempered by our residential zoning, which includes large tracks of undeveloped green space, it is clear that sewer service will likely be needed in many currently undeveloped areas. See State Water Quality Management Plan, Appendix 8-2, Page 32.

Village of Lithopolis Council Members
Todd Brausch Ginger Brenning Linda Deem Carli Hush Teri Gilmore Michael Long

To avoid confusion and possible overlapping of services, the Village believes it is appropriate to remove the overlapping Canal Winchester service area as the continued overlap creates an incentive for developers to pit one municipality against the other to secure more concessions which could disrupt the ability of all of the municipalities in the area to provide essential services, including sewer and water, in a rational and economic manner.

It is important to note that pursuant to the recent Supreme Court decision in Bakies v. Perrysburg, Ohio EPA should strive to provide Lithopolis with the future flexibility to connect to other wastewater treatments systems besides Canal Winchester in the event that adequate service from Canal Winchester is denied. The agreement between Lithopolis and Canal Winchester expires in 2012, and under the Supreme Court's decision in Bakies, Canal Winchester could elect to refuse to provide additional capacity in the near term and it could cease to serve Lithopolis after the termination of the contract. This could prevent Lithopolis from serving its current service area and limit its ability to expand services into newly developed areas in the future. Further, without the flexibility to connect to alternative wastewater treatment systems (Columbus via Groveport or Fairfield County), Lithopolis would have limited or no options for sewer service. By establishing the facility planning areas as proposed, and providing Lithopolis with the option to connect to the Village's collection system in the future, Ohio EPA will provide Lithopolis with the flexibility to address future conditions if, due to other development pressures, Canal Winchester needs to restrict or terminate Lithopolis' access to the Canal Winchester wastewater treatment plant or generally as population in the area increases.

With these issues in mind Lithopolis' comments on the draft 208 plan are as follows

1. That Lithopolis be designated as its' own Management Agency for collection purposes.
2. That the attached Lithopolis Service Area Map be recognized as the Lithopolis Facility Planning Area (FPA).
3. Eliminate overlapping Management Agencies within the Lithopolis FPA.
4. On page 36 strike in its entirety "In response to a request from the Village of Lithopolis the Columbus Regional Facility Planning Area boundary has been adjusted to include approximately 1500 acres in Pickaway (Section 13 Madison Twp) and Fairfield (sections 17 & 18 Bloom Twp.) Counties. See additional description under prescription 25-P10." as there was no request from the Village of Lithopolis.
5. Modify 25-P5 - change reference to the "Lithopolis satellite area" to "areas within the Lithopolis FPA."
6. Modify 25-P10 as follows –

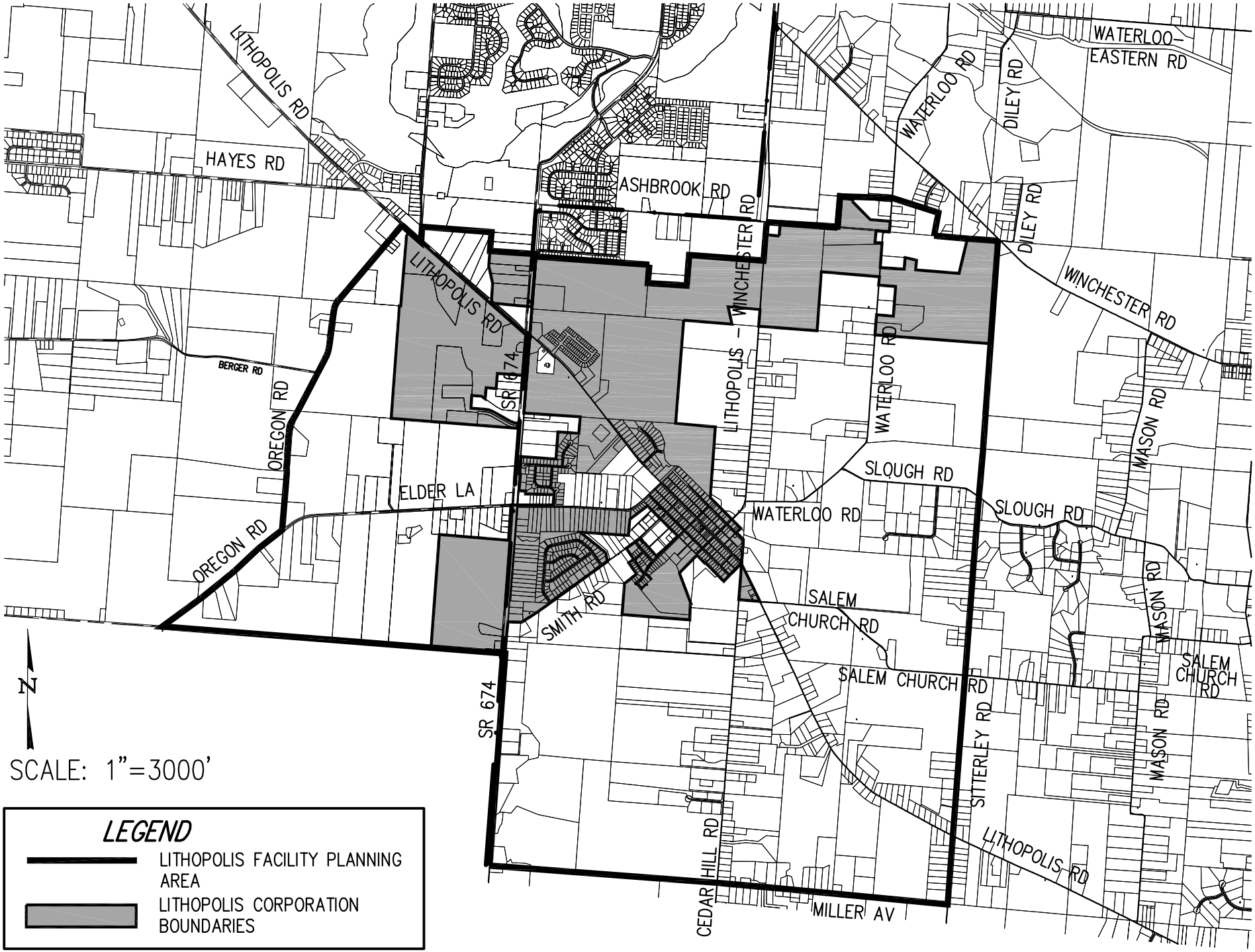
   25-P10 The Village of Lithopolis is responsible for wastewater collection within the village corporate boundaries and shall plan, design, construct and operate the collection system. Lithopolis shall arrange for the treatment of wastewater from this collection system through service agreements with one or more of these existing wastewater treatment providers: Canal Winchester, Columbus, or Fairfield County. Lithopolis currently has an agreement with Canal Winchester that stipulates an actual flow volume up to 250,000 gallons per day. The Village of Lithopolis may extend sewer service (collection only) to areas within the Lithopolis FPA (# 25-7) provided Lithopolis either currently has the contracted capacity to service the area, as determined by accepted engineering methods, or that Lithopolis has demonstrated sufficient planning and will have the necessary capacity to service the FPA by the time such capacity need is required.

If you are have any questions or comments please feel free to contact me (614) 837-2031 or the Lithopolis Village Solicitor, Jon Browning (614) 464-3900, otherwise we expect our comments to be incorporated into the revised 208 Plan.

Thank you for you time and attention to this matter.

Sincerely,

Eric Sandine, Mayor
Village of Lithopolis


LITHOPOLIS RD
HAYES RD
ASHBROOK RD
WATERLOO RD
DILEY RD
WATERLOO–
EASTERN RD
WINCHESTER RD
LITHOPOLIS RD
SR 674
BERGER RD
OREGON RD
ELDER LA
LITHOPOLIS – WINCHESTER RD
WATERLOO RD
SLOUGH RD
MASON RD
SMITH RD
SALEM
CHURCH RD
SALEM CHURCH RD
SITTERLEY RD
CEDAR HILL RD
MILLER AV
N
SCALE: 1"=3000'
LEGEND
LITHOPOLIS FACILITY PLANNING AREA
LITHOPOLIS CORPORATION BOUNDARIES

From: "Jennifer A. Frommer" <jfrommer@stilsonconsulting.com>
To: <dan.dudley@epa.state.oh.us>
Date: Mon, Apr 3, 2006 1:21 PM
Subject: Pickerington 208 prescription

Dan:

Per our last meeting on the 208 topic, I have seen no movement on furthering the joint agreement between Canal Winchester, Fairfield County, and the City.

Regardless, as we spoke at the meeting, Pickerington would like for you to add some brief language in its prescription along the lines of, "The City of Pickerington reserves the right to enter into written agreement with area DMA's to (have others) provide sanitary sewer service to portions of its service area, on a limited, case-by-case basis."

Let me know what you think. The City is in the beginning stages of resurrecting a WWTP improvement, but didn't want to be bound to service territories in the interim to the detriment of their system.

Thank you for your time....

Jennifer Frommer, P.E.

CC: "'Judy Gilleland'" <jgilleland@pickerington.net>

OHIO EPA - DSW
2006 APR 21 PM 4: 20

VILLAGE OF GROVEPORT
Central Ohio's Hometown

MUNICIPAL BUILDING
655 Blacklick Street
Groveport, OH 43125
614-836-5301
FAX: 614-836-1953
www.groveport.org

April 21, 2006

Dan Dudley
Ohio Environmental Protection Agency
122 South Front Street
P. O. Box 1049
Columbus, OH 43216-1049

Re: Comments on the State Water Quality Management Plan (208 Plan)
Comments submitted on Behalf of the Village of Groveport, Ohio

Dear Mr. Dudley:

Please accept the following comments submitted on behalf of the Village of Groveport, Ohio on the recently proposed updates to the State Water Quality Management Plan ("208 Plan"). These comments are submitted to provide Ohio EPA with an understanding of the complex political jurisdictional situation in southeast Franklin County and northwest Fairfield County and to encourage Ohio EPA to remove overlapping service areas within this sub-region. Maintaining consistency with existing contracts, the goals of the federally and state approved Columbus Facility Planning Area. ("Columbus FPA"). , and more recent annexations, assures that municipal investments and plans for investment will best serve the citizens of the area and water quality in southeast Franklin County. The removal of overlapping service areas will encourage all of the involved municipalities to serve the existing and future wastewater collection and treatment needs of this area in a manner that is both protective of human health and the environment and encourages reasonable use and an economically sound return on the investments made by the municipalities in wastewater treatment and collection infrastructure.

BACKGROUND

The Village of Groveport is located in southeastern Franklin County. The Village manages its own sanitary sewer collection system which collects and transports the Village's sewage for treatment to the City of Columbus' Southerly Wastewater Treatment Plant. The contract between the Village and Columbus for the treatment of the Village's sewage is attached. (Attachment A). The Village and Columbus agreed to allow the Village to expand its collection system to serve two expansion areas beyond the core area A. These areas are identified in Attachment B as areas B and C. Please note that all of these areas fall within the Columbus

FPA. Examples of the Village's reliance on existing contracts with Columbus are the attached plans for expanded sewer service into Areas B and C. See Attachment C.

Unfortunately, under the proposed 208 Plan, several significations portions of these expansion areas fall within two and in some instances, three, different proposed service areas. In particular, under the proposed 208 Plan, portions of expansion area C are covered by parts of the proposed service areas for Canal Winchester and/or for the Village of Lithopolis. This type of overlap, particularly given the complex situation occasioned by the contractual relationship between Canal Winchester and Lithopolis, (1) will not lead to the efficient and economically reasonable delivery of sanitary sewer services in this high growth area; (2) will frustrate orderly comprehensive planning and prudent allocation of public dollars; and (3) may encourage less environmentally sound development. The Village requests that Ohio EPA exercise its sound discretion and establish definitive service area for the Village as shown on Attachment C (Current capacity study eastern boundary limit 2005/2006) that will limit these concerns in the future. This map excludes the area east of Oregon Road already annexed to Canal Winchester and Lithopolis.

SPECIFIC COMMENTS

As acknowledged in the Central Scioto Wastewater Quality Management Plan update, as approved by U. S. EPA in 2003, a majority of the increases in population within the Columbus Metropolitan facility planning areas are expected to need centralized sewer service. *See,* Draft State Water Quality Management Plan, Appendix 8-2, Page 31. The Columbus FPA specifically recommended central services noting that the Southerly Treatment Plant be the prime provider for waste services since it is on a large receiving stream and central located in the water basin. In addition, and as the State Water Quality Management Plan notes on page 32 of Appendix 8-2, one of the areas of greatest projected population increases is expected to be the Village and the areas adjacent to it in southeast Columbus and surrounding unincorporated areas. Although the impacts of development in this area may be tempered by cluster developments which include large tracks of undeveloped green space, it is clear that sewer service will likely be needed in many currently undeveloped areas. *See* State Water Quality Management Plan, Appendix 8-2, Page 32. In light of the existing agreements between Columbus and the Village allowing for the expansion of the Village's service areas, the Village is currently uniquely positioned to provide sanitary sewer services in this area in a timely and economically viable manner. Ohio EPA should take this opportunity to clarify the service areas within the southeastern portion of Franklin County to take advantage of the Village's position to ensure that sanitary sewers are provided in an efficient and timely manner in these expansion areas both to currently existing and potentially failing home sewage treatment and disposal systems ("HSTDS") and any new developments. As shown on Attachment C, these service extensions are well underway and are being sized to facilitate further extension into the contracted service areas.

As can be seen from the contracts between the Village and Columbus and the attached sewer plans already being implemented, the areas outlined on Attachment C (2006 Sanitary Planning Limit) can be adequately and efficiently served by the Village within a reasonable timeframe. As these areas are within the Columbus FPA and contracts are already in place,

when and if development occurs, the Village can immediately serve any new development. Consequently, it is critical that Ohio EPA place the entire area under the exclusive planning authority of the Village. To avoid confusion and possible overlapping of services, the Village believes it is appropriate to remove the overlapping, proposed Canal Winchester service area as it frustrated are planning and construction efforts already under way as an outgrowth of our Columbus contracts and the Columbus FPA.

This proposal is consistent with the Village of Lithopolis' efforts to establish an exclusive service area east of Oregon Road. As Ohio EPA is aware, the Village of Lithopolis currently contracts with Canal Winchester for the treatment of sewage from Lithopolis' collection system. It is the Village's understanding that Lithopolis has provided Ohio EPA with a proposed exclusive planning area which has a minor overlap with the Village's expansion area C east of Oregon Road. The Village believes that in the interest of all of the municipalities in the area, it is appropriate for Ohio EPA to allow Lithopolis to include this area in its exclusive service area. Depending on Lithopolis contracting arrangements with Canal Winchester and timely discussion with the Village as we plan for further expansions in Area C, all areas within the Columbus FPA within Lithopolis can be contracted with Columbus via the Village's collection system in the future.

It is also important to note that pursuant to the recent Supreme Court decision in *Bakies v. Perrysburg*, holding that municipal contracts for provision of sewer services have a particularly high standing for enforcement, and that service can be extended or curtailed as a function of the contract, Ohio EPA should strive to respect our existing contracts with Columbus, our current ongoing planning and construction activities consistent with those contracts, and the desirable treatment capabilities of the Columbus Southerly Treatment plant which has been planned and built to serve these areas. By establishing the facility planning areas as proposed on Attachment C, and providing Lithopolis with the option to connect to the Village's collection system in the future depending on Lithopolis contract discussions with Canal Winchester, Ohio EPA will provide the Village with the flexibility to address future needs in our developing service area.

CONCLUSION

As Ohio EPA has recognized, providing for the efficient, economical delivery of essential sewer services to areas of high growth within a Columbus Municipal Planning Area is a high priority to protect water quality within both the Blacklick and, more generally, the Central Scioto River watersheds. The Village of Groveport is uniquely positioned due to current contractual obligations to serve the expansion areas proposed in this comment letter. The Village's proposal also takes into account the Village of Lithopolis' planned service area and it gives all of the municipal governments in this high growth area the flexibility to allocate sewer services in such a way as to maximize the return on each municipality's investment in sanitary sewer infrastructure. The Village's proposal will also reduce uncertainty related to delivery of central sewer services. The Village believes that this is critical, as confusion could lead to inappropriate developments within this area with potential use of non-centralized sewers or HSTDS. Consequently, it is in the best interest of southeastern Franklin County and the State of Ohio to implement these changes to the service area of both the Village of Groveport.

Respectfully submitted,

Jon Crusey
Administrator

Cc: Mayor Eric Sandine, Lithopolis

Kevin Shannon, Esq.

J. Jeffrey McNealey, Esq.

JJM:RJS:mcw

A

SEWER SERVICE AGREEMENT

CONTRACT
BETWEEN THE CITY OF COLUMBUS
AND
THE VILLAGE OF GROVEPORT

THIS AGREEMENT MADE AND ENTERED INTO THIS 1st DAY OF December, 2000, by and between the CITY OF COLUMBUS, OHIO, (Columbus), and the VILLAGE OF GROVEPORT, OHIO, (Groveport), for the discharge, transportation, pumping and treatment of sewage, industrial wastes, water or other liquid wastes from the Village of Groveport to and by the City of Columbus, utilizing the Sewerage System and Sewage Treatment Works of the City of Columbus,

WITNESSETH:

In consideration of the mutual covenants and promises herein contained, and in accordance with the applicable provisions of Chapters 1145 and 1147, Columbus City Codes, 1959 as amended and of Ordinance No. 1744-99 passed July 26, 1999 by the Council of the City of Columbus, and Ordinance No. 2000-017 passed April 24, 2000 by the Village of Groveport, the parties hereto agree as follows:

Section 1: That, subject at all times to the City of Columbus' right to sell surplus utility services, under the provisions of Article XVIII, Section 6 of the Constitution of Ohio, Groveport, shall have the right and obligation, throughout the effective period of this Agreement to discharge all sewage, industrial wastes, water or other liquid wastes from its sanitary sewers, either directly or indirectly, or both, into the Sewerage System of the City of Columbus, Ohio, and to have the same transported, pumped and treated by the Sewerage System and Sewage Treatment Works of the City of Columbus, provided, however,

(a) The Village of Groveport, shall have adopted or passed such measures as may be necessary to authorize the execution of this Agreement.

(b) Whenever, and to the extent that, the Columbus City Codes Chapter 1145 prohibits or restricts the direct or indirect discharge to the sanitary sewer of subfoundation building drains from premises within Columbus, such prohibitions or restrictions shall apply with equal force to premises within Groveport as if same were a part of this Agreement.

(c) Groveport, agrees it will not at any time cause or permit storm water or roof water leaders to be led into or connected with the separate sanitary system of sewers, or led into or connected with any soil pipe, house drain, or house sewer tributary to the separate sanitary system of sewers.

Groveport, agrees that it shall limit inflow and infiltration to its sewer system. The limitations applying thereto shall be in accordance with a future mutually acceptable modification to this Agreement.

(d) Groveport, agrees that no person shall directly or indirectly use or discharge to, any sewer within the Village of Groveport which is tributary to the City of Columbus Sewer System in violation of any applicable provision of Columbus City Codes Chapters 1145 and 1147.

into any sewer or into any water course, ditch, or drain leading into any sewer, any acid, chemical, or other substance, which tends to, or does destroy, or in any way injures the sewer or which in any way interferes with proper maintenance of facilities and the transportation, treatment, or disposition of any sewage carried or drained through any sewer in Columbus.

(f) Groveport, agrees it will not discharge, cause or permit to be discharged, directly or indirectly, into any sewer, any kerosene, gasoline, benzine, naphtha or any explosive or inflammable chemical, substance or thing.

(g) Groveport, agrees the requirements set forth herein, together with any elaboration, extension, definition or amendment of said requirements as such may be duly elaborated, extended, defined or amended through rules and regulations issued from time to time by the Director of Public Utilities, or by Legislative processes of Columbus, shall be fully applicable to all premises in Groveport, which are, or later become tributary directly or indirectly, to the Columbus Sewerage System, to the same extent and degree as they apply within the City of Columbus and any violation of these provisions shall be corrected or caused to be corrected at once by Groveport.

(h) Subject to Sections 4 and 5 hereinafter, Groveport agrees that sewer services, providing for the discharge of sewage, industrial wastes, water or other liquid wastes into its sanitary sewers, shall be restricted to usage by properties within the corporate limits of Groveport, as these limits exist on the date this agreement takes effect, provided, however, that in the case of premises within the area identified as "Area B" on the map attached hereto and made a part of this agreement, and noted as "**Exhibit 1**", Groveport may grant the right to discharge sewage, industrial wastes, water or other liquid wastes into sanitary sewers within the said Village of Groveport when and after said premises within said "Area B" become formally annexed to the Village of Groveport. ~~It is further provided that upon and with specific written approval of the Director of Public Utilities of the City of Columbus other premises within the area identified as "Area C" which substantially become formally annexed to said Village of Groveport may also be granted the right to discharge sewage, industrial wastes, water or other liquid wastes into sanitary sewers within the Village of Groveport.~~

Reference to annexations as used in this Contract does not include annexation by merger pursuant to the Ohio Revised Code, Section 709.43 through 709.46, inclusive, and as subsequently amended.

Groveport, agrees that should any properties within Service Area annex to the City of Columbus, the City of Columbus shall have the right to provide sewer service to such properties the same as it would any other areas within its corporate limits irrespective of this Agreement.

(i) Groveport, agrees that the construction of all house sewers or service connections within its boundaries shall comply with this Agreement, the then current minimum requirements governing such work in Columbus, and conform to Groveport's rules and regulations.

(j) Groveport, agrees that the design, construction, operation, use and maintenance of all sanitary sewers, house services and connections within its boundaries including all connections with the Columbus Sewerage System shall be performed at the entire expense of Groveport, or its residents, and shall conform in all respects with or exceed the corresponding standards and

practice of the City of Columbus. All mainline sanitary sewers and connections to serve areas within Groveport shall be constructed in accordance with detailed plans and specifications which have been approved from an engineering standpoint by the Columbus Director of Public Utilities, provided that such approval, from an engineering standpoint, or disapproval supported by engineering reasons therefore, shall be made by the Columbus Director of Public Utilities, within thirty (30) days after said plans and specifications have been submitted for final approval by Groveport. Absent approval or disapproval as set forth above, Groveport may proceed with construction in full conformity with such plans and specifications and with such engineering supervision and inspection as may be required by Columbus, and subject to all other provisions of this Agreement and applicable references. Upon completion of such work, and not later than sixty (60) days thereafter, accurate record drawings showing the work as actually constructed shall be filed, by Groveport, with Columbus, having been approved and signed by Groveport and submitted to Columbus for final approval. These record drawings shall show the area of each and every tributary lot and tract computed in accordance with paragraph (l) of this Section. Groveport agrees to notify Columbus, Division of Sewerage and Drainage, Permit Office, at least forty-eight (48) hours prior to tapping any Columbus sewers.

(k) Groveport, agrees that for all structures and properties connected to the Columbus Sewerage System, after the effective date of this Agreement, a system capacity charge for main trunk sanitary sewer benefit, or such similar charges as may be hereinafter established by Columbus, shall be applicable to any and all such structures and properties which are located within Groveport corporate limits, wherever such property will be tributary directly or indirectly, to the Columbus Sewerage System, and provided that such charge(s) shall be determined and collected by the Village of Groveport before or upon the issuance of a permit to connect such structures to the sewerage system. The charge so determined shall be computed on the size of the domestic water service tap for either city water or well water usage for each structure as computed by Columbus, for similar structures as established and periodically amended by Columbus Ordinance. Groveport agrees to pay the City of Columbus, at three (3) month intervals, a percentage of all such charges as collected, consistent with the following schedule:

Percentage of amount collected by Groveport to be paid to Columbus:

YEAR	PERCENTAGE
Date of Contract - Dec. 31, 1999	**33.0%**
Jan. 1, 2000 - Dec. 31, 2000	**45.0%**
Jan. 1, 2001 - Dec. 31, 2001	**50.0%**
Jan. 1, 2002 - Dec. 31, 2002	**75.0%**
Jan. 1, 2003 - Dec. 31, 2003	**90.0%**
Jan. 1, 2004	**100.0%**

(l) Groveport, agrees to establish a system of sewer service connection permits and shall transmit copies of sewer service permits to the City of Columbus at three (3) month intervals along with System Capacity Charges collected for that same three (3) month interval. Groveport shall keep and maintain an accurate record of all premises within its corporate boundaries connected with its sewers and any City of Columbus sewer lines which record shall, upon demand, be made available to the City of Columbus. Groveport shall issue permits and collect all applicable fees for all premises located within its corporate limits. Groveport shall give 48 hours notice to the City of Columbus, Division of Sewerage and Drainage, Sewer

Permit Office, prior to making any sewer service connection to a City of Columbus sewer line.

(m) Groveport, agrees to furnish to the Columbus Director of Public Utilities, all available information and data as to all sources of water supply other than the Columbus Division of Water, which may be in existence, or may later be developed to serve Groveport. As to wells, this information shall include the location, size, capacity and depth thereof. Further, Groveport agrees that where such water supply discharges directly or indirectly, into the sanitary sewer system, Groveport shall require metering or other forms of measurement as agreed to by the Columbus Director of Public Utilities.

(n) As soon as available, Groveport agrees to furnish to Columbus copies of its location atlas maps showing the overall sanitary sewer system and furnish additional copies as and when individual maps are changed or brought up-to-date.

Section 2:

a) The City of Columbus, through its Division of Water, shall have the rights and privilege, beginning as of the effective date of this Agreement, of billing for sewerage service charges as listed in the following paragraphs.

For the "Old Village" area of Groveport, (designated as "Area A" on Exhibit I), which is supplied water from the Groveport water treatment facility, billing for sewerage charges will be based upon the amount of filtered water pumped into the Village of Groveport water distribution system as such is measured by metering devices which shall be installed by the Village of Groveport, provided that the type of meter, their installation and their location must be approved by the Director of Public Utilities for the City of Columbus, and based upon extra strength user charges and industrial users charges which are applicable to specific facilities with the Village of Groveport water plant service area. These metering devices may include the individual meters installed at each property used for determining water bills by the Village of Groveport Water Distribution System.

The City of Columbus will bill the Village of Groveport for these charges at three (3) month intervals.

For all other areas of Groveport, which receive water from the City of Columbus water distribution system, billing for sewerage service charges will be based upon the water usage or consumption as indicated by the metering system established by Columbus Division of Water. Under the method established above, for determination of the sewerage service charge or charges, said charge or charges shall be computed by subjecting the water/sewer usage to the applicable provisions and rates of Chapter 1147, Columbus City Codes, 1959, which applicable rates may be changed in accordance with such rate structure as may be established from time to time for areas outside the Columbus corporate limits by ordinances passed by the Columbus City Council; provided, however, and subject to the provisions of Section 1 of this Agreement, that in the event of any such subsequent change in the rates of charge, the rate of charge to the residents of Groveport, shall not, in such case, exceed the rates of charge duly established and collected, at such time, for any other political subdivision. Groveport ratepayers agree to pay such charges within thirty (30) days after receipt of aforesaid bill.

(b) Columbus agrees that Groveport shall have the right and privilege to make charges, for structures and premises within the corporation limits of Groveport, independent of the

structures and premises within the corporation limits of Groveport, independent of the requirements of Section 1, and such charges shall not be subject to the division as established in Section 1(k).

(c) Upon Groveport's written request, Columbus agrees to include as a separate item under the billing authorized above, such user surcharge for structures and premises within the corporate limit of Groveport as may be established from time to time by Groveport ordinance or regulation. Such surcharge shall be refunded to Groveport quarterly, together with a verified report of the amount collected.

(d) Columbus agrees that in the computation of charges made to Groveport's Sewerage Service customers, the same credits or adjustments shall be applicable to Sewerage Service customers in Columbus as are now, or may hereafter from time to time, be applicable thereto, due to non-entry into the sanitary sewers of water consumed by such users, shall be applicable to Groveport's customers; provided that any fee charged by Columbus to obtain such credits or adjustments may be increased by fifty-cents ($0.50) for users within the Village of Groveport.

Section 2.1: Columbus may administer and enforce Sections 1145.01 - 1145.99 of the Columbus City Codes and all amendments thereto within Groveport corporate limits in order to prohibit or limit the discharge of toxic and other substances into the sewerage system. It is also agreed that the City of Columbus representatives may enter industrial establishments, perform inspections, and sample waste streams for the purpose of enforcing Section 1145 and 1147 of the Columbus City Code, as amended. Groveport agrees to adopt as a local regulation or ordinance of Groveport, the requirements of Section 1145.01 - 1145.99 in order that these requirements shall be applicable to all premises in Groveport which are, or later become, tributary directly or indirectly, to the Columbus Sewage System to the same extent as they apply to premises within Columbus.

(a) Groveport agrees that all fees for administering and enforcing Chapter 1145 shall be collected in accordance with Chapter 1147 of the Columbus City Codes, as amended.

Section 3: The term of this agreement will commence on December 1, 2000 and shall remain in full force and effect until midnight of November 30, 2050, subject to earlier termination or to revision, or to properly authorized modification or to renewal upon mutual agreement of the parties hereto and shall supersede and cancel any and all previous agreements concerning sewage service between the parties hereto for the specific Village of Groveport.

Section 4: Groveport, agrees that during the effective period of this Agreement, Columbus employees or agents shall have the right to enter into and within Groveport corporate limits for all purposes of this Agreement, for the further purpose of construction within the individual design-tributary area of any extensions to the Sewer System of Groveport, and constructing any other main sewers which, on the basis of sound engineering principles, may be deemed necessary by the Columbus Director of Public Utilities to build up an adequate sewer collector system in the entire area to be serviced by Columbus, including, but not being limited to, Groveport corporate limits.

The plans and specifications for the construction of sewers shall be submitted by Columbus to Groveport for approval as engineering and location. Such approval or rejection supported by engineering reasons therefore, shall be made by Groveport, within thirty (30) days after said plans and specifications have been submitted by Columbus to Groveport for final approval. In the case where no approval or disapproval is made by Groveport within said thirty (30) days, Columbus may proceed with construction, without prejudice, in full conformity with the plans and specifications so submitted and not acted upon by Groveport, subject however, to legal requirements governing the need for proper easements where said sewers will be located on private

standpoint by Groveport within the said thirty (30) days, such disapproval shall be made in writing and the engineering reasons for disapproval set forth therein.

Columbus pledges itself to construct such sewer extensions at its own expense and, insofar as possible, to restore disturbed areas to a reasonably equal condition in which they were found prior to such construction. Columbus will and shall have the right to preserve, maintain, operate, replace and repair any such sewers. During the life of this contract, Groveport shall have the right to connect any main sewers of its own collector system to any such aforementioned sewers, subject to the requirement that the flow from Groveport main sewers is not above that designed for and is not from areas outside the individual tributary-design area of the said main sewers constructed by Columbus. Further, subject to the requirement that such connections shall be made under Columbus' supervision in such manner as approved by Columbus and in full conformity with all other provisions of this Agreement.

Section 4.1: Groveport will take no action to initiate, approve, nor in any manner support a merger with any adjacent township pursuant to Section 709.43 through 709.46, inclusive, of the Ohio Revised Code or any revision or amendment thereto. All efforts by Groveport to increase its geographic boundaries shall be through the annexation procedure. Groveport agrees that it will not initiate, approve, nor support in any manner, annexation to Groveport of properties located outside Groveport's Service Area designated on "Exhibit 1" attached to this Contract.

Section 4.2: It is agreed by the parties that in the event a merger between Groveport and any Township should occur, the City of Columbus shall incur no obligation to service areas other than those specifically referred to in this Contract. The parties further agree that as of the effective date of said merger, the rates chargeable hereunder shall become ten (10) times those set forth in Section 2 hereof. Groveport consents to the provisions set forth in this section as related to the cost and expense of providing continued services under this Agreement and not as an exaction, tax or penalty in the event the conditions imposing this section occur. Further, Groveport consents and agrees that the provision in this section are not confiscatory nor unreasonable.

Section 4.3: If the City of Columbus enters into any new Sewerage Service Agreement or modifies, amends, extends or otherwise changes the terms of any Sewerage Service Agreement with any political jurisdiction and the new, modified, amended, extended or otherwise changed Agreement does not contain the same provisions regarding merger/annexation as set forth is Section 4.1 and 4.2 of the amended Sewerage Service Contract with Groveport then Sections 4.1 and 4.2 are null and void.

Section 5: Groveport further agrees that Columbus may connect any sewer to the sewerage system of Groveport after submission of the plans and specifications to Groveport in accordance with the provisions of Section 4 and provided that such sewer connections by Columbus do not serve areas outside Groveport sewer system tributary-design areas.

Columbus agrees that for all properties and premises within Columbus designed and subsequently connected into such sewers, it shall reimburse Groveport for any oversizing of that section of the sewer system built by Groveport on the basis of an estimate of the differential in cost of that section of the system involved, to be mutually agreed upon prior to approval of plans.

Section 6: Groveport agrees that during the term of this Agreement, it will take no action whatsoever, including any funding, preliminary engineering, or other surveying necessary or incident to plan, design, construct, or operate any sanitary waste water treatment facility and that, except as herein provided or as may be subsequently authorized by the Columbus City Council, Columbus shall be the sole and exclusive provider to Groveport of such services as are provided by the terms of this Agreement within the designated contract service areas set forth on "Exhibit I".

service areas set forth on "Exhibit I".

Section 7: If any portion of this Agreement proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force or effect of any other portion of this Agreement unless it clearly appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid or unconstitutional.

Section 8: That failure on the part of either party of this Agreement to faithfully discharge its obligations and responsibilities hereunder, either in whole or in part, shall vest in the other party to the Agreement the right to terminate same, effective sixty (60) days after written notice of such failure and the intent to terminate is delivered to the offending party, provided that the offending party shall have the right to cure or correct the such failure, to faithfully discharge its obligations and responsibilities and upon demonstration thereof, such notice of cancellation shall not be effective and this Agreement shall remain in full force and effect without prejudice to Columbus' right to collect amounts due and owing to Columbus arising under the terms of this Contract prior to notice of termination.

IN WITNESS WHEREOF, the parties hereto have set their hands on this 1st day of December 1, 2000.

THE CITY OF COLUMBUS, OHIO

By _____
PUBLIC UTILITIES DIRECTOR

Approved as to form:

_____
Solicitor, Kevin C. Stanford
Village of Groveport, Ohio

THE VILLAGE of GROVEPORT, OHIO

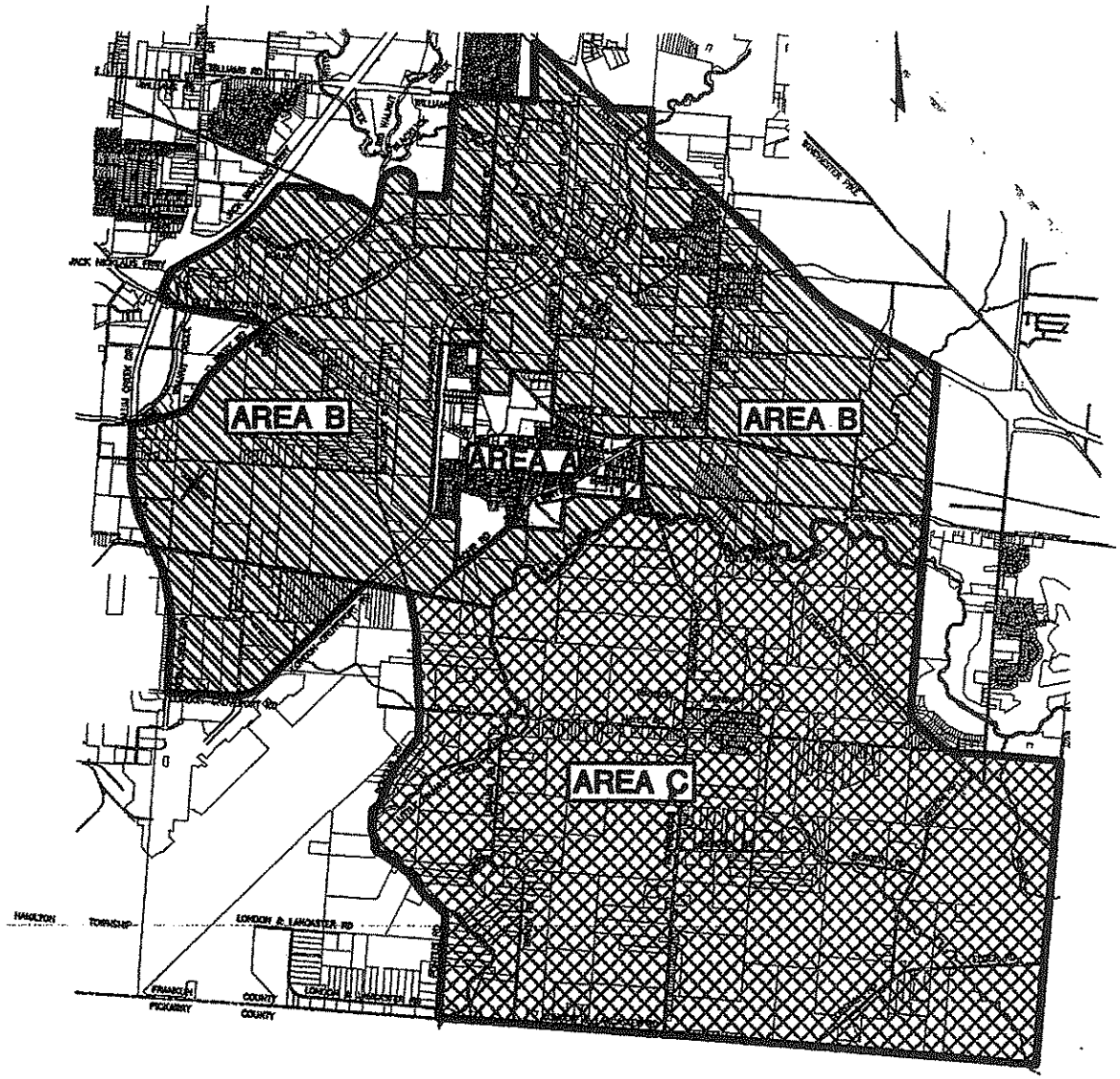
By Lance Westcamp
Mayor
TITLE

_____
City Attorney 12/1/00
Columbus, Ohio

By _____
Village Administrator
TITLE

mcs/Grvprt99.Sub
May 4, 2000

B



AREA "A" —— AREA SERVED BY THE VILLAGE OF GROVEPORT WATERPLANT.

AREA "B" —— SEWAGE SERVICES CAN BE PROVIDED IF AND WHEN AREA IS ANNEXED TO THE VILLAGE OF GROVEPORT.

AREA "C" —— DEFERRED AREA. SEWAGE SERVICE CAN BE PROVIDED IF AND WHEN AREA IS ANNEXED TO THE VILLAGE OF GROVEPORT AND UPON APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC UTILITIES CITY OF COLUMBUS.

CORP LINE

VILLAGE OF GROVEPORT, OHIO

CONTRACT SANITARY SERVICE AREA

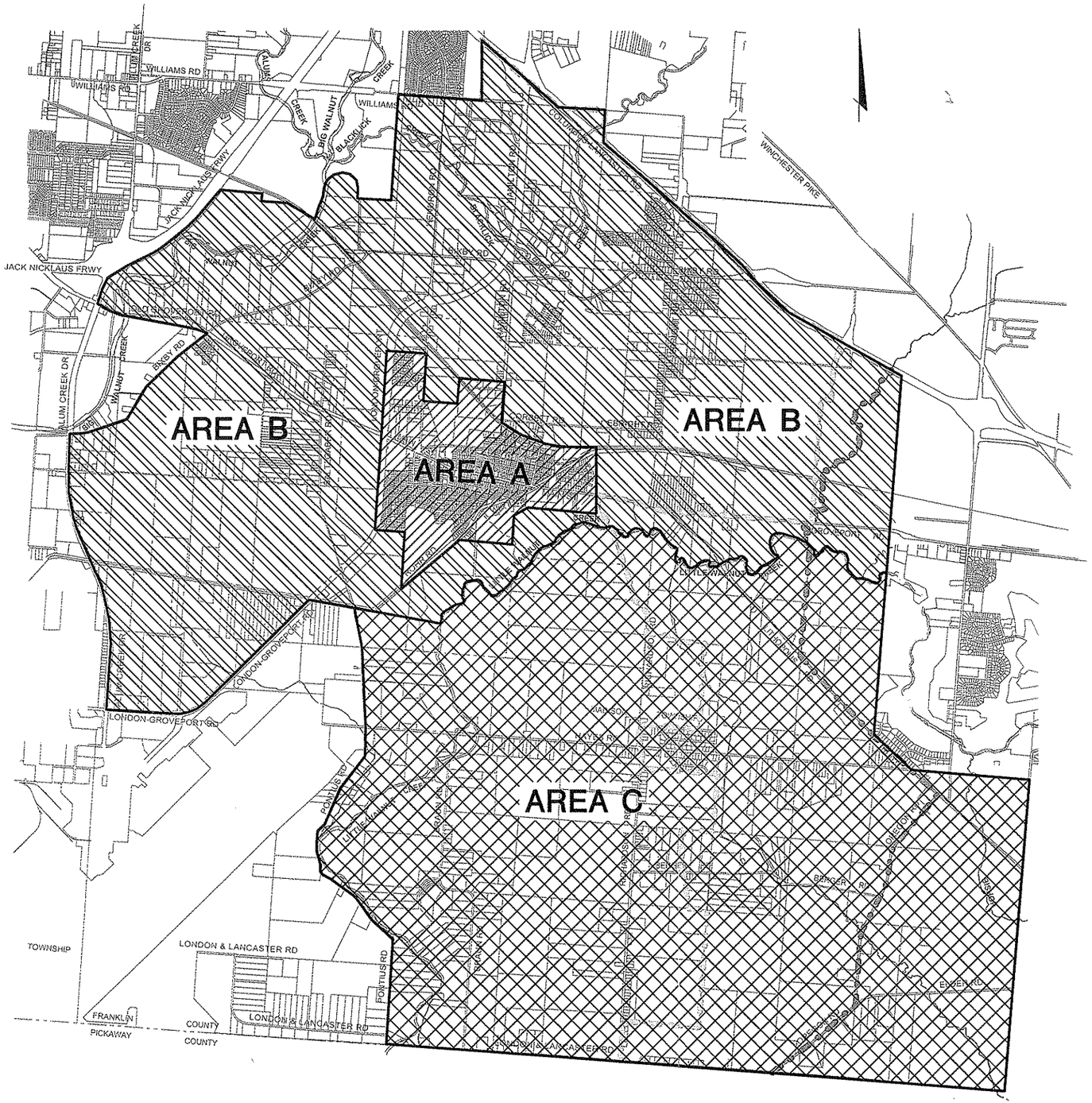
EXHIBIT I

DATE: JULY 1978 SCALE: 1"= 4000'

EVANS, MECHWART, HAMBLETON & TILTON, INC.
CONSULTING ENGINEERS & SURVEYORS

S-6533

C



AREA "A" --- AREA SERVED BY THE VILLAGE OF GROVEPORT WATERPLANT.

AREA "B" --- SEWAGE SERVICES CAN BE PROVIDED IF AND WHEN AREA IS ANNEXED TO THE VILLAGE OF GROVEPORT.

AREA "C" --- DEFERRED AREA. SEWAGE SERVICE CAN BE PROVIDED IF AND WHEN AREA IS ANNEXED TO THE VILLAGE OF GROVEPORT AND UPON APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC UTILITIES CITY OF COLUMBUS.

CORP LINE

2005 SANITARY PLANNING LIMIT.

CURRENT CAPACITY STUDY EASTERN BOUNDARY LIMIT 2005/2006.

CONTRACT SERVICE AREA LIMITS.

VILLAGE OF GROVEPORT, OHIO

CONTRACT SANITARY SERVICE AREA

EXHIBIT I

DATE: JULY 1999 SCALE: 1"= 4000'

EVANS, MECHWART, HAMBLETON & TILTON, INC.
CONSULTING ENGINEERS & SURVEYORS

S-6533

\\SERVER-II\FARST\PROJECT\S06533\DWG\CONTRACT.DWG - 1 XREFS: BASE1 - PLOTTED BY PHOOVER - July 07, 1999 - 8:59 AM

From: "Antle, Chad" <CAntle@co.delaware.oh.us>
To: "Dan Dudley" <Dan.Dudley@epa.state.oh.us>
Date: Thu, Apr 20, 2006 10:39 PM
Subject: public comment

Dan: Per our phone conversation today, I would like to draw your attention to page 24 of Appendix 9-1. This table delineates numerous characteristics and responsibilities for different areas of Delaware County in regards to sanitary sewers and waste water treatment. I have found some erroneous material in this table with regards to the ownership of WTTP and existing areas of service for existing WWTP. An example of this is that Olentangy Environmental Control Center provides service to Liberty, Concord, Orange, Berlin Townships and is not documented as such in the table. In the near future I will provide you a list of treatment facilities that the County owns and operates and their respective service areas for you to include in this table.

I would like to thank you for your time and efforts in the development of the "208" document.

Thanks, Chad

Chad L. Antle, P.E.

Assistant Director

Division of Environmental Services

Delaware County

50 Channing Street Delaware, Ohio 43015

(740) 833-2240

(740) 833-2239 (fax)

(740) 272-3767 (cell)

CC: "Smelker, Jack" <JSmelker@co.delaware.oh.us>

(21)

OHIO EPA - DSW
2006 APR 24 AM 10: 33

Delaware County Commissioners

Glenn A. Evans
Kris Jordan
James D. Ward

County Administrator
David Cannon

Clerk to the Commissioners
Letha George

April 14, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: State Water Quality Management Plan
Section 208 Area Wide Waste Management Plan
Public Comment

Dear Mr. Dudley:

Please accept this correspondence as public comment that has been sought by the Ohio EPA to its draft of the 2006 Update to the State Water Quality Management Plan. As you can see by the enclosed resolution, Delaware County strongly support the Ohio EPA's efforts to define the roles of the surrounding communities and the Delaware County Regional Sewer District to provide sanitary sewer service. As our townships are a part of the Delaware County Regional Sewer District, we desire to allow the Sewer District to provide our townships with wastewater conveyance and treatment services.

We fully support the Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Delaware County, specifically for areas that are unincorporated and/or within the unincorporated areas of the County. Further, we support the requirement of municipalities to obtain service agreements with the Sewer District when a sewer extension is proposed outside the current corporation boundaries.

We look forward to the plan being adopted as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District.

Respectfully

David Cannon
Delaware County Administrator

Delaware County Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015
(740) 833-2100 (740) 548-7313 FAX: (740) 833-2099 E-mail: county@co.delaware.oh.us

Delaware County Commissioners

Glenn A. Evans
Kris Jordan
James D. Ward

County Administrator
David Cannon

Clerk to the Commissioners
Letha George

RESOLUTION NO. 06-461

IN THE MATTER OF SUPPORTING THE OHIO ENVIRONMENTAL PROTECTION AGENCY PROPOSED STATE WATER QUALITY MANAGEMENT PLAN (208 PLAN):

It was moved by Mr. Evans, seconded by Mr. Jordan to approve the following:

WHEREAS, The State Environmental Protection Agency (EPA) has been studying the State Water Quality Management Plan, better known as the 208 Plan for a number of years, and

Whereas, The State EPA has proposed an updated 208 Plan for Delaware County, and

Whereas, the proposed State 208 Plan allows the County to provide for sanitary sewer services in the unincorporated areas of the County, and

Whereas, The EPA proposed Plan allows for efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District, and

Whereas, the proposed 208 Plan will allow the townships of Delaware County a voice in the decision to provide sanitary sewer within their jurisdiction, and

Whereas, the proposed 208 Plan will allow Delaware County to invest on sewer systems without the threat of infringement of the area and thereby losing the ability to recoup the investment cost.

NOW THEREFORE, PURSUANT TO THE FORGOING, BE IT RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio as follows:

That the Board of County Commissioners fully support the Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Delaware County, specifically for areas that are in the unincorporated areas of the County

FURTHER BE IT RESOLVED That the Board of County Commissioners strongly support the requirement of municipalities to obtain service agreements with the Sewer District when a sewer extension is proposed outside the current corporation boundaries.

Vote on Motion	Mr. Evans	Aye	Mr. Jordan	Aye	Mr. Ward	Aye

I, Jennifer Walraven, Assistant Clerk of the Board of County Commissioners hereby certify that the foregoing is a true and correct copy of a resolution of the Board of County Commissioners of Delaware County duly adopted on April 13, 2006, and appearing upon the official records of said Board.

Jennifer Walraven
Assistant Clerk to Commissioners

Delaware County Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015

(740) 833-2100 (740) 548-7313 FAX: (740) 833-2099 E-mail: county@co.delaware.oh.us

22

OHIO EPA - DSW
2006 APR 24 AM 10: 32

March 24, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: State Water Quality Management Plan
Section 208 Area Wide Waste Management Plan
Public Comment

Dear Mr. Dudley:

Please accept this correspondence as public comment that has been sought by the Ohio EPA to its draft of the 2006 Update to the State Water Quality Management Plan.

As a township of Delaware County, we strongly support the Ohio EPA's efforts to define the roles of the surrounding communities and the Delaware County Regional Sewer District to provide sanitary sewer service. As our township is a part of the Delaware County Regional Sewer District, we desire the Sewer District to provide our citizens with wastewater conveyance and treatment services.

We fully support the Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Delaware County, specifically for areas that are unincorporated and/or within BERKSHIRE Township.

We strongly support the requirement of municipalities to obtain service agreements with the Sewer District when a sewer extension is proposed outside the current corporation boundaries.

We look forward to the plan being adopted as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District.

Respectfully

William J. Hatley Jim Kopenhagen Robert Carpenter

Township Trustee

(23)

BERLIN

OHIO EPA - DSW

Township Trustees

2006 MAR 31 AM 10: 23

3271 Cheshire Road
Delaware, Ohio 43015
Phone: 740-548-6350
Fax: 740-549-1932

Trustees
Ken O'Brien
Philip P. Panzarella
Steve A. Spangler Sr.

Clerk
Theresa Cannon

March 27, 2006

Mr. Dan Dudley
Division of Surface water
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: State Water Quality Management Plan
Section 208 Area Wide Waste Management Plan
Public Comment

Dear Mr. Dudley:

Please accept this correspondence as a public comment that has been sought by the Ohio EPA to its draft of the 2006 Update to the State Water Quality Management Plan.

As a township of Delaware County, we strongly support the Ohio EPA's efforts to define the roles of the surrounding communities and the Delaware County Regional Sewer District to provide sanitary sewer service. As our township is a part of the Delaware County Regional Sewer District, we desire the Sewer District to provide our citizens with wastewater conveyance and treatment services.

We fully support the Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Delaware County, specifically for areas that are unincorporated and/or within Berlin Township.

We strongly support the requirement of municipalities to obtain service agreements with the Sewer District when a sewer extension is proposed outside the current corporation boundaries.

BERLIN

Township Trustees

3271 Cheshire Road
Delaware, Ohio 43015
Phone: 740-548-6350
Fax: 740-549-1932

Trustees
Ken O'Brien
Philip P. Panzarella
Steve A. Spangler Sr.

Clerk
Theresa Cannon

We look forward to the plan being adopted as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District.

Respectfully,

Berlin Township Trustees

Phil Panzarella | Steve Spangler Sr. | Ken O'Brien

(24)

TRENTON TOWNSHIP TRUSTEES

OHIO EPA - DSW
2006 APR 21 AM 10: 09

Cynthia F. Walton, Clerk
15495 Hartford Road
Sunbury, Ohio 43074
(740) 965-4816
Fax (740) 965-2050
Zoning (740) 965-4270

April 19, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
P. O. Box 1049
Columbus, OH 43216-1049

RE: State Water Quality Management Plan
Section 208 Area Wide Waste Management Plan
Public Comment

Dear Mr. Dudley:

Enclosed please find a resolution from the Trenton Township Trustees Meeting Minutes that we would like to be considered as public comment that has been sought by the Ohio EPA to its draft of the 2006 Update to the State Water Quality Management Plan.

We look forward to the plan being adopted as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District.

Respectfully,

Trenton Township Trustees /cfw.

Trenton Township Trustees

TTT/cfw

CC: Delaware County Commissioners

RESOLUTION 06-04-01

WHEREAS, the undersigned Trustees of Trenton Township, Delaware County, Ohio, on behalf of the citizens of said Trenton Township have been concerned with the (Ohio) State Water Quality Management Plan, Section 208 Area Wide Waste Management Plan, and

WHEREAS, we desire to express our firm support of the Ohio EPA's efforts to define the roles of the communities in the eastern half of Delaware County, Ohio and the Delaware County Regional Sewer District in providing sanitary sewer service to the citizens of this area; and

WHEREAS, we desire to express our firm support of Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Trenton Township, Delaware County, Ohio, and

WHEREAS, we desire to express our firm support for the requirement that municipalities obtain service agreements with the Sewer District at any time a sewer extension is proposed outside the current boundaries of such municipal corporations, and

WHEREAS, we anticipate the plan's adoption as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District,

NOW, THEREFORE, we the undersigned Trustees of Trenton Township on behalf of the citizens of said Township resolve our expressions (1) of firm support for the actions of the Ohio EPA in its efforts to define the roles of the townships and communities in Delaware County, Ohio and (2) our firm support of the role of the Delaware County Regional Sewer District in providing our citizens with wastewater conveyance and treatment services, the (3) for the Ohio EPS's Draft Water Quality Management Plan and its prescriptions for wastewater service in Trenton Township, Delaware County, Ohio and (4) our firm support of the requirement that municipalities obtain service agreements with the said Sewer District at any time a sewer extension is proposed outside the current boundaries of such municipal corporations and (5) our firm support for the adoption of the plan as drafted to provide efficient and economic wastewater conveyance and treatment to the citizens of Trenton Township, Delaware County, Ohio
Resolved by: Justice
Second: Fisher
Vote:

This is a true and correct copy from the Trenton Township Trustees Regular Meeting Minutes of April 5, 2006.

Cynthia F. Walton

Cynthia F. Walton
Fiscal Officer

OHIO EPA - DSW
2006 APR 11 AM 10: 20

(25)

March 24, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: State Water Quality Management Plan
Section 208 Area Wide Waste Management Plan
Public Comment

Dear Mr. Dudley:

Please accept this correspondence as public comment that has been sought by the Ohio EPA to its draft of the 2006 Update to the State Water Quality Management Plan.

As a township of Delaware County, we strongly support the Ohio EPA's efforts to define the roles of the surrounding communities and the Delaware County Regional Sewer District to provide sanitary sewer service. As our township is a part of the Delaware County Regional Sewer District, we desire the Sewer District to provide our citizens with wastewater conveyance and treatment services.

We fully support the Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Delaware County, specifically for areas that are unincorporated and/or within Harlem Township.

We strongly support the requirement of municipalities to obtain service agreements with the Sewer District when a sewer extension is proposed outside the current corporation boundaries.

We look forward to the plan being adopted as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District.

Respectfully

Jerry W. Paul

Township Trustee

David D. Jackson
H Charles Backman

(28)

OHIO EPA - DSW
2006 APR -5 AM 10: 33

March 24, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: State Water Quality Management Plan
Section 208 Area Wide Waste Management Plan
Public Comment

Dear Mr. Dudley:

Please accept this correspondence as public comment that has been sought by the Ohio EPA to its draft of the 2006 Update to the State Water Quality Management Plan.

As a township of Delaware County, we strongly support the Ohio EPA's efforts to define the roles of the surrounding communities and the Delaware County Regional Sewer District to provide sanitary sewer service. As our township is a part of the Delaware County Regional Sewer District, we desire the Sewer District to provide our citizens with wastewater conveyance and treatment services.

We fully support the Ohio EPA's Draft Water Quality Management Plan and its prescriptions for wastewater service in Delaware County, specifically for areas that are unincorporated and/or within Troy Township.

We strongly support the requirement of municipalities to obtain service agreements with the Sewer District when a sewer extension is proposed outside the current corporation boundaries.

We look forward to the plan being adopted as drafted to provide efficient and economic wastewater conveyance and treatment by the Delaware County Regional Sewer District.

Respectfully

Paul Price

Township Trustee

BENESCH
Friedlander Coplan & Aronoff LLP
Attorneys at Law

Orla E. Collier
Writer's Direct Dial: (614) 223-9340
Writer's Email: ocollier@bfca.com

April 21, 2006

VIA E-MAIL: dan.dudley@epa.state.oh.us
AND REGULAR MAIL

Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Section 208 Plan

Dear Mr. Dudley:

This letter will serve as the Village of Sunbury's formal public comments to the State's proposed Areawide Water Quality Management Plan due April 21, 2006. As you know, the Village of Sunbury has submitted a proposed Section 208 plan to the Ohio EPA for incorporation in the State's plan. The plan provides for a facility planning area both within and outside the municipal boundaries of the Village. The Village has attended prior public meetings regarding the State's proposed plan and has previously offered comments.

The Village incorporates herein the March 7, 2006 letter from Mike O'Brien, Sunbury Village Administrator, to the Ohio EPA and the March 27, 2006 letter from the Village's counsel to the Ohio EPA as part of its official comments. These letters were previously submitted as comments in the earlier public meetings and public comment and are attached for your convenience.

In summary, the Village of Sunbury emphasizes four (4) significant points regarding the State's 208 plan as respects Delaware County:

1. The Delaware County Sewer Master Plan – Update 2005 is a conceptual master plan for sewer services in the unincorporated areas of Delaware County. The plan is not a Section 208 plan. Delaware County is not a Designated Management Agency ("DMA") with facility planning responsibilities. The plan does not include input from all affected political subdivisions and does not establish Facility Planning Areas. The

Ohio EPA has recognized that the Delaware County Master Plan will not be considered for application in this year's State Water Quality Management Plan.

2. Delaware County has no existing sewage treatment facilities in the area surrounding the Village of Sunbury. The Village of Sunbury has an approved WWTP in the planning area.

3. The Village strongly opposes "generic prescriptions" in Delaware County. (Appx. 9-1, page 3). Section 2 of the "generic prescriptions" implies that a municipality may extend sewer service outside its municipal boundaries only by agreement with the county or by annexation. This prescription violates a municipality's constitutional and statutory authority to extend utility services outside its municipal boundaries. See Ohio Constitution, Article XVIII, § 4 and § 6; R.C. §§ 743.01 and 743.12.

4. The Village of Sunbury believes that linking municipal sewer services to annexation, under the guise of a "generic prescription," will not promote sound environmental planning and community economic development.

The Village of Sunbury urges the Ohio EPA to adopt the Village's proposed Section 208 plan as part of the State's Areawide Water Quality Management Plan.

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

Orla E. Collier
Counsel for the Village of Sunbury

cc: Michael O'Brien, Village Administrator
David Brehm, City Attorney

The Village of Sunbury

P. O. Box 508
Sunbury, Ohio 43074
(740) 965-2684
Fax (740) 965-9633

LEONARD R. WEATHERBY
MAYOR

MIKE O'BRIEN
ADMINISTRATOR

JOHN LANE
FISCAL OFFICER/CLERK OF COUNCIL

To: Mr. Dan Dudley
Manager, Standards and Technical Support
Division of Surface Water
Ohio Environmental Protection Agency
122 S. Front St.
P.O. Box 1049
Columbus, Ohio 43216-1049

March 7, 2006
Subject: Response to the State Water Quality Management Plan including section 208 Areawide Waste Management Plan

Dear Mr. Dudley

My name is Mike O'Brien, I am the Village Administrator for Sunbury, Ohio and I appreciate the opportunity to address the State Water Quality Management Plan including section 208 Areawide Waste Management Plan.

Delaware County has submitted its Sewer Master Plan – Update 2005. The Ohio EPA, in its Section 208 Plan, has stated with regard to this plan:

> ... On November 9, 2005 the Agency received an Update 2005 for the Delaware County Sewer Master Plan, too late for the Agency to consider for this State Water Quality Management Plan update. The work will be considered for application in the next update of the State's 208 plan. Generic prescriptions are provided for Delaware County Management Agencies until such time as the Ohio EPA can collectively evaluate the County's Sewer Master Plan and facility planning work from the municipalities of Delaware, Galena and Sunbury.

I would like to make the following points:

1. The Delaware County Plan is a conceptual master plan for sewer services in the unincorporated areas of the County. The Plan is not a Section 208 plan. Delaware County is not a Designated Management Agency ("DMA") with facility planning responsibilities. The Plan does not include input from all DMAs, including Sunbury, and does not establish Facility Planning Areas.

2. The Village of Sunbury has submitted a proposed Section 208 Plan for the Village of Sunbury and a Facility Planning Area which includes Kingston, Porter, Berkshire and Trenton Townships in Delaware County.

3. Delaware County has no existing sewage treatment facility in the area. The Village of Sunbury has an approved WWTP in the planning area.

4. Delaware County did not consider our proposed Section 208 plan in its master plan.

5. Delaware County has identified two basin areas – Drainage Area 2A and 2B. This is also referenced as the "Central Big Walnut Service Area." Delaware County recommends one regional treatment facility for Galena, Sunbury and surrounding townships.

6. Delaware County ignores the fact that Sunbury and Galena already have existing WWTP facilities in the area.

7. Contrary to Delaware County's position, Sunbury is capable of accepting additional flow outside the municipal boundaries of the Village. Sunbury is willing to extend sewer service without condition of annexation.

8. Delaware County suggests an Alternative A – discharge of flows from the unincorporated area into the Alum Creek Water Reclamation Facility. The total cost would be $22,234,852. This would result in a tap-in fee of $10,200 per tap.

9. Delaware County did not evaluate the alternative of sewer service by the Village of Sunbury by the existing Sunbury WWTP.

10. Delaware County has not discussed regional cooperation with the Village of Sunbury.

In short, Sunbury recommends Ohio EPA approval of the Sunbury proposed Section 208 plan.

Respectfully Submitted,

Mike O'Brien

Mike O'Brien
Sunbury Village Administrator

Copy: Orla E. "Chip" Collier Esq.
Len Weatherby Mayor
David Brehm Esq.

BENESCH
Friedlander Coplan & Aronoff LLP
Attorneys at Law

Orla E. Collier
Writer's Direct Dial: (614) 223-9340
Writer's Email: ocollier@bfca.com

March 27, 2006

VIA E-MAIL: dan.dudley@epa.state.oh.us
AND REGULAR MAIL

Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Section 208 Plan

Dear Mr. Dudley:

As you know, I represent the Village of Sunbury. The Village has submitted a proposed Section 208 plan to the Ohio EPA. This plan provides for a facility planning area both within and outside the corporate boundaries of the Village. Delaware County has no sewage treatment facilities in the geographical areas outside the Village.

I am in receipt of your email to Tom Homan wherein you state that "generic prescriptions" will apply in Delaware County. You specifically reference the Delaware County section of the 208 plan, Appendix 9-1, page 23 *et seq*. You also reference the "generic prescriptions" at Appendix 9-1, page 3.

Section 2 of the "generic prescriptions" provides:

> 2. All municipal management agencies with <u>home rule</u> powers are responsible for sewage collection and treatment <u>within their respective corporate boundaries</u>. Such service may be provided by the management agency or through contracting for such services. Sewer service <u>may</u> be extended to <u>annexed</u> land, <u>and to areas beyond the corporate boundaries</u>, provided the management agency has the capacity to adequately collect and treat all wastewater under the terms of its NPDES permit. When the proposed extension is <u>beyond the corporate boundaries</u> and <u>within a sewer district established under ORC 6119 or 6117</u>, <u>and the land is not annexed,</u>

> the extension of sewer service would require a service agreement with the other sewer district. (emphasis added).

The effect of this language is to preclude a municipality, such as Sunbury, from extending needed sewer service beyond its corporate boundaries unless the geographical area is annexed or unless a County, in a previously established sewer district, agrees to the extension. This would be true whether or not the County has any sewage treatment or collection facilities in such geographical area.

For the reasons that follow, the Village of Sunbury believes that this "generic prescription" is inconsistent with Ohio constitutional statutory and case law and is inconsistent with sound environmental policy.

First of all, a municipality in Ohio has the constitutional right to acquire, construct, own, lease or operate public utility facilities within or outside its corporate limits. See Ohio Constitution, Article XVIII, § 4 and § 6. A municipality also has the statutory authority to extend public utility services outside municipal boundaries upon written request. See R.C. § 743.01 and 743.12; Sproul v. City of Wooster, 840 F.2d 1267 (6th Cir.); Stow v. Cuyahoga Falls, 7 Ohio App.3d 108 (1982).

A county has the right, power and authority to establish a county sewer district and to plan for, acquire and operate water facilities and sewage collection facilities within the sewer district. See Chapters 6103 and 6117, Ohio Revised Code.

The Ohio courts have clearly established that a county's authority to provide utility services under Chapters 6103 and 6117, Ohio Revised Code and a municipality's authority to provide such services pursuant to the Ohio Constitution and statutes are co-equal in dignity. The courts will apply a "balancing test" to determine the authority to provide utility service in case of conflict. See Bd. of Commrs. of Ottawa County v. Village of Marblehead (1995), 102 Ohio App.3d 306, citing Delaware Cty. Bd. of Commrs. v. Columbus (1986), 26 Ohio St.3d 179 and Columbus v. Teater (1978), 53 Ohio St.2d 253. The court in the Marblehead case further concluded that the Ohio EPA's authority to approve construction plans does not preempt these constitutional and statutory provisions.

The effect of the "generic prescriptions" is to grant a county exclusive authority over the municipal extension of sewer service outside its political boundaries whether or not the county has the present capability of providing sewer service in the area. Unless the municipality annexes such geographical area, the municipality will have to obtain county approval. This requirement is inconsistent with Ohio law.

There is no lawful basis for the Ohio EPA, under the guise of the "generic prescription," to impose territorial limitations upon either municipal or county sewage service. For a vast array of reasons, a municipality may desire to extend needed sewer service to a geographical area outside its corporate boundaries without conditioning the extension upon annexation. There are many situations, including JEDD and CEDA arrangements, whereby a municipality will extend sewer service without condition of annexation to promote sound environmental planning and community economic development.

Centralized sewer service should not be linked to annexation. The "generic prescription" applies to either condition service upon municipal annexation or leave unincorporated areas un-served by centralized sewer. Proper Section 208 planning requires that local political subdivisions cooperate in planning for future sewer service. Absent agreement and the establishment of facility planning areas in a comprehensive Section 208 plan, no political subdivision should be granted exclusive service rights in a generic prescription.

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

Orla E. Collier

cc: Michael O'Brien
Village of Sunbury
Administrator
David Brehm
Paul Brock

(3D)

February 10, 2006

Mr. George Elmaraghy
Chief, Division of Surface Water
Ohio Environmental Protection Agency
Central Office
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

Re: State Draft 208 Plan
Village of Galena, Delaware County, Ohio
PDG Job No. 3550-005

Dear Mr. Elmargahy:

The Village of Galena has reviewed the draft "State Water Quality Management Plan, including Section 208 Area Wide Waste Management Plans".

Comment No. 1

The Village of Galena review has found an omission in Appendix 8-1 and 9-1 of the State Plan. The Ohio Environmental Protection Agency failed to include on pages 27 of Appendix 8-1 and page 24 of Appendix 9-1 the newly issued NPDES Permit No. 4PC00102*AD to the Village of Galena. This permit allows the discharge of an additional .500 mgd of sewage collected per Phase I of the Galena Area Wide Water Quality Management Plan which was submitted to Ohio EPA in July of 2004 and revised June 2005. We have enclosed a copy of the final NPDES permit 4PC00102*AD issued December 13, 2005. This wastewater treatment plant is currently under design. A comprehensive sewer master plan for the Village of Galena 201 Area is currently being completed.

The Ohio Environmental Protection Agency as the state planning agency and by the issuance of Phase I NPDES Permit No. 4PC00102*AD per the Clean Water Act Section 208 has "identified the treatment works necessary to meet anticipated municipal and industrial waste treatment needs of the area (Galena Planning Area) over a twenty year period". The Ohio EPA has further identified the Village of Galena as the designated management agency to construct, operate, and maintain facilities required by the plan. We would anticipate the state plan will rectify the omission of the new Galena WWTP.

Comment No. 2

On page 3 of Appendix I, Generic Prescriptions for wastewater treatment, does not recognize the fact that approved 201 facilities plans for municipalities all have planning areas outside the village or city boundaries. These villages and cities were required to plan for a minium of twenty years. Language in this section should recognize this fact and provide for the 201 prescription as part of the 208 plan.

Comment No. 3

On page 4 of the Appendix 9-1, the Village of Galena has a comment regarding "Determining When a Public Sewer is Available". Ohio EPA has incorporated Ohio Revised Code 6117.51 into this section of the State 208 Plan. This regulation applies to County Commissioners and Boards of Health. Ohio EPA must clarify this section to state this prescription applies only to areas outside of 201 facilities planning areas. We believe it is unacceptable to allow new subdivisions or new commercial businesses to develop without connection to sanitary sewers in 201 facility planning areas. We believe ORC 6117.51 was promulgated to control existing health problems or a hazard of water pollution.

If there are any questions or comments concerning the Village of Galena's response to the draft State 208 plan, please do not hesitate to contact this office.

Sincerely,

VILLAGE OF GALENA, OHIO

Mike Crites
Rich, Crites and Dittmer, LLC

cc: Dan Dudley, Ohio EPA
Joseph P. Koncelik, Director of Ohio EPA
Thomas Hopper, Mayor
Dave LaValle, Service Director
Robert Jablonski, PDG Westerville Office
Paul Brock, PDG Bowling Green Office

OHIO EPA
2006 APR -5 AM 10:13

31

POGGEMEYER
DESIGN GROUP

April 3, 2006

Mr. Dan Dudley
Manager
Division of Surface Water
Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

CERTIFIED MAIL

Mr. Kevin Johnson
Public Interest Center
Division of Surface Water
Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

"It is our goal to service each client at the highest professional level, delivering innovative design, technical superiority, and outstanding quality."
-Mission Statement

Re: Comments State 208 Plan
PDG #: 3550-005

Dear Mr. Dudley and Mr. Johnson:

Our review of the State 208 plan has raised the following public comments:

1. The State of Ohio does not have planning authority within Village and City boundaries. These political entities are the designated management agencies for their defined political boundaries. Therefore, the State of Ohio Generic Prescriptions should not and do not apply inside Villages and Cities.

   Furthermore you stated you were "washing away" facilities planning documents prepared by and for Villages and Cities to logically plan for their infrastructure.

   You stated that since the end of the construction grant days these plans are no longer necessary. We must inform you that your own Agency, Ohio EPA will not approve new or increased WWTP discharges without the submittal of a new facilities plan. We would urge you to contact DEFA to confirm these plans are necessary and required by OEPA.

2. As stated previously in comments submitted to OEPA, the Generic Prescription of when public sewers are available, is inadequate to protect against large subdivision development by on-lot sewerage treatment. Coupled with this fact that ODH has eliminated Ohio EPA

1168 North Main Street ▪ Bowling Green, Ohio 43402 ▪ 419.352.7537 ▪ 419.353.0187 Fax ▪ www.poggemeyer.com

review and approval of subdivisions, the OEPA is creating the potential for large on-lot developments that eventually fail and create significant water pollution problems. For the last 30+ years Ohio EPA has dedicated significant resources to eliminate the water pollution from these developments. Creating more of this potential pollution source does not seem prudent. Subdivisions should be served by sanitary sewers.

The State draft plan in Appendix 9-1 page 25, 21-C9, *"Generic prescriptions are provided for Delaware County Management Agencies until such time that Ohio EPA can evaluate the County's Sewer Master Plan and facility planning work from the municipalities of Delaware, Galena and Sunbury."*

Based on comments #1 and #2, this interim State prescription is inadequate to protect the Columbus Drinking Water Reservoirs. We believe it has been over ten years since the last State 208 plan and it is unacceptable to accept this inadequate prescription for another ten years.

Thank you for this opportunity to comment on the Draft State 208 Plan. We urge the Ohio EPA to carefully consider these comments to prevent creating the same pollution problems OEPA was established to eliminate.

If there are any questions, please do not hesitate to contact our office.

Sincerely,

POGGEMEYER DESIGN GROUP, INC.

Paul G. Brock

Paul G. Brock, P.E.
Project Manager

cc: George Elmaraghy, Ohio EPA
Al Rupp, Ohio EPA
Bob Jablonski, PDG

P:\CLIENTS\3550\005\letters\Dudley_State 208 comments.wpd

JEFFREY A. RICH*†
D. MICHAEL CRITES
JEFFREY A. DITTMER
MARK E. PHILLIPS≠
MARK H. GILLIS
BRANDY M. MAAS‡
JOSEPH SCHMANSKY
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OF COUNSEL
E. JOEL WESP, E. J. WESP Co., LLC
JAMES R. GORRY†
ROSEMARY SOVA
R. LAMONT KAISER
KENNETH J. MOLNAR
LEON DAVID BASS
JEFFREY H. JORDAN

RICH, CRITES & DITTMER, LLC

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Writer's Email: mcrites@richcrites.com

Branch Offices in Delaware and Galena, Ohio

*ALSO ADMITTED FLORIDA BAR
†ALSO ADMITTED ARIZONA BAR
‡ALSO ADMITTED CALIFORNIA BAR
≠ALSO ADMITTED W. VA. BAR

Writer's Direct Fax: 614-540-7468

February 13, 2006

Mr. George Elmaraghy
Chief, Division of Surface Water
Ohio Environmental Protection Agency
Central Office
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

Re: State Draft 208 Plan
Village of Galena, Delaware County, Ohio
PDG Job No. 3550-005

Dear Mr. Elmargahy:

The Village of Galena has reviewed the draft "State Water Quality Management Plan, including Section 208 Area Wide Waste Management Plans", and has the following comments:

Comment No. 1

The Village of Galena review has found an omission in Appendix 8-1 and 9-1 of the State Plan. The Ohio Environmental Protection Agency ("Ohio EPA") failed to include on page 27 of Appendix 8-1 and page 24 of Appendix 9-1 the newly issued NPDES Permit No. 4PC00102*AD to the Village of Galena. This permit allows the discharge of an additional .500 mgd of sewage collected per Phase I of the Galena Area Wide Water Quality Management Plan which was submitted to Ohio EPA in July of 2004 and revised June 2005. We have enclosed a copy of the final NPDES permit 4PC00102*AD issued December 13, 2005. This wastewater treatment plant is currently under design. A comprehensive sewer master plan for the Village of Galena 201 Area is currently being completed.

The Ohio EPA, as the state planning agency and by the issuance of Phase I NPDES Permit No. 4PC00102*AD per the Clean Water Act Section 208, has "identified the treatment works necessary to meet anticipated municipal and industrial waste treatment needs of the area (Galena Planning Area) over a twenty year period". The Ohio EPA has further identified the Village of Galena as the designated management agency to construct, operate, and maintain facilities required

by the plan. We would anticipate the State plan will rectify the omission of the new Galena WWTP.

Comment No. 2

On page 3 of Appendix I, Generic Prescriptions for wastewater treatment does not recognize the fact that approved 201 facilities plans for municipalities all have planning areas outside the village or city boundaries. These villages and cities were required to plan for a minimum of twenty years. Language in this section should recognize this fact and provide for the 201 prescription as part of the 208 plan.

Comment No. 3

On page 4 of the Appendix 9-1, the Village of Galena has a comment regarding "Determining When a Public Sewer is Available". Ohio EPA has incorporated Ohio Revised Code 6117.51 into this section of the State 208 Plan. This regulation applies to County Commissioners and Boards of Health. Ohio EPA must clarify this section to state this prescription applies only to areas outside of 201 facilities planning areas. We believe it is unacceptable to allow new subdivisions or new commercial businesses to develop without connection to sanitary sewers in 201 facility planning areas. We believe ORC 6117.51 was promulgated to control existing health problems or a hazard of water pollution.

If there are any questions or comments concerning the Village of Galena's response to the draft State 208 plan, please do not hesitate to contact this office.

Sincerely,

VILLAGE OF GALENA, OHIO

D. Michael Crites
Special Counsel to The Village of Galena

Enclosure
cc: Dan Dudley, Ohio EPA ✓
Joseph P. Koncelik, Director of Ohio EPA
Thomas Hopper, Mayor
Dave LaValle, Service Director
Ken Molnar, Solicitor
Robert Jablonski, PDG Westerville Office
Paul Brock, PDG Bowling Green Office

OhioEPA

State of Ohio Environmental Protection Agency

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

RECEIVED
DEC 14 2005

December 13, 2005

Re: Ohio EPA Permit No. 4PC00102*AD
Facility Name: Galena Village WWTP

Mayor and Council
Village of Galena
PO Box 286
Galena OH 43021

Ladies and Gentlemen:

Transmitted herewith is one copy of the final National Pollutant Discharge Elimination System permit referenced above.

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and shall set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after notice of the director's action. A copy of the appeal must be served on the director of the Ohio Environmental Protection Agency and the Environmental Law Division of the Office of the Attorney General within three days of filing with the Commission. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

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

Sincerely,

Patti L. Smith

Patti L. Smith, Supervisor
Permit Processing Unit
Division of Surface Water

PLS/dks

Enclosure

CERTIFIED MAIL

Postit® Fax Note 7671	Date 12/14/05	# of pages ▶
To MR. DALE BROOK	From DAVE	
Co./Dept. PDW / BG	Co.	
Phone #	Phone #	
Fax # [illegible]	Fax #	

Part I, B. - SLUDGE MONITORING REQUIREMENTS

. Sludge Monitoring. During the period beginning on the effective date of this NPDES permit and lasting until the expiration date, the permittee shall monitor the treatment works' final sludge at Station Number 4PC00102581, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sludge sampling.

Table - Sludge Monitoring - 581 - Final

Effluent Characteristic	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day					
Parameter	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
00611 - Ammonia (NH3) In Sludge - mg/kg	-	-	-	-	-	-	-	1/Year	Composite	December
00627 - Nitrogen Kjeldahl, Total In Sludge - mg/kg	-	-	-	-	-	-	-	1/Year	Composite	December
00633 - Nitrite Plus Nitrate, Total In Sludge - mg/kg	-	-	-	-	-	-	-	1/Year	Composite	December
01003 - Arsenic, Total In Sludge - mg/kg	75	-	-	-	-	-	-	1/Year	Composite	December
01028 - Cadmium, Total In Sludge - mg/kg	85	-	-	-	-	-	-	1/Year	Composite	December
01043 - Copper, Total In Sludge - mg/kg	4300	-	-	-	-	-	-	1/Year	Composite	December
01052 - Lead, Total In Sludge - mg/kg	840	-	-	-	-	-	-	1/Year	Composite	December
01068 - Nickel, Total In Sludge - mg/kg	420	-	-	-	-	-	-	1/Year	Composite	December
01093 - Zinc, Total In Sludge - mg/kg	7500	-	-	-	-	-	-	1/Year	Composite	December
01148 - Selenium, Total In Sludge - mg/kg	100	-	-	-	-	-	-	1/Year	Total	December
51129 - Sludge Fee Weight - dry tons	-	-	-	-	-	-	-	1/Year	Total	December
70316 - Sludge Weight - Dry Tons	-	-	-	-	-	-	-	1/Year	Composite	December
71921 - Mercury, Total In Sludge - mg/kg	57	-	-	-	-	-	-	1/Year	Composite	December
78465 - Molybdenum In Sludge - mg/kg	75	-	-	-	-	-	-	1/Year	Composite	December

Part I, B. - SSO MONITORING EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. SSO Monitoring. During the period beginning on the effective date of this NPDES permit and lasting until the expiration date, the permittee shall monitor at Station Number 4PC00102300, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

Table - SSO Monitoring - 300 - Final

Effluent Characteristic	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day			Measuring Frequency	Sampling Type	Monitoring Months
Parameter	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly			
74062 - Overflow Occurrence - No./Month	-	-	-	-	-	-	-	When Disch.	Total	All

NOTES for Station Number 4PC00102300:

A sanitary sewer overflow is an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. These overflows shall be monitored when they discharge.

For the purpose of counting occurrences, each location on the sanitary sewer system where there is an overflow, spill, release, or diversion of wastewater on a given day that enters waters of the state is counted as one occurrence. For example, if on a given day overflows occur from a manhole at one location and from a damaged pipe at another location and they both enter waters of the state, record two occurrences for that day. If overflows from both locations continue on the following day, record two occurrences for the following day. At the end of the month, total the daily occurrences and report this number in the first column of the first day of the month on the 4500 form. If there are no overflows during the entire month, report "zero" (0).

All sanitary sewer overflows are prohibited except under emergency conditions where the overflow occurs in full compliance with all of the provisions of 40 CFR 122.41(m) and Part III Item 11 of this NPDES permit.

Effluent Characteristic	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading* kg/day			Measuring Frequency	Sampling Type	Monitoring Months
Parameter	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly			
50050 - Flow Rate - MGD	-	-	-	-	-	-	-	1/Day	Continuous	All
50092 - Mercury, Total(Low Level) - ng/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
80082 - CBOD 5 day - mg/l	-	-	5	3	-	9.46	5.68	2/Week	24hr Composite	All

Notes for station 4PC00102001:

* Effluent loadings based on average design flow of 0.500 MGD.

Mercury - See Part II, Item S.

Part I, A. - FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this NPDES permit and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall: 4PC00102001 . See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

Table - Final Outfall - 001 - Final

Effluent Characteristic	Discharge Limitations							Monitoring Requirements		
	Concentration Specified Units				Loading[1] kg/day					
Parameter	Maximum	Minimum	Weekly	Monthly	Daily	Weekly	Monthly	Measuring Frequency	Sampling Type	Monitoring Months
00010 - Water Temperature - C	-	-	-	-	-	-	-	1/Day	Continuous	All
00300 - Dissolved Oxygen - mg/l	-	7.0	-	-	-	-	-	1/Day	Grab	All
00400 - pH - S.U.	9.0	6.5	-	-	-	-	-	1/Day	Grab	All
00530 - Total Suspended Solids - mg/l	-	-	14	12	-	34.1	22.7	2/Week	24hr Composite	All
00552 - Oil and Grease, Hexane Extr Method - mg/l	10	-	-	-	-	-	-	1/Month	Grab	All
00600 - Nitrogen, Total - mg/l	-	-	10	-	-	18.9	-	1 / 2 Weeks	24hr Composite	All
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	1.4	0.9	-	2.65	1.70	2/Week	24hr Composite	Summer
00610 - Nitrogen, Ammonia (NH3) - mg/l	-	-	4.5	3.0	-	8.52	5.68	2/Week	24hr Composite	Winter
00630 - Nitrite Plus Nitrate, Total - mg/l	-	-	-	-	-	-	-	1/Month	24hr Composite	All
00665 - Phosphorus, Total (P) - mg/l	-	-	1.5	0.5	-	2.84	0.95	1 / 2 Weeks	24hr Composite	All
01074 - Nickel, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	24hr Composite	Quarterly
01094 - Zinc, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	24hr Composite	Quarterly
01113 - Cadmium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	24hr Composite	Quarterly
01114 - Lead, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	24hr Composite	Quarterly
01118 - Chromium, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	24hr Composite	Quarterly
01119 - Copper, Total Recoverable - ug/l	-	-	-	-	-	-	-	1/Quarter	Grab	Quarterly
01220 - Chromium, Dissolved Hexavalent - ug/l	-	-	-	-	-	-	-	2/Week	Grab	Summer
31616 - Fecal Coliform - #/100ml	-	-	2000	1000	-	-	-			

JEFFREY A. RICH*†
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JEFFREY A. DITTMER
MARK E. PHILLIPS≠
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Writer's Direct Fax: 614-540-7468

33

OHIO EPA - DSW
2006 MAR 22 AM 10:1

March 20, 2006

Mr. Dan Dudley, Manager
Division of Surface Water
Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

Re: Delaware County Sewer Master Plan
Village of Galena
Job No. 3550-005

Dear Mr. Dudley:

On behalf of the Village of Galena, we have reviewed the "Delaware County Sewer Master Plan, Update 2005," and have the following comments:

The Delaware County Update 2005 utilized the same studies as the Update 2004. The Village of Galena July 2004 "Areawide Water Quality Management Plan" revised June and August 2005 was again not utilized in the County sewer update. The Village of Galena was again surprised by the failure of county planners to utilize this resource. This plan was originally published as a draft in November of 2003. Comments were received by the City of Columbus and Village of Sunbury. No comments were received from Delaware County.

A small portion of the boundary of the Galena Areawide Water Quality Management Plan is included in an area which Delaware County signed a 1991 services agreement with Columbus. The agreement states that if Big Walnut Sewer Interceptor had capacity it could service the area. Yet the Columbus 201 facilities plan which was incorporated into "Water Quality Management Plan, Scioto River Basin and Black Lick Creek," final December 4, 2002, which addressed the regional wastewater management needs through the year 2020 did not include the Central Big Walnut Service Area. This plan did not address areas outside the Columbus facilities planning area titled Area 2A in the Delaware County Sewer Master Plan Update 2005.

As a result of the Galena area lying outside the Columbus Facilities Planning Area and the fact that the City of Columbus is facing the expenditure of a couple of billion dollars to service the existing planning area, the Village of Galena completed its own Areawide Water Quality Management Plan. The Village submitted and revised this plan as requested by Ohio EPA. As a

NPDES permit application with the Areawide Water Quality Management Plan as part of the antidegradation addendum was submitted to Ohio EPA. On December 13, 2005 Ohio EPA issued a final NPDES Permit to the Village of Galena for a Phase I 500,000 gal/day wastewater treatment plant. The new membrane WWTP is currently under design as well as a sewer master plan to service the Galena facilities planning area.

This planned new wastewater treatment plant will treat wastewater to the highest level of any wastewater treatment plant in Delaware or Franklin County.

The Delaware County Sewer Master Plan in chapter "Technology Review" again states "The Lower Big Walnut service area will be discharged into the City of Columbus wastewater collection and treatment system under an agreement with the City of Columbus". Again in 1991 County/Columbus Agreement was not a guarantee of service. The 2002 final Columbus facilities plan which only included areas to be serviced to 2020 did not include the Lower Big Walnut Services Area.

The Ohio Environmental Protection Agency as the state planning agency and by the issuance of Phase I NPDES Permit No. UPC00102*AD per the Clean Water Act Section 208 has "identified the treatment works necessary to meet anticipated municipal and industrial waste treatment needs of the area (Galena Planning Area) over a 20 year period". The Ohio EPA has further identified the Village of Galena as the designated management agency to construct, operate, and maintain facilities required by the plan. Therefore the Delaware County Sewer Master Plan is outdated and incorrect. Furthermore as previously stated the County plan has no plan for the next 20 years as the Galena proposed service area is outside the Columbus facilities planning area.

Should you or Ohio EPA have any questions concerning these comments, please feel free to contact this office.

VILLAGE OF GALENA, OHIO

D. Michael Crites

D. Michael Crites
Special Counsel to the Village of Galena

cc: Chad Antell, Delaware County
Jack Smelker, Delaware County
George Elmaraghy, Ohio EPA
Kenneth J. Molnar, Esq.
Thomas Hopper, Mayor
Dave LaValle, Service Director
Robert Jablonski, PDG, Westerville Office
Greg Sanders, Ohio EPA CDO
Anthony Haynes, Ohio EPA CDO
Mike Sapp, Ohio EPA CDP

File No. MCVGSC.03

(34)

POGGEMEYER
DESIGN GROUP

TO: Dan Dudley - Ohio EPA Division of Surface Water

FAX NO.: 614-644-2745

PDG JOB NO.: 3550005

FROM: Paul Brock PE Poggemeyer Design Group

DATE: 2/7/06

RE: Galena and State 208 Plan

Number of Pages Including Transmittal Page:

Deliver: (X) Immediately X Normal Delivery

Message:

Dan, I have reviewed your draft 208 plan for Delaware County. You have omitted the Galena .5MGD plant in addition to the .075MGD plant. I have enclosed a copy of the Issued NPDES Permit. (ATTACHED to item (32) 2/13/06 Crites)

I was very disappointed that the Galena plan was not listed in the State 208 plan. I wish you would contact me to discuss this soon.

Sincerely

Paul G Brock PE.

pc Bob Jablonski - Westerville PDG.

Corporate Headquarters ▪ 1168 North Main Street ▪ Bowling Green, Ohio 43402
419.352.7537 ▪ 419.353.0187 Fax ▪ www.poggemeyer.com

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City of Delaware Ohio

Office of the City Manager

740.368.1640
Fax 740.368.1525

OHIO EPA - DSW
2006 APR 21 PM 4: 37

(35)

April 21, 2006

Mr. Dan Dudley, Manager
Standards & Technical Support
Ohio EPA
Division of Surface Water
P.O. Box 1049
122 South Front Street
Columbus, Ohio 43216

HAND DELIVERED

RE: City of Delaware's Comments to Draft State Water Quality Management Plan including Section 208 Area-wide Waste Management Plans (Final Draft February 2006)

Dear Mr. Dudley:

Pursuant to Ohio EPA's direction, the City of Delaware (the "City") hereby provides the following written comments to Ohio EPA's Draft State Water Quality Management Plan including Section 208 Area-wide Waste Management Plans (the "Draft 208 Plan"), final draft dated February 2006. The Draft 208 Plan lists Delaware County as a "high" priority for regional wastewater planning but notes that "generic prescriptions" will be in place until specific prescriptions can be drafted. (Draft 208 Plan, p. 37). The Draft 208 Plan also notes that local communities should pursue facility planning that meets 208 plan needs. The current generic prescriptions, however, are inconsistent with regional wastewater planning and local facility planning in Delaware County because of unique issues involving explosive population growth and competing sewer service providers. As a result, the generic prescriptions need to be revised for Delaware County to accommodate these unique issues.

The details of the generic prescriptions are set forth in Appendix 9-1 of the Draft 208 Plan. As relevant to the City's comments, the generic prescriptions include the following:

City Hall • 1 South Sandusky Street • Delaware, Ohio 43015 • E-mail: cmo@ci.delaware.oh.us

1. **All municipal management agencies with home rule powers are responsible for sewage collection and treatment within their respective corporate boundaries. Such service may be provided by the management agency or through contracting for such services. Sewer service may be extended to annexed land, and to areas beyond the corporate boundaries, provided the management agency has the capacity to adequately collect and treat all wastewater under the terms of its NPDES permit. When the proposed extension is beyond the corporate boundaries and within a sewer district established under ORC 6119 or 6117, and the land is not annexed, the extension of sewer service would require a service agreement with the other sewer district.**

2. **The County Commissioners (or a sewer district under ORC 6119) are responsible for sewage collection and treatment in unincorporated communities. Where sewers are not available, approval of individual home sewage treatment systems (HSTS) is the responsibility of the county health department or local health department and shall follow applicable sanitary codes.**

3. **The County Commissioners under ORC 6117 have authority for central sewers and sewage treatment in all unincorporated areas; when unsanitary conditions exist Ohio EPA may require that the County Commissioners fix the problem.**

<u>City's Comments on Generic Prescriptions</u>

1. According to the generic prescriptions, when the City proposes to extend sewer service beyond its corporate boundaries, the City would arguably need to obtain the approval of Delaware County (the "County"). The City currently has permits-to-install (PTI), issued by Ohio EPA, for sewer infrastructure located and to be located in areas outside the City's corporate boundaries. (See map attached as Exhibit A). These systems have been approved by Ohio EPA and consist of gravity sewers, which are the "best available technology" for the transmission of sewage (as opposed to force mains and lift stations). The City has incurred substantial debt (i.e., in excess of $40 million) to construct these systems and to expand the City's wastewater treatment plant (WWTP) to handle the increased flow. The repayment of this debt, most of which is issued by Ohio EPA's own DEFA, requires sewer service to be expanded outside the City's existing corporate boundaries. Arguably, however, the County could prevent such extensions under the Draft 208 Plan's generic prescriptions. Since the City has existing, Ohio EPA-issued PTI's to provide sewer service outside its existing corporate boundaries, the Draft 208 Plan must be revised to provide that generic prescriptions do not

apply to areas that have been included in the planning area for existing PTI's, issued prior to USEPA's approval of the 208 Plan in effect for that area.

2. The Draft 208 Plan erroneously indicates that a Facility Planning Area (FPA) has not been defined for the City of Delaware (p. 24, Appendix 9-1 of Draft 208 Plan). Ohio EPA, however, admits in Comment 21-C3 that:

> The City of Delaware submitted City of Delaware Facility Planning Area 201 Update in January 2001. The City adopted a Comprehensive Plan (2003-2008) in 2004 that includes wastewater infrastructure issues and environmental resources. (p. 25, App. 9-1)

Since the City has developed an FPA and such area has been accepted by Ohio EPA and, at the very least, tacitly used by Ohio EPA in issuing PTIs to the City for areas outside its existing corporate boundaries, the Draft 208 Plan needs to be revised to acknowledge and recognize the City's existing FPA. We suggest that the Draft 208 Plan be revised to indicate that the generic prescriptions do not apply to the City's FPA, as depicted in the map attached as Exhibit B, and that sewer service within this FPA be provided by the City, unless the City agrees otherwise.

In the alternative, the City suggests that Ohio EPA remove Delaware County from the Draft 208 Plan and address Delaware County in a separate 208 Plan or include Delaware County in the 208 Plan that will be drafted for the remaining 22 counties in the future. As the Draft 208 Plan notes, population in Delaware County is projected to increase by about 142%, or approximately 156,207 more people, by 2030 (p. 26, App. 8-1). Ohio EPA also notes that a coherent regional plan is needed to address sewage collection and treatment needs throughout the county, especially in the southern half of the County. Given the anticipated explosive population growth and need for a "coherent regional plan", the City suggests that more input and effort be applied to the Delaware County situation because of its unique issues and population growth. The City would welcome the opportunity to engage in a comprehensive, binding sewer service planning process with all of the stakeholders including Delaware County, the Village of Sunbury and the Village of Galena. The desired outcome of such a process would be a comprehensive plan for sewer service in Delaware County which could then be incorporated into a 208 Plan.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me.

Yours Sincerely,

R. Thomas Homan
City Manager

Attachments

xc: City Council
Dan Bennington, City Attorney
Thomas Marshall, Ph.D., P.E., Director of Public Utilities
Bill Ferrigno, City Engineer
Dave Efland, Planning Director
Delaware County Commissioners
Dave Cannon, County Administrator
Mayor Hopper, Village of Galena
Mayor Weatherby, Village of Sunbury
Michael O'Brien, Village of Sunbury Administrator
Bill Fischbein, Ohio EPA Deputy Director for Legal Affairs
Craig Butler, Ohio EPA District Chief
John Mahoney, Ohio Municipal League
Frank Merrill, Bricker & Eckler

City of Delaware Existing Sewer Infrastructure - Exhibit A

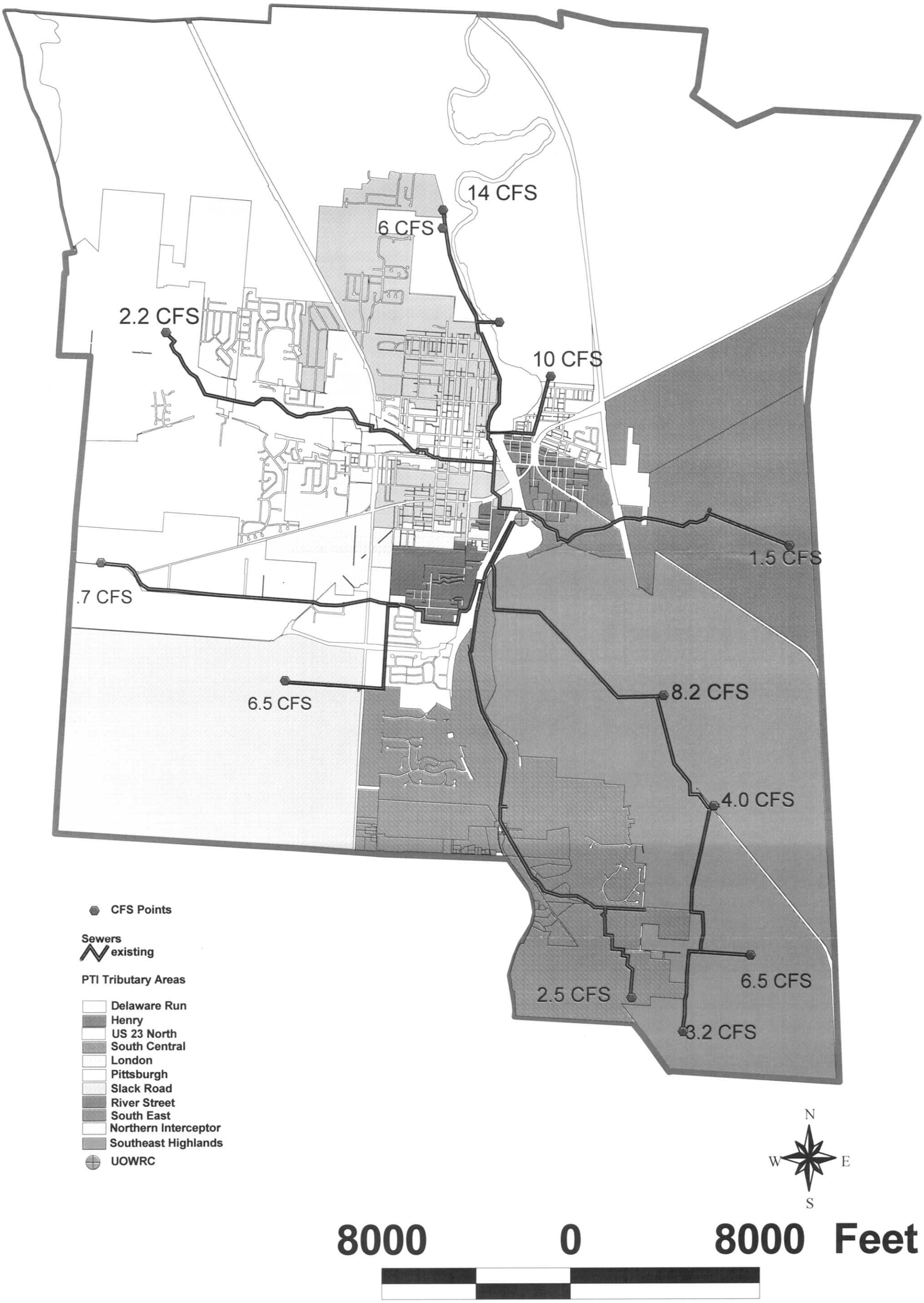
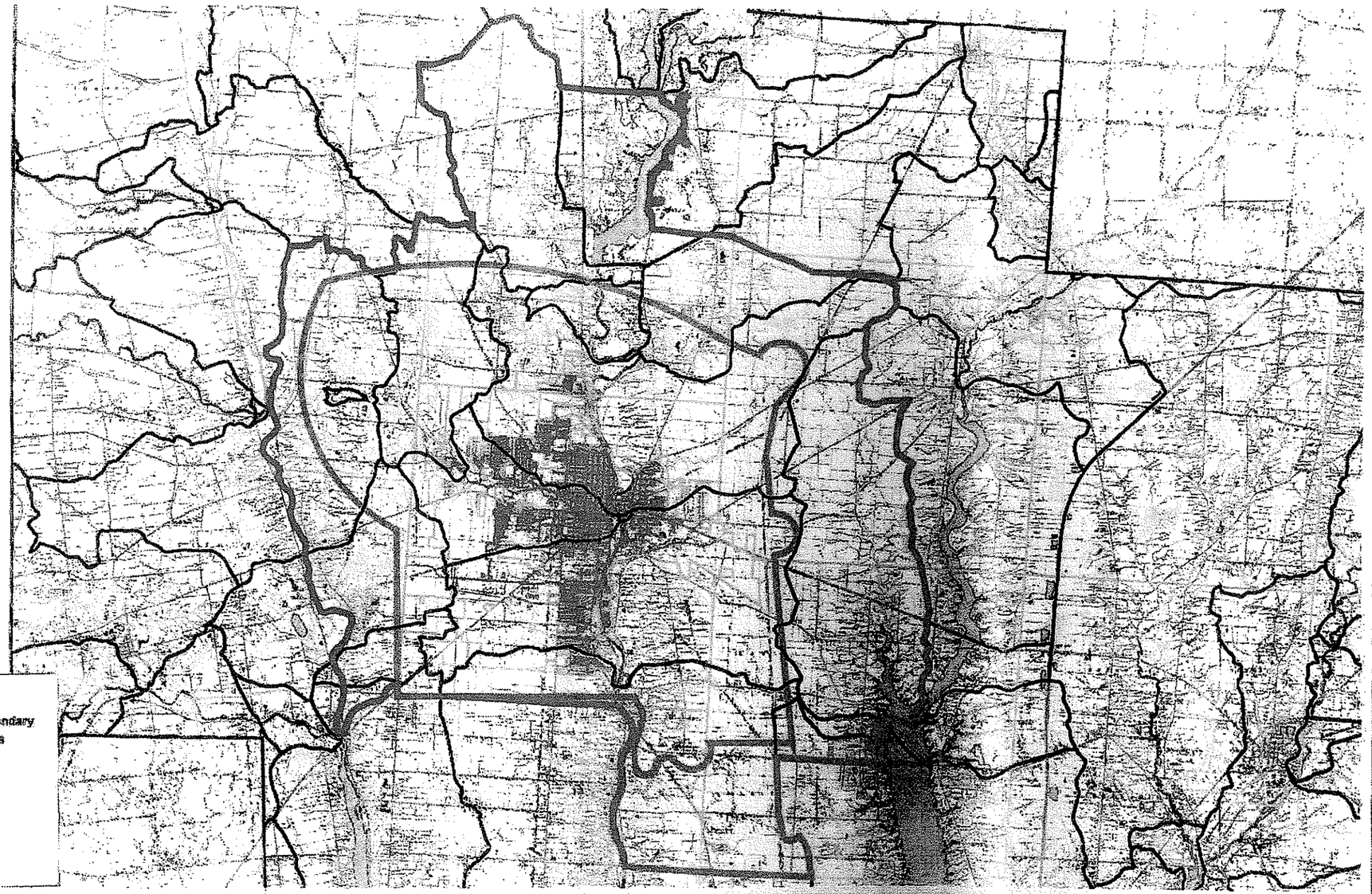


EXHIBIT B



LEGEND

- FPA Proposed 1A Boundary
- Watershed Boundaries
- Existing Service Area
- Township Boudaries
- Sewer Lines
- Waterbodies
- Rivers
- Hydrology
- Roads
- Parcels

MALCOLM PIRNIE

City of Delaware
Proposed 1A Facilities
Planning Area

0 3 6 Miles

N W E S

OHIO EPA - DSW
2006 APR 25 AM 10: 16

City of Delaware Ohio

Office of the City Manager

740.368.1640
Fax 740.368.1525

April 13, 2006

Mr. Dan Dudley, Manager
Ohio EPA
Division of Surface Water
122 S Front St
P.O. Box 1049
Columbus OH 43216-1049

Dear Dan:

At its April 10, 2006 meeting, the City Council adopted Resolution No. 06-28, a resolution urging the Ohio Environmental Protection Agency to reconsider and revise the Draft 2008 Plan as it pertains to Delaware County. A copy of the resolution is enclosed for your information.

Yours Sincerely,

R. Thomas Homan
City Manager

Enclosure

xc: City Council
Dan Bennington, City Attorney
Allen Rothermel, Assistant City Manager
Thomas Marshall, Ph.D., P.E., Director of Public Utilities
Bill Ferrigno, City Engineer
Dave Efland, Planning Director
Lee Yoakum, Community Affairs Coordinator
Frank Merrill, Bricker & Eckler
Mike O'Brien, Village of Sunbury
Thomas Hopper, Village of Galena

RESOLUTION 06-28

A RESOLUTION URGING THE OHIO ENVIRONMENTAL PROTECTION AGENCY TO RECONSIDER AND REVISE THE DRAFT 208 PLAN AS IT PERTAINS TO DELAWARE COUNTY, AND DECLARING AN EMERGENCY.

WHEREAS, The Ohio Environmental Protection agency has issued a Draft 208 Plan for Delaware County, and

WHEREAS, the City of Delaware believes that revisions to the Draft 208 Plan would better serve to protect the environment of Delaware County, and

WHEREAS, the City of Delaware believes that revisions to the Draft 208 Plan would better take into account that the City of Delaware has built or is building facilities with millions of dollars of Federal or Federally guaranteed money to serve areas not reflected in the Draft Plan, and

WHEREAS, the City of Delaware believes that revisions to the Draft 208 Plan would allow for more orderly and managed growth and build out within the City's Comprehensive Planning Area without the anticipated conflict among jurisdictions regarding service areas, and

WHEREAS, the City of Delaware together with the Villages of Sunbury and Galena have Draft meeting with the Delaware County Commissioners to review the Draft 208 Plan for the purpose of resolving the issues that they anticipate should the Draft 208 Plan be adopted,

NOW THEREFORE BE IT RESOLVED by the Council of the City of Delaware that:

SECTION 1. The City of Delaware hereby urges the Ohio Environmental Protection agency to reconsider and revise the Draft 208 Plan as it pertains to Delaware County.

SECTION 2. EMERGENCY CLAUSE. That this resolution is hereby declared to be an emergency measure necessary to provide for the public peace, safety, health and welfare of the City, and as such will be in full force and effect immediately upon its passage.

VOTE ON EMERGENCY CLAUSE: YEAS 7 NAYS 0
ABSTAIN 0

PASSED: April 10, 2006 YEAS 7 NAYS 0
ABSTAIN 0

ATTEST: _____ CITY CLERK

_____ MAYOR

OHIO EPA - DSW
2006 APR -6 PM 1:35

SANITARY SEWER MASTER PLAN

PREPARED FOR:

VILLAGE OF GALENA, OHIO

PREPARED BY:

POGGEMEYER DESIGN GROUP, INC.
1168 NORTH MAIN STREET
BOWLING GREEN, OHIO 43402

JOB NO. 3550-030

MARCH, 2006

SANITARY SEWER MASTER PLAN

PREPARED FOR:

VILLAGE OF GALENA, OHIO

PREPARED BY:

POGGEMEYER DESIGN GROUP, INC.
1168 NORTH MAIN STREET
BOWLING GREEN, OHIO 43402

JOB NO. 3550-030

MARCH, 2006

STATE OF OHIO
PAUL G. BROCK
E-48050
REGISTERED
PROFESSIONAL ENGINEER

3-27-06

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Appendix

Sewer Areas
Proposed Sewers

INTRODUCTION

The Village of Galena is located north of Hoover Reservoir in Delaware County. The Village of Galena presently consists of 132 homes. However, the Village is subject to rapid potential growth. Currently the Village sanitary services are provided by a 75,000 gallon per day package plant owned and operated by Village of Galena. The Village of Galena owns and operates the sanitary sewer collection system. General location and site maps are shown on Plates 1 and 2. The Galena Planning Area is shown in Plate 3.

This study will evaluate current proposed development, potential growth areas, potential development within Galena, near-term growth adjacent to the Village, and potential long-term growth. The sanitary sewer system required to service the areawide Galena Planning Area will be evaluated and sewer system alternatives will be provided.

The Village of Galena is currently experiencing constant development pressures for public services including, but not limited to, an expanded wastewater treatment system. Delaware County is unable to respond to this growth pressure in a timely manner to meet the growing needs of the Village of Galena.

The Village of Galena is seeking reasonable solutions to the community's need for public services. The Village of Galena has directed Poggemeyer Design Group, Inc. to review and analyze the existing wastewater treatment facility, analyze the Village and regional land use plans and sanitary service plans for population growth. This study was authorized by the Village of Galena Council.

Study Area

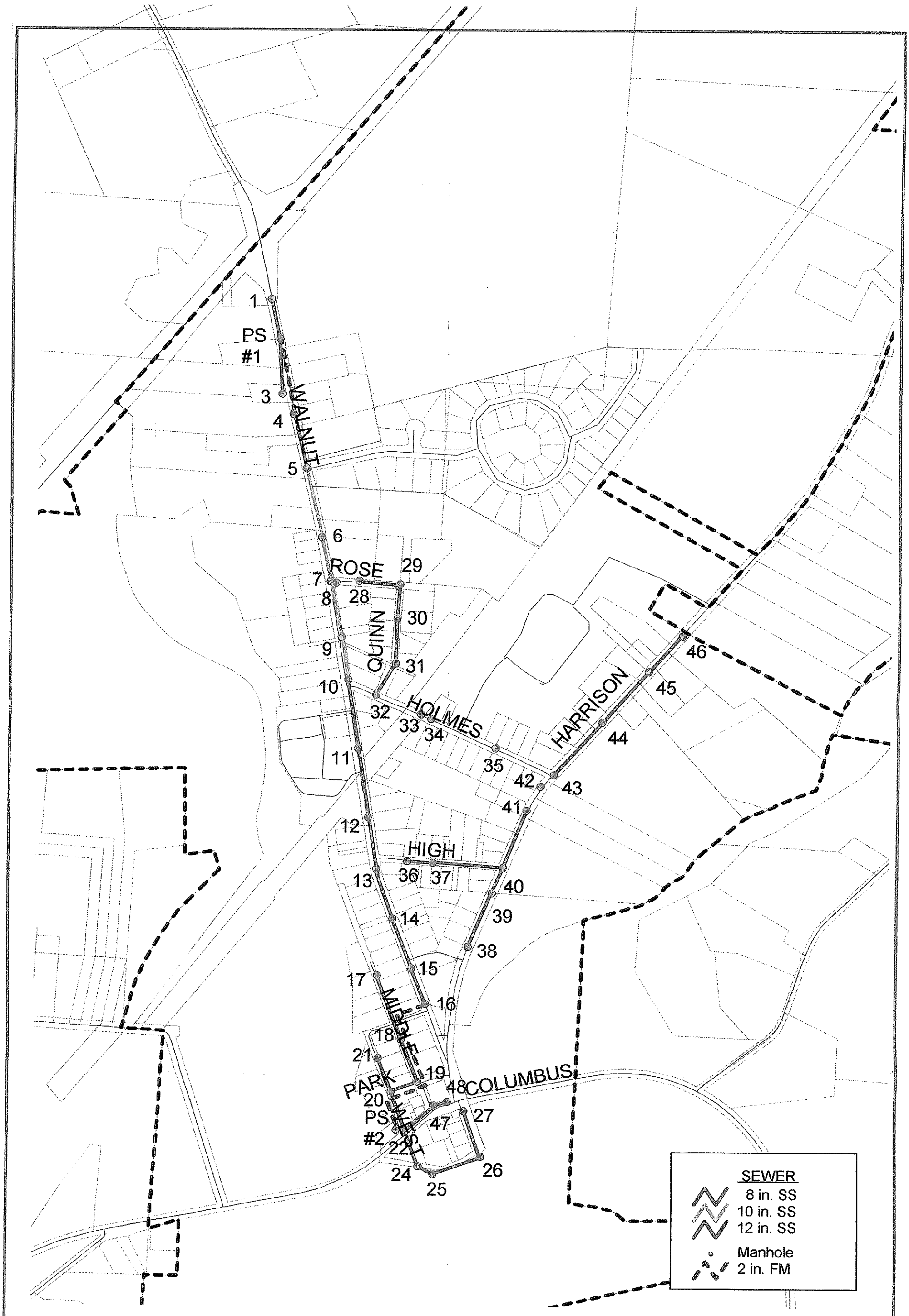
Sanitary sewers were evaluated for the area which was defined in the Galena Areawide Water Quality Management Plan, Plate 3. The study area was further divided into subareas, Plate 4.

Scope of Work

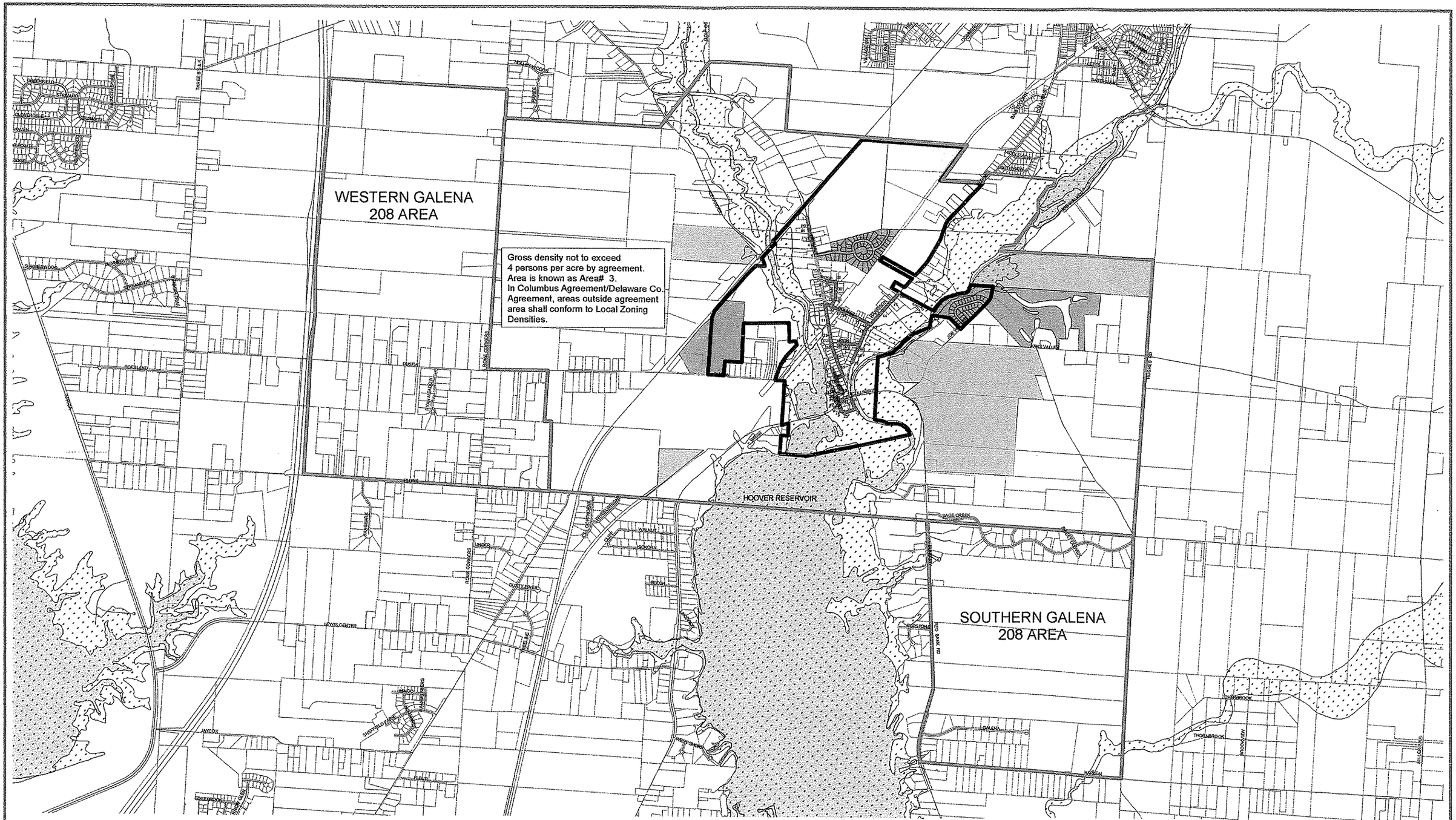
The scope of work of this project is to plan sewer service to the Galena planning area.

DELAWARE COUNTY, OHIO
VILAGE OF GALENA
SANITARY SEWER MASTER PLAN

REFERENCE: ACAD DWG P. BROCK 03/20/06 JOB #3550-030 FILE: PLATE1.DWG	LOCATION MAP PLATE ONE	VILLAGE OF GALENA SANITARY SEWER MASTER PLAN	POGOEMEYER DESIGN GROUP

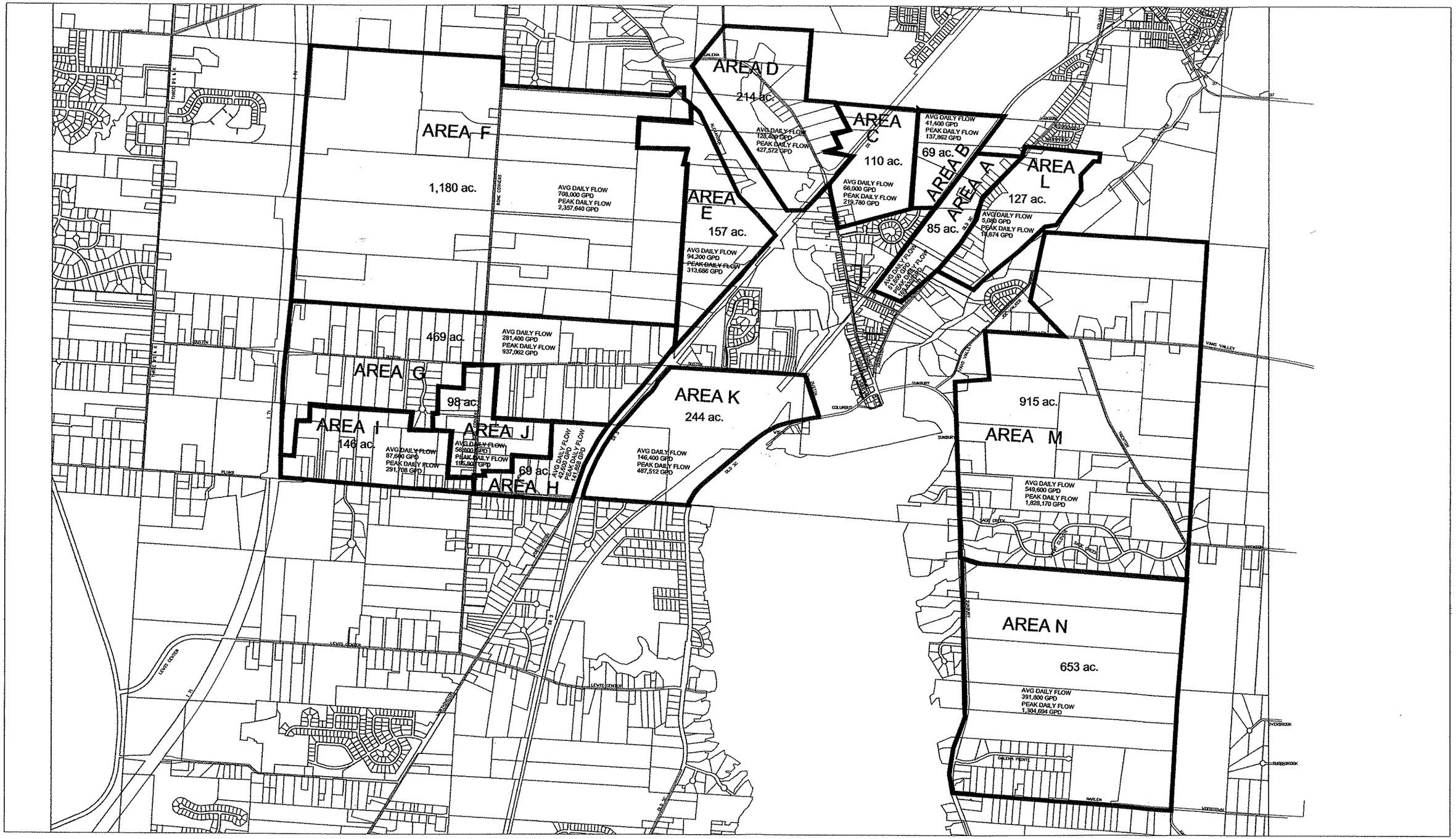


JOB #: 3550-030	EXISTING GALENA SEWER SYSTEM PLATE TWO	VILLAGE OF GALENA SANITARY SEWER MASTER PLAN	POGGEMEYER DESIGN GROUP
FILE: PLATE2 I:\3550-030\PROJ.APR			



JOB #: 3550-030 FILE: PLATE3 I:\3550\030\PROJ.APR	VILLAGE OF GALENA PLANNING AREA PLATE THREE	VILLAGE OF GALENA SANITARY SEWER MASTER PLAN

POGGEMEYER DESIGN GROUP



REFERENCE:
ACAD DWG
P. BROCK
03/20/06

JOB #3550-030

FILE: SEWERS.DWG

OHIO

SEWER AREAS

PLATE FOUR

N

VILLAGE OF GALENA
SANITARY SEWER
MASTER PLAN

POGGEMEYER
DESIGN GROUP

SEWER USER PROJECTIONS

The Galena Planning area was divided into subareas. The areas are listed in Table 1 with the corresponding acreage and potential sewage flow.

The current planning area has some residential development although most of the area is undeveloped. The per acre factor of 600 gallons/acre developed in this report will be adequate to cover the usage expected in the developed areas.

For the entire planning area, low density single-family homes were utilized as the likely scenario for residential development. However, some commercial development is also a possibility for this area.

Projecting the actual type and amount of development is difficult. Sewer use can be predicted by per acre factors. For planning purposes, only residential development was considered.

TABLE 1
ESTIMATED WATER/SEWER FLOW
AVERAGE DAILY FLOW

Development Type	Assumed Flow/Acre Gallons per Day	Average Flow/Acre Gallons per Day
Residential	600	600
Industrial	2,000-3,000	2,500
Commercial	1,000-2,000	1,500

The projected average daily and peak flows were calculated for each area to be sewered. Plate 4 details the areas studied in the planning area. Generally these sewers are the trunk sewers or "spine" of the sewer system. As development occurs, gravity sanitary sewers from each subdivision would top the spine sewer.

TABLE 2 GALENA PLANNING SUB AREAS				
Area	Acres	Estimated Flow (gpd)		Potential Taps
		Average	Peak	
A	85	51,000	169,830	170
B	69	41,400	137,862	138
C	110	66,000	219,780	227
D	214	128,400	427,572	428
E	157	94,200	313,686	324
F	1,180	708,000	2,357,640	2,441
G	469	281,400	937,062	970
H	69	42,600	141,858	142
I	146	87,600	291,708	292
J	98	58,800	195,804	196
K	244	146,400	487,512	488
L	127	5,080	16,916	12
M	915	549,000	1,828,170	1,830
N	653	391,800	1,304,694	1,306

PROPOSED SANITARY SEWERS

Sewers are designed for peak flow conditions. See Plate 5.

Delaware County is the fastest growing county in the State of Ohio. We believe that some of the smaller areas closer to the wastewater treatment plant may develop first. However, there is no guarantee that a larger area would not develop first.

Areas A, B, C, D, and L would be tributary to the existing sanitary sewer system. These flows with the existing flows would bring the **existing** Village sewers to design capacity. Consideration could be given during the sewer design for Area D to bring this flow directly to the wastewater treatment plant.

All other areas would be collected by gravity sewers and pumped by force main to the wastewater treatment plant. Itemized costs have been provided for each area.

Areas H, I, J, and G may develop last as these areas are the most costly to sewer due to the surface topography.

PROPOSED SANITARY
PROPOSED FORCEMAIN
PROPOSED PUMP STATION
EXISTING SANITARY

REFERENCE:
ACAD DWG
P. BROCK
03/20/06

JOB #3550-030

FILE: SEWERS.DWG

OHIO

PROPOSED SEWERS

PLATE FIVE

VILLAGE OF GALENA SANITARY SEWER MASTER PLAN

POGGEMEYER DESIGN GROUP

SEWER AVERAGE COSTS

The proposed waterlines and sanitary sewers are schematic in nature. Adjustments will have to be made to accommodate the development. Below are rule-of-thumb average costs for water and sewer lines for use in predicting costs of facilities not shown in the report. The average costs are based on normal construction efforts and they include other project costs, such as design, legal, permits, etc.

TABLE 3

AVERAGE COST RANGE FOR FORCE MAINS AND SANITARY SEWERS

Gravity Sanitary Sewers		Force Main Sewers	
Size	Average Cost/Ft.	Size	Average Cost/Ft.
8"	$50 - $90	8"	$40 - $50
10"	$90 - $110	10"	$55 - $60
12"	$100 - $120	12"	$55 - $65
15"	$110 - $140		

These are rough estimates for preliminary planning only. Actual itemized estimates have been completed for any proposed improvements. Costs can be expected to rise each year with the inflation rate.

AREAS A & L

Area A = 85 acres at 2 homes/acre = 51,000 gpd Average 169,830 gpd peak

Area L = 127 acres at 2 homes/acre = 5,080 gpd Average 16,916 gpd peak

Total Estimated Average Daily Design Flow = 56,800 gpd

Total Estimated Peak Daily Flow = 186,746 gpd

Areas A & L are proposed to be served by a pump station and force main to the existing Village of Galena Sanitary Sewer System. Approximately 2,066 lineal feet of 6" force main will be required and 3,800 lineal feet of 8" sanitary sewer. The estimated number of taps for this area is 182.

TABLE 4
AREAS A&L
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	3,800	L.F.	$50	$190,000
2	4" Force Main	2,066	L.F.	$26	$53,716
3	Manholes	7	Each	$5,000	$35,000
4	Lift Station with Telemetry	1	Each	$150,000	$150,000
5	Site Restoration with Street Repair	1	L.S.	$80,000	$80,000
6	Connection to Existing Manhole	1	Each	$3,500	$3,500
	SUBTOTAL				$512,216
	Contingency (10%)				$51,222
	TOTAL CONSTRUCTION COST				$563,438
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$128,054
	TOTAL ESTIMATED COST				$691,492

AREA B

Area B = 69 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 44,400 gpd

Total Estimated Peak Daily Flow = 137,862 gpd

Area B will be served by 3,000 lineal feet of gravity sanitary sewer. The estimated number of taps for this area is approximately 138.

TABLE 5
AREA B
CONVENTIONAL GRAVITY SEWER
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	3,000	L.F.	$50	$150,000
2	Manholes	9	Each	$5,000	$45,000
3	Site Restoration with Street Repair	1	L.S.	$60,000	$60,000
4	Connection to Existing Manhole	1	Each	$3,500	$3,500
	SUBTOTAL				$258,500
	Contingency (10%)				$25,850
	TOTAL CONSTRUCTION COST				$284,350
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$64,625
	TOTAL ESTIMATED COST				$348,975

AREA C

Area C = 110 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 66,000 gpd

Total Estimated Peak Daily Flow = 219,780 gpd

Area C will be served by 2,550 lineal feet of 8" gravity sanitary sewer. The estimated taps for this area is 227.

TABLE 6
AREA C
CONVENTIONAL GRAVITY SEWER
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	2,550	L.F.	$50	$127,500
2	Manholes	8	Each	$5,000	$40,000
3	Site Restoration with Street Repair	1	L.S.	$60,000	$60,000
4	Connection to Existing Manhole	1	Each	$3,500	$3,500
	SUBTOTAL				$231,000
	Contingency (10%)				$23,100
	TOTAL CONSTRUCTION COST				$254,100
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$57,750
	TOTAL ESTIMATED COST				$311,850

AREA D

Area D = 214 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 128,400 gpd

Total Estimated Peak Daily Flow = 427,572 gpd

Area D will be served by 4,200 lineal feet of 8" gravity sewer and a pump station and 5,640 feet of force main. The estimated number of taps for this area is 428.

TABLE 7
AREA D
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	4,200	L.F.	$50	$210,000
2	6" Force Main	5,640	L.F.	$26	$146,640
3	Pump Station with Telemetry	1	Each	$160,000	$160,000
4	Manholes	12	Each	$5,000	$60,000
5	Site Restoration with Street Repair	1	L.S.	$80,000	$80,000
6	Connection to Existing Manhole	1	Each	$3,500	$3,500
	SUBTOTAL				$660,140
	Contingency (10%)				$66,014
	TOTAL CONSTRUCTION COST				$726,154
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$165,035
	TOTAL ESTIMATED COST				$891,189

AREA E

Area E = 157 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 94,200 gpd

Total Estimated Peak Daily Flow = 313,686 gpd

Area E will be served by 3,705 lineal feet of 8" gravity sanitary sewer, a pump station, and 2,310 lineal feet of force main. The estimated number of taps for this area is 324.

TABLE 8
AREA E
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	3,705	L.F.	$50	$185,250
2	6" Force Main	2,310	L.F.	$26	$60,060
3	Manholes	11	Each	$5,000	$55,000
4	Lift Station with Telemetry	1	Each	$150,000	$150,000
5	Site Restoration with Street Repair	1	L.S.	$80,000	$80,000
	SUBTOTAL				$530,310
	Contingency (10%)				$53,031
	TOTAL CONSTRUCTION COST				$583,341
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$132,578
	TOTAL ESTIMATED COST				$715,919

AREA F

Area F = 1,180 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 708,000 gpd

Total Estimated Peak Daily Flow = 2,357,640 gpd

Area F will be served by 4,000 lineal feet of 24" gravity sanitary sewers, 1,000 lineal feet of 10" gravity sanitary sewer, pump station, and 13,206 lineal feet of force main. The estimated number of taps to serve this area is 2,441.

TABLE 9
AREA F
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	10" Sanitary Sewer	1,000	L.F.	$90	$90,000
2	24" Sanitary Sewer	4,000	L.F.	$125	$500,000
3	12" Force Main	13,206	L.F.	$60	$792,360
4	Pump Station Telemetry	1	Each	$250,000	$250,000
5	Air Release Valve in Manhole	4	Each	$16,000	$64,000
6	Pig Launching Manhole	4	Each	$8,000	$32,000
7	24" Steel Casing Pipe Jack and Bore	400	L.F.	$530	$212,000
8	Sanitary Sewer Manholes	14	Each	$5,000	$70,000
9	Site Restoration with Street Repair	1	L.S.	$320,000	$320,000
	SUBTOTAL				$2,330,360
	Contingency (10%)				$233,036
	TOTAL CONSTRUCTION COST				$2,563,396

TABLE 9 AREA F CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST					
Item No.	Item	Quantity	Unit	Unit Price	Total Price
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$466,072
	TOTAL ESTIMATED COST				$3,029,468

AREA G

Area G = 469 acres at 2 homes/acre (Tributary to Area I Pump Station)

Total Estimated Average Daily Design Flow = 281,400 gpd

Total Estimated Peak Daily Flow = 937,062 gpd

Area G will be served by 3,700 lineal feet of 8" gravity sanitary sewer and 7,600 lineal feet of 12" gravity sewer. This area will require a pump station and force main in Area I. The total estimated number of taps for this area is 970.

TABLE 10
AREA G
CONVENTIONAL GRAVITY SEWERS
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	3,700	L.F.	$50	$185,000
2	12" Sanitary Sewer	7,600	L.F.	$110	$836,000
3	Manholes	31	Each	$5,000	$155,000
4	Site Restoration with Street Repair	1	L.S.	$271,000	$271,000
	SUBTOTAL				$1,447,000
	Contingency (10%)				$144,700
	TOTAL CONSTRUCTION COST				$1,591,700
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$289,400
	TOTAL ESTIMATED COST				$1,881,100

AREA H

Area H = 69 acres at 2 homes/acre (Tributary to Area I Pump Station)

Total Estimated Average Daily Design Flow = 42,600 gpd

Total Estimated Peak Daily Flow = 141,858 gpd

Area H would be served by 1,600 lineal feet of 8" gravity sanitary sewer, pump station, and 2,020 lineal feet of force main. The estimated number of taps for this area is 142.

TABLE 11
AREA H
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	1,600	L.F.	$50	$80,000
2	3" Force Main	2,020	L.F.	$23	$46,460
3	Pump Station with Telemetry	1	Each	$110,000	$110,000
4	Site Restoration with Street Repair	1	L.S.	$60,000	$60,000
5	Connection to Existing Manhole	1	Each	$3,500	$3,500
	SUBTOTAL				$299,960
	Contingency (10%)				$29,996
	TOTAL CONSTRUCTION COST				$329,956
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$74,990
	TOTAL ESTIMATED COST				$404,946

AREA I

Area I = 146 acres at 2 homes/acre (Tributary to Pump Station to WWTP)

Total Estimated Average Daily Design Flow = 87,600 gpd

Total Estimated Peak Daily Flow = 291,708 gpd

Area I would be served by 4,400 lineal feet of 8" sanitary sewer. The pump station would be sized for Areas I, G, H, and J. The average daily design flow for the pump station would be 469,200 gallons per day, with 18,668 lineal feet of force main. The estimated number of taps for this area is 292.

TABLE 12
AREA I
CONVENTIONAL GRAVITY SEWERS
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	4,400	L.F.	$50	$220,000
2	Manholes	12	Each	$5,000	$60,000
3	Site Restoration with Street Repair	1	L.S.	$70,000	$70,000
4	Connection to Pump Station	1	Each	$3,500	$3,500
	SUBTOTAL				$353,500
	Contingency (10%)				$35,350
	TOTAL CONSTRUCTION COST				$388,850
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$88,375
	TOTAL ESTIMATED COST				$477,225

TABLE 13 AREAS I, G, H, AND J FORCE MAIN AND PUMP STATION TO GALENA WWTP ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST					
Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	12" Force Main	18,668	L.F.	$60	$1,120,080
2	Pump Station Telemetry	1	Each	$250,000	$250,000
3	Air Release Valve in Manhole	6	Each	$16,000	$96,000
4	Pig Launching Manhole	6	Each	$8,000	$48,000
5	24" Steel Casing Pipe Jack and Bore	400	L.F.	$530	$212,000
6	Site Restoration with Street Repair	1	L.S.	$373,360	$373,360
	SUBTOTAL				$2,099,440
	Contingency (10%)				$209,944
	TOTAL CONSTRUCTION COST				$2,309,384
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$419,888
	TOTAL ESTIMATED COST				$2,729,272

AREA J

Area J = 98 acres at 2 homes/acre (Tributary to Area I Pump Station)

Total Estimated Average Daily Design Flow = 56,800 gpd

Total Estimated Peak Daily Flow = 195,804 gpd

Area J would be served by 2,800 lineal feet of gravity sanitary sewer. This area would require the construction of sewers in Area G and pump station and force main in Area I, tributary to the Village WWTP. The estimated taps for this area are 196.

TABLE 14
AREA J
CONVENTIONAL GRAVITY SEWERS
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	2,800	L.F.	$50	$140,000
2	Manholes	8	Each	$5,000	$40,000
3	Site Restoration with Street Repair	1	L.S.	$60,000	$60,000
4	Connection to Existing Manhole	1	Each	$3,500	$3,500
	SUBTOTAL				$243,500
	Contingency (10%)				$24,350
	TOTAL CONSTRUCTION COST				$267,850
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$60,875
	TOTAL ESTIMATED COST				$328,725

AREA K

Area K = 244 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 146,400 gpd

Total Estimated Peak Daily Flow = 487,512 gpd

Area K would be served by 3,900 lineal feet of 8" gravity sanitary sewer and a pump station and 4,280 lineal feet of force main would be required. Th estimated umber of taps is 488.

TABLE 15
AREA K
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	3,900	L.F.	$50	$195,000
2	4" Force Main	4,280	L.F.	$26	$111,280
3	Manholes	11	Each	$5,000	$55,000
4	Site Restoration with Street Repair	1	L.S.	$120,000	$120,000
5	Lift Station with Telemetry	1	Each	$150,000	$150,000
	SUBTOTAL				$631,280
	Contingency (10%)				$63,128
	TOTAL CONSTRUCTION COST				$694,408
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$157,820
	TOTAL ESTIMATED COST				$852,228

AREA M

Area M = 915 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 549,000 gpd

Total Estimated Peak Daily Flow = 1,828,170 gpd

Area M would be served by 14,778 lineal feet of 8" sewer, 2,970 lineal feet of 10" sewer, 3,140 lineal feet of 12" sewer, 2,560 lineal feet of 12" sanitary sewer, 2,218 lineal feet of 15" sanitary sewer, a pump station, and 6,845 lineal feet of force main. Total estimated number of taps is 1,830.

TABLE 16
AREA M
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	14,778	L.F.	$50	$738,900
2	10" Sanitary Sewer	2,970	L.F.	$100	$297,000
3	12" Sanitary Sewer	3,140	L.F.	$110	$345,400
4	15" Sanitary Sewer	2,218	L.F.	$130	$288,340
5	12" Force Main	6,845	L.F.	$60	$410,700
6	Manholes	66	Each	$5,000	$330,000
7	Air Release Valves	2	Each	$16,000	$32,000
8	24" Steel Casing Pipe Jack and Bore	200	L.F.	$530	$106,000
9	Pig Launching Manhole	2	Each	$8,000	$16,000
10	Pump Station with Telemetry	1	Each	$250,000	$250,000
11	Site Restoration with Street Repair	1	L.S.	$600,000	$600,000
	SUBTOTAL				$3,414,340
	Contingency (10%)				$341,434

TABLE 16 AREA M CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST					
Item No.	Item	Quantity	Unit	Unit Price	Total Price
	TOTAL CONSTRUCTION COST				$3,755,774
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$682,868
	TOTAL ESTIMATED COST				$4,438,642

AREA N

Area N = 653 acres at 2 homes/acre

Total Estimated Average Daily Design Flow = 391,800 gpd

Total Estimated Peak Daily Flow = 1,304,694 gpd

Area N would be served by 5,400 lineal feet of 8" sanitary sewer and 400 lineal feet of 15" sanitary sewer, pump station, and 8,282 lineal feet of force main. Total estimated number of taps is 1,306.

TABLE 17
AREA N
CONVENTIONAL GRAVITY SEWERS, PUMP STATION, AND FORCE MAIN
ENGINEER'S OPINION OF PROBABLE ESTIMATE OF COST

Item No.	Item	Quantity	Unit	Unit Price	Total Price
1	8" Sanitary Sewer	9,500	L.F.	$50	$475,000
2	10" Force Main	8,282	L.F.	$55	$455,510
3	Manholes	15	Each	$5,000	$75,000
4	Pump Station with Telemetry	1	Each	$250,000	$250,000
5	Air Release valves	2	Each	$15,000	$30,000
6	24" Steel Casing Pipe Jack and Bore	200	L.F.	$530	$106,000
7	Pig Launching Manhole	2	Each	$8,000	$16,000
8	Site Restoration with Street Repair	1	L.S.	$240,000	$240,000
	SUBTOTAL				$1,647,510
	Contingency (10%)				$164,751
	TOTAL CONSTRUCTION COST				$1,812,261
	Project Costs: Legal, Design Engineering, Financing, Construction Observation, Testing, Interest During Construction, and Review Fees				$329,502
	TOTAL ESTIMATED COST				$2,141,763

FACILITY PLANNING AREA

The Village of Galena has prepared an "Areawide Water Quality Management Plan" which includes the facilities planning area. The Clean Water Act states "To the extent practicable, waste treatment management shall be on an area wide basis and provide control or treatment of all point and non-point sources of pollution, including in place or accumulated pollution sources". This goal remains relevant despite the declining federal role.

The Galena "Areawide Water Quality Management Plan's" purpose is to assist efforts to achieve the "fishable and swimable" water quality standards of the Clean Water Act. This plan takes a comprehensive regional approach to water quality protection.

Any new sanitary sewer extension must comply with this plan and the "Areawide Water Quality Management Plan" prepared by the Village of Galena.

SUMMARY

As stated previously, it is difficult to predict which area will develop first. We believe Areas A, B, C, D, E, K, and L may be the first to develop. Areas H, I, J, and G may be the last areas to be served by sewers. The following table lists costs and maximum available taps.

TABLE 18
SUMMARY SUB AREA COSTS

Area	Estimated Project Cost	Maximum Taps	Cost/Tap	
A & L	$691,492	182	$3,799	
B	$348,975	138	$2,529	
C	$311,850	227	$1,374	
D	$891,189	428	$2,082	
E	$715,919	324	$2,210	
F	$3,029,468	2,441	$1,241	
G	$1,881,100	970	$1,939	**$1,706**
H	$404,946	142	$2,852	**$1,706**
I	$477,225	292	$1,634	**$1,706**
J	$328,725	196	$1,677	**$1,706**
K	$852,228	488	$1,746	
M	$4,438,642	1,830	$2,425	
N	$2,141,763	1,306	$1,640	
Force main cost for Areas G, H, I, and J to be pumped to WWTP				

The first phase expansion of the WWTP of .5 mgd would provide capacity for areas A, L, B, C, D, and E with 117 taps remaining. A second expansion of an additional .5 mgd would provide capacity to Area M. As other areas were proposed to be developed, the wastewater treatment plant would have to be expanded accordingly. Depending on which areas developed first, there is some flexibility to sewer flows to the wastewater treatment plant.

FINANCING

General

Public improvements may be financed in several ways, based upon a combination of methods available under Ohio laws. The method chosen depends on the nature of the improvements, who will benefit from the improvements, and the ability of the community to assume additional financial indebtedness. Alternate methods for financing capital improvements are discussed below.

Current Revenues

Current revenues may be used to finance improvement projects. Such revenues may be derived from general taxation, fees, charges for services, special funds or special assessments. The advantages of this method include: the community saves the interest costs that would be charged on borrowed money, and the community retains greater budget flexibility for future projects.

The major disadvantage is the need to have uncommitted cash available, which often precludes the financing of extensive capital improvements in a small community.

Reserve fund financing may also be used. Under this procedure, funds are accumulated in advance for the construction of capital projects. The accumulation may result from surplus or "earmarked" operational revenues that are set aside, depreciation accounts, or from the sale of capital assets.

General Obligation Bonds (Excluding Self-Supporting Bonds)

General obligation bonds are secured by an unconditional pledge of the municipality's credit, including its taxing powers. General obligation bonds are retired by a levy against the property over the stated period of the bond issue, including interest costs.

Voter-approved indebtedness is outside the 10-mill debt limitation; nonvoted indebtedness is included within the 10-mill debt limitation. Both, however, are still subject to the statutory debt limitations of 10 ½% of assessed valuation.

General Obligation Bonds (Self-Supporting)

Self-supporting bonds are secured by an unconditional pledge of the municipality's credit. These bonds are retired from revenues of a municipal water, sewer, or other utility, which are in excess of revenues required for the operating expenses of the utility and of any other bond retirement.

Self-supporting bonds are included within the 10-mill debt limitation, unless approved by the electorate. In either case, these bonds are subject to the statutory limitation of 10.5% of assessed valuation.

A revenue experience record of six months to one year, at the rate schedule necessary to support the bond issue, is normally required to determine that bonds are self-supporting. However, an experience record is not required for bonds falling within the limitation of non-voted bonds, as described in the previous summary on General Obligation Bonds. In such cases, the 10-mill or 10.5% percent debt limitation would also apply until an experience record was established.

In the event that revenues are not sufficient to retire self-supporting bonds, a levy against property must be made. This levy takes precedence over all other unvoted levies within the 10-mill limitation.

Special Assessments

Special assessments may be levied on an acreage front foot, benefits derived, or tax valuation basis, against all properties within the area served by the improvement. Once levied, special assessments may be paid in cash or by a levy against the property to be paid on an annual basis over the stated period of the bond issue. Interest costs are included in the assessed amount.

Special assessment bonds also are secured by an unconditional pledge of the municipality's credit. They are not subject to the statutory debt limitation, but are included within the constitutional 10-mill limitation.

In the event that collections are not sufficient to retire special assessment bonds, a levy against all property must be made. This levy takes precedence over all other unvoted levies within the 10-mill limitation.

If the entire cost of all proposed phases of the wastewater treatment plant and sewer shown in this plan were assessed to the acreage of the proposed annexation, the total cost per acre would be approximately $8,000.00.

Mortgage Revenue (M.R.) Bonds

Mortgage revenue bonds are secured only by the income received by the municipality for the specific improvements being funded by the bond. They are self-liquidating obligations.

Revenue Bonds are not included within the statutory debt limitations or 10-mill limitation. From a practical standpoint, however, a mortgage revenue issue is limited by the ability to market the bonds at reasonable rates and by a rate schedule acceptable to the consumers of the system.

Since M.R. bonds are secured only by revenue, the rate schedules established must be sufficient to provide for operation and maintenance costs of the utility and for the annual principal and interest payments on the bonds, and to produce "coverage", or additional revenue, until specified reserve amounts are established.

Mortgage Revenue Bonds are often discounted or sold for less than par value, and generally carry higher-interest rates than other bonds.

Notes

Notes are often used as a means of initial financing in anticipation of the issuance of bonds. Notes may be issued for a period of up to one year and generally, may be renewed seven times for a maximum life of eight years. Notes can be used for general obligation and special assessment issues, but not for mortgage revenue issues.

Government Grants and Loans

A demographic analysis has been prepared for the Village of Galena to show the potential programs for which Village may be eligible. Most of these programs are available to small Villages and rural areas only. The most likely source of funding is through an economic development program. A copy of this analysis is included in the appendix.

Ohio Water Development Authority (OWDA)

The OWDA has loan funds available to communities for water and sewer improvements. Terms are 40 years in hardship cases only and 10 to 25 years in all other cases. All users are eligible and the market rates are lower than conventional financing rates usually attainable by most small communities. This indebtedness is outside the statutory debt limitations of the community.

There are low interest (2%) loans available in cases of extreme hardship and economic need.

Planning Loans (OWDA)

OWDA also has planning loans available to initiate projects within a community. Loans are available at attractive rates for five-year terms.

Community Development Block Grants (CDBG)

Public improvements may be funded by CDBG funds, if the project meets program criteria as established by the Department of Housing and Urban Development (HUD) and the Ohio Department of Development (ODOD). The Ohio Department of Development and the various offices within that Department can be contacted at (1-800-848-1300).

Funds may be acquired under the "Economic Development" program for public improvements directly associated with an economic development project. Water, sewer, street, drainage, and other public improvements may be eligible if they are required by a business or industry in order to expand existing facilities or locate a new facility in a community. Projects are rated on the number of newly created or retained jobs by the business or industry, private investment made by the business or industry, other dollars contributed to the project, a determination as to whether the expenditure of public funds is necessary and appropriate, as well as other program criteria.

APPENDIX

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March 8, 2006

Public hearing comments of The Nature Conservancy, Ohio Chapter -
208 plan, Big Darby Creek watershed

Recently, the Ohio Chapter commented on the General Permit for Discharges of Storm Water, Big Darby Creek Watershed, which is incorporated in this draft 208 plan for the Big Darby Creek watershed. As with the stormwater permit, The Nature Conservancy supports these actions of the Agency, while recognizing shortcomings still exist.

As Ohio EPA has stated in the past, notably in the 2004 document, "Darby at the Crossroads," the ecological health of the Big Darby is at considerable risk. Therefore, measures such as riparian protection and groundwater recharge, which are included in the draft 208 plan, are necessary and must be achieved and exceeded. As you know, the outcome of this effort is critical to protection and needed improvement of stream quality in the watershed.

This is most critical because of known degradation documented across Ohio related to urbanization, which can cause damage to stream health at levels of 5% and even less. Through extensive monitoring, Ohio EPA has documented these declines many times.

In the Hellbranch Run watershed, the degree of urbanization already is at 12 to 14%, and it exceeds 5% in the rest of the Franklin County portion of the Big Darby watershed. Hellbranch Run has declined in the past 15 years, losing most mussel species, and many fish species. Hellbranch Run and much of Big and Little Darby Creeks and other tributaries need to be restored, and not just maintained at their present condition. This will not happen unless we meet and exceed goals such as those outlined in this 208 plan.

It is very important that we not let what has happened in Hellbranch Run spread further in the watershed. Damage, and potential damage, from urbanization extends outside of Franklin County. Additional degradation of these streams would be a highly regrettable environmental loss for future generations of Ohioans. The Big Darby biodiversity is unique in central Ohio and that heritage cannot be matched or replaced. Many of the 38 rare species of the watershed, including 15 fish and 23 mussel species, are at risk.

Thank you for your efforts to date. Much more needs to be done. Local efforts need to meet and exceed these permit proposals. We ask that these local jurisdictions carefully review this draft, and provide information that shows they will meet and exceed these proposals. While we encourage a number of needed changes in our comments of February 8 on the draft stormwater permit, and those need to be addressed in this plan also, we support the 208 plan in general. We ask that the Agency work with local jurisdictions to address landowner concerns. We recognize the 208 plan is an effort that must undergo continuous improvement in scientific information, the permit process and other approaches in order to permanently protect the outstanding features of the Big Darby Creek's ecology.

Anthony Sasson

From: "Dave Brand" <dbrand@co.madison.oh.us>
To: "'Dan Dudley'" <Dan.Dudley@epa.state.oh.us>
Date: Wed, Feb 8, 2006 4:49 PM
Subject: RE: State WQM & 208 Plan

Dan,

For everyone else's understanding here is what you put in the Draft statewide water quality plan update for 2006:

Draft for public comment State WQM Plan - Appendix 9-1 February 2006 pg 65

County government officials in Madison County have prepared master sewer plans for their County. It covers all communities within the county, including municipalities. A steering committee composed of utility personnel and other community members worked with a consultant to prepare a draft plan that all parties agreed to. This plan was made available for general public review and comment in April 2005. A final plan was prepared and accepted by the Madison County Commissioners in June 2005. However, because of technical problems with getting final maps to Ohio EPA in a format usable by the Agency, this information is not included in the State Water Quality Management Plan 2006 update. Ohio EPA intends to resolve the technical problems and include specific prescriptions for Madison County in the next State WQM Plan update. Formal resolutions or letters of support from all municipal governments will also be needed.

See also Appendix 9-3, 208 Plan Prescriptions for Water Quality Protection within the Big Darby Creek Watershed.

To say that I and the county are disappointed with this determination would be an understatement. There seems to have been some miscommunication as to what you needed on the maps and the issues involved. I believe that you have has an approved copy of our 208 plan in paper form for some 7 months.

While we understood that you asked about electronic copies for your plan and we made contact with the consultant who said that they would get those to you, we were not aware that you required them in a specific format per the ORC to validate our accepted plan. On the contrary, those maps by themselves are meaningless; the commissioners adopted the hard copy.

The issue with the resolutions from the municipalities is a separate issue. We cannot cause these letters to be written.

If;

1.) This is just a matter of administrative issues and the OEPA will still be enforcing our adopted plan then we would be more will go along with this until the next update.

If however, you are saying that;

2). Our plan, which you were a part of during the whole process, now does not exist after we were assured that we followed the formats needed, then this is not acceptable to us.

If #2 is the case that the plan now does not exist in the OEPA eyes, we will be left to pursue this matter in other channels to protect our planning authority. I believe you more than any other individual will understand how vulnerable this would leave us.

Please clarify this issue for myself and the Madison County Commissioners.

Dave

David P. Brand, P.E., P.S.

Madison County Engineer

Madison County Sanitary Engineer

825 US 42 NE

London, OH 43140

dbrand@co.madison.oh.us

740-852-9404

740-852-9530 (fax)

-----Original Message-----
From: Dan Dudley [mailto:Dan.Dudley@epa.state.oh.us]
Sent: Monday, February 06, 2006 11:25 AM
To: monroecom@1st.net; pccommissioners@adelphia.net; Allen Commissioners; Jeff Henson; Randal Edgemon; Steven Smith; J Tetzloff; Malcolm Porter; Chuck Buck; Elaine Marsh; Len Rychlik; Matt Miller; M Byers; M Welch; leliason@athenscountygovernment.com; msullivan@athenscountygovernment.com; pegsix@athenscountygovernment.com; Mark Wilson; Sarah Lynn; Beal Lowe; mthomas@belmontcountycommissioners.com; Tim DeWitt; Frank Reed; Orla Collier; Frank Merrill; Ed Meixner; Brown; pkcoc@bright.net; putcoadm@bright.net; rosscocom@bright.net; Van Wert Commissioners; Jeffery Miller; Matt Peoples; CCAO; Don Killinger; T Allen; Glenn Sprowls; Tom Homan; Kipp Mark; Tim Weaver; Clark Rausch; Mike Sweder; commission@clarkcountyohio.gov; lawco@cloh.com; commissioners@co.ashtabula.oh.us; A Millice; Fereidoun Shokouhi; J Hackworth; R Ferryman; Barry Bryant; Chad Antle; Da-Wei Liou; G Evans; J Ward; K Jordan; Fairfield Co Commissioners; Don Rector; Dan Nichter; Paul Rosile; Tom Shockley; Hancock Commissioners; Hancock Engineer; hccom@co.hardin.oh.us; commissioners@co.hocking.oh.us; Logan Commissioner; John Bayliss; Scott Coleman; David Dhume; David P. Brand; David Brand; A Appelfeller; D Columber; K Frayer; Commissioners Tuscarawas; Union Commissioners; Lloyd Hagerty; Mary Sampsel; Steve Stolte; commissioners@co.vinton.oh.us; Wycocom; Cheryl Roberto; Steve Campbell; Beth Clark; Frances Beasley; Susan Ashbrook; Paul Dumouchelle; Michael Carder; John Mahoney; marbeck@coshoctoncounty.net; Crawford Commissioners; Stu Schwartz; Warren Schlatter; Bob Gable; Greg Nageotte; Michele Willis; Randy Sanders; commissioners@dragonbbs.com; Skip Riffe; Kim Mascarella; Knox Commissioners; David Parkinson; Mary Beth Timm; Carrcomm; William Tansey; Tansey.William@epamail.epa.gov; N McKeen; sweilnau@erie-county-ohio.net; T Ferrell; Jack Deweese; Jay Shoup; Dean Ringle; Jeff Franklin; Tim Hamilton; Don Armour; James Rozelle; Katie Dixon; Franklin Commissioners; Heather Doherty; D Genter; J Graf; P Barnaby; gcboc@gallianet.net; H Montgomery; CC Commissioners; Mayor Grossman; James Blackburn; C Edwards; Jean Caudill; tloftus@heidelberg.edu; commissioners@henrycountyohio.com; commissioners@highland-co.com; Brian McPherson; commissioners@jeffersoncountyoh.com; Robert Stewart; Jerry Brems; Kenneth Salsberry; M Phelps; J Resser; David Ditmars; Keith Doll; commissioners@mercercountyohio.org; John O'Meara; Steve Studenmund; Dave Tyndall; morgancocomm@mnp.net; William Habig; Andy Vidra; John Beeker; commissioners@muskingumcounty.org; Gretchen Brafford; Mike Robinette; Claude Custer; Joe Hadley; perryco@netpluscom.com; Chris Yoder; Larry Antosch; Chad Amos; Kristin Clingan; Susan McDonald; commissioners@ohiohills.com; OMA; Tammy Horch; Michael Cochran; Jane Wittke; Anne Baird; bonnell.8@osu.edu; Peggy Hall; Jerry Iles; Timothy Lawrence; libby.7@osu.edu; J.P. Lieser; Robert McCall; Dana Oleskiewicz; brent sohngen; weathringtn-rice.1@osu.edu; Dan Bradhurst; Judith Gilleland; Guy Jamesson; Paul Brock; Prater, Daniel J.; Jr., Robert J. Schmidt; Tracy Hatmaker; David Shaver; S Crall; morrowco@rrohio.com; Michael Snyder; Steve Salay; kwinters@ssd.com; Michael Frommer; Laura Ringenbach; Keith Dimoff; Vicki Diesner; Kurt Erichsen; Anthony Sasson; hcc@valkyrie.net; Scott M. Doran; Ted Boggs; commissioners@washingtongov.org; Allen Engineer; ncsholtis@wmconnect.com; WCC; Larry Kleinhans; John De Libera; lsksenecacounty@yahoo.com; Robert

Parkinson; O Spears; tomr@zoomnet.net
Subject: State WQM & 208 Plan

The draft State Water Quality Management Plan update, including 208 plan materials, is now available on the Agency's Web site:

http://www.epa.state.oh.us/dsw/index.html

(look under current interest topics - 208 plans)

The attached files contain additional background and information on how to comment.

Dan Dudley

Manager, Standards & Technical Support

Division of Surface Water, Ohio EPA

(614) 644-2876

dan.dudley@epa.state.oh.us

CC: "Chris Widener" <district84@ohr.state.oh.us>, "Chris Widener" <widenercr@core.com>, "Steve Austria" <saustria@mailr.sen.state.oh.us>, "Steve Pronai" <prosecutor@co.madison.oh.us>, "'David Dhume'" <ddhume@co.madison.oh.us>, "'Bob Hackett'" <commissioners@co.madison.oh.us>

The Nature Conservancy
SAVING THE LAST GREAT PLACES ON EARTH

The Nature Conservancy
Ohio Chapter
6375 Riverside Drive, Suite 50
Dublin, OH 43017-5045

tel [614] 717.2770
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nature.org/ohio

40

Re: Comments on draft Ohio EPA 208 plan, Appendix 9-3, 208 Plan Prescriptions for Water Quality Protection within the Big Darby Creek Watershed, February 2006

RECEIVED
2006 APR 24 AM 9:46
OFFICE OF THE DIRECTOR
OHIO EPA

April 20, 2006

Director Joe Koncelik
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Director Koncelik:

Thank you for your efforts to protect Big Darby Creek's outstanding features through the draft Ohio EPA 208 plan and especially the February 2006 "Appendix 9-3, 208 Plan Prescriptions for Water Quality Protection within the Big Darby Creek Watershed." We encouraged a number of needed and related changes in our comments of February 8 and March 16, 2005, on the draft Big Darby stormwater permit. Those need to be addressed in this plan also; please refer to those comments. We support the 208 plan in general.

Importantly, it is very clear that inadequately managed development degrades stream quality, and has been shown to do so at very low levels of development, both in Ohio and nationally, with impacts measured at developments rates as low as 3% of a watershed.[1] Ohio EPA data has shown impacts at development levels of only 5%. Establishing adequate management of development impacts immediately is essential to long-term survival biodiversity of the Big Darby Creek watershed.

Our comments include, among others:

- Biological importance of the Big Darby Creek watershed
- The lack of coverage for areas served by home sewage treatment systems
- Areal Extent and Definition of Big Darby Creek Watershed
- Riparian setback distances
- The need to address groundwater infiltration for the entire Big Darby watershed in Franklin County
- Avoiding stormwater BMPs as a conditional use in the floodplain
- Encouragement of native vegetation in open space
- Adequacy of homeowners associations for open space management

[1] Keith W. Robinson, Sarah M. Flanagan, Joseph D. Ayotte, Kimberly W. Campo, Ann Chalmers, James F. Coles, and Thomas F. Cuffney. 2004. Water Quality in the New England Coastal Basins Maine, New Hampshire, Massachusetts, and Rhode Island, 1999–2001. U.S. Geological Survey Circular 1226. http://pubs.usgs.gov/circ/2004/1226/

Recycled Paper

Much more needs to be done - there is no assurance that the TMDL, stormwater permit and 208 plan are adequate to protect the watershed's rare and sensitive aquatic species, and review and revision should be ongoing. Local efforts need to meet and exceed these permit proposals. We ask that Ohio EPA work more closely with these local jurisdictions so that they carefully review this draft and other Agency documents, and show they will meet and preferably exceed these proposals. While we encourage a number of needed changes in our (attached), comments of February 8 and March 16, 2005 on the draft stormwater permit, and those need to be addressed in this plan also, we support the 208 plan in general. We ask that the Agency work with local jurisdictions to address landowner concerns. We recognize the 208 plan is an effort that must undergo continuous improvement in scientific information, the permit process and other approaches in order to permanently protect the outstanding features of the Big Darby Creek's ecology. The areas along the Franklin/Madison County line, and Pickaway County, include some of the most diverse aquatic communicates in Ohio and must be protected now.

Thank you for your efforts to date. Again, adequate effort is necessary to protect this outstanding Ohio natural resource so that it may be enjoyed by future generations. We look forward to seeing improvements in and implementation of this stormwater permit, and to working with the Agency for protection of the Big Darby Creek watershed.

Sincerely,

Anthony Sasson
for

Rich Shank
Director, Ohio Chapter

Attachments (3)

cc w/attachments:
Dan Dudley, DSW, Ohio EPA,
Mike Gallaway, CDO, Ohio EPA

The following are specific comments of the Ohio Chapter of The Nature Conservancy on Appendix 9-3 of the draft plan, which addresses the 208 Plan Prescriptions for Water Quality Protection within the Big Darby Creek Watershed.

Biological importance of the Big Darby Creek watershed

The 208 plan must meet Ohio's antidegradation goals. The plan should ensure no further decline in species richness occurs and streams not meeting Clean Water Act goals are restored. The plan should ensure that rare and declining species must be protected and enhanced. The 208 plan should protect and enhance the biological integrity of Big Darby Creek and tributaries. The areas along the Franklin/Madison County line, and Pickaway County, include some of the most diverse aquatic communicates on Ohio and must be protected now.

The Big Darby watershed includes 38 rare aquatic species, including 15 fish and 23 mussel species. Ohio EPA is well aware of the biological importance of the aquatic species richness in the Big Darby Creek watershed, and of the decline in such richness in Hellbranch Run, as one example of a degraded tributary, and throughout the Big Darby and Little Darby Creek mainstems. To supplement your information, we are providing the attached letter of December 9, 2005, which The Nature Conservancy provided to Kevin Wheeler of the City of Columbus for use by the Big Darby Accord, regarding use of a biological analysis of watershed species by The Nature Conservancy. We emphasize the species richness of these streams, especially for rare species, and are providing maps of species richness prepared in 2005 by our aquatic ecologist, Jason Taylor. Many high quality, species-rich sections of these streams would be affected by stormwater runoff from any future development and therefore depend on the success of this stormwater permit. We encourage your further review of protection needs for rare and declining species in these areas using this and other information. We feel this information should make clear the need to protect the streams in the middle and lower reaches of the watershed.

We believe there is no assurance that the TMDL, stormwater permit and 208 plan are adequate to protect the watershed's rare and sensitive aquatic species, and review and revision should be ongoing. Because these species define the Big Darby's outstanding status, how will the Agency ensure their protection?

Page 5, Table 1

Development restrictions; Management of infiltration and nutrients; Increased controls on stormwater runoff – While we understand that developments that would be served by central sewers would be subject to these standards, much of potential future development - potentially thousands of acres - could be served by home sewage treatment systems (HSTS). It does not appear that such development is managed under this plan at the same environmental performance as properties under central

sewer service. Such HSTS development could be very environmentally damaging, as it could, and probably would, fail to achieve the 208 plan goals. For example, it does not appear that riparian corridor protection, groundwater infiltration, and runoff management at HSTS properties would be subject to the same standards as those sites under central sewer service. The only reference we see that pertains to this is in Table 1 under "Management and infiltration of nutrients," where the Agency's "3k Management" criterion states "Local governments encouraged to implement same …"

Since this is only "encouraged" but not required, how will the Agency ensure such implementation? What is the agency doing to work with local governments to establish similar protections for homes not on central sewers?

The plan does not address sites developed using home sewage treatment systems. To our knowledge, at this time these sites are not subject to Big Darby Accord restrictions, and will not have comparable environmental protections such as Ohio EPA is proposing in the draft stormwater permit or this draft 208 plan. Many incidences of such damage are readily evident in Big Darby Creek watershed areas presently served by HSTS. To date, local government has not provided adequate protection. The plan should explain how the agency will work with local governments to improve this management and adequately meet protection goals.

Page 8
Areal Extent and Definition of Big Darby Creek Watershed
Map acreage - We thank the Agency for revision the map and boundaries of the watershed in Franklin County. Please provide the net acreage difference, as it appears it could be substantial. This is especially important, as many of the "new" areas included in the watershed along the eastern boundary would likely already be developed, adding to the challenge of meeting Clean Water act goals. There is a need to recalculate the amount of impervious surface in the watershed.

Excluding parcels with drainage directed outside the watershed - The Agency proposes to exclude parcels that would direct drainage outside the watershed. Has Ohio EPA determined this will not adversely affect groundwater recharge? If so, please explain.

Page 11
Criteria 1 - Adoption of Institutional Mechanisms

> 1c Institutional controls for riparian corridor protection should include a purpose statement with the following three elements …

While we recognize that the statement and the word "should" were used from the Environmentally Sensitive Development Area External Advisory Group recommendations report, we strongly emphasize that such institutional controls must include the necessary purpose statement, and change the word "should" to "shall." This would ensure the purpose statement is included, and not voluntary on the part of the

entity. The Agency should require the entities have clear language as to what is to be achieved.

Page 12
Criteria 2 0 Set Back Distances

Please see The Nature Conservancy comments of February 22, 2006, on the draft Big Darby stormwater permit, especially those related to Page 14 of the draft permit, Section III.G.2.b. Riparian Setback Requirements.

The size of the setback distance set forth here in the draft 208 plan appears to be out of date. The Nature Conservancy strongly encourages that belt width formula currently used by the ODNR be applied. For the text of ODNR's Rainwater and Land Development manual, see ftp://ftp.dnr.state.oh.us/Soil_&_Water_Conservation/rainwater/.)

The November 2004 report "Environmentally Sensitive Development Area External Advisory Group Recommendations" (ESDA EAG) emphasized the need to establish native vegetation along stream corridors. The plan does not address this recommendation.

Franklin County setback increase needed – In the draft Big Darby Creek stormwater permit, Franklin County stream setbacks are now proposed at distances less than those in other counties. Because of the negative impacts of threatening urbanization, this is unacceptable. All calculations need to increase Franklin County's stream setbacks to be at least the most recent formula used by ODNR in their 2005 draft "Rainwater and Land Development" manual –

$$W=133XDA^{0.43}.$$

The Big Darby watershed should not be held to a standard that is less protective than what is recommended for the rest of Ohio; instead it should have a more conservative standard to protect the community of rare and sensitive species.

In addition, since the Franklin County setback distances are supposed to be more protective because of the imminent threat of development, this same logic should be applied to other counties, since development can and will be just as much of a threat in these places. These other most active development areas include Logan County, Union County/Marysville, Plain City and West Jefferson. In fact, many of these areas are not in attainment of Clean Water Act goals, and need improvements from such measures as setbacks.

We appreciate the inclusion of stream setbacks. In 2004, the ESDA EAG recommended native vegetation within the riparian corridor defined here. This plan condition does not appear to include native vegetation within the setback distance. Without native vegetation, the stream setback will have much lower quality, and would defeat the purpose of the setback. How will the agency ensure the habitat goals of the

TMDL and ESDA EAG are met? Others, such as the Hellbranch Watershed Forum also are recommending native vegetation in the stream corridor (see their 2005 recommendations to the Big Darby Accord).

The draft plan uses the phrase “set back” as a noun. “Setback” is the one-word term usually used for a distance such as a buffer, and should be used throughout this document. “Set back” (two words) is a verb.

Page 16
3a Acceptable Open Space: Primary Conservation Areas

“3. Wetlands as defined by the Army Corps of Engineers or the EPA” should state “or the *Ohio* EPA” for clarification.

Page 17
3c Open Space Requirements for Infiltration

This requirement should be extended to the entire Big Darby watershed in Franklin County, and not just to the shallow ground water recharge for the Hellbranch Run watershed (220-010). In addition, Ohio EPA should investigate extending this requirement to other areas subject to development at threatening levels, such as the Marysville and West Jefferson areas.

3e Conditional Uses

Suggesting that “Stormwater best management practices” could be a conditional use in the open space, especially that which is floodplain, is detrimental to stream quality, and contradicts the Ohio EPA’s draft stormwater permit for the Big Darby Creek watershed, issued for public notice December 30, 2005. See Page 16, Part III.G.2.b.ii.3 “Siting of stormwater BMPs.” The draft permit states: “No structural sediment controls … or structural post-construction controls shall be used in a stream or the delineated setback. Mistakes such as stormwater ponds within floodplains have recently been allowed in the watershed in Franklin County, and we greatly appreciate Ohio EPA addressing this problem. Within this meander belt width and the floodplain, we strongly encourage Ohio EPA to not permit stormwater BMPs such as ponds and berms.

Page 18
3 f Prohibited Uses – 4. Disturbance of the *natural* vegetation

"Native vegetation" is the more appropriate term than “natural vegetation” and should be used in the plan. Removal and other management of alien and invasive species should be encouraged by the plan.

At the December 18, 2003, ESDA EAG meeting, The Nature Conservancy brought up the point that some of the draft language in EAG material uses the term "natural

vegetation" to refer to plants that should be encouraged to grow in the streams' riparian areas. "Natural vegetation" is not a technically, and I suggest legally, meaningful term, since all vegetation is "natural." This could include non-native species. (We are trying to discourage non-native, exotic and invasive species in order to establish the most complete and functional stream ecosystem, and healthy Big Darby Creek watershed. I believe it was the intent of the EAG to encourage control of these non-native species.) "Native vegetation" is a more appropriate term, and native vegetation is more likely to establish and maintain a higher quality stream ecosystem.

After consulting with Steve Studenmund of Franklin County Metro Parks and Tim Peterkoski of ODNR, we suggested the EAG adopt:

> Native vegetation: "Plant species that were found in the local area prior to substantial European settlement."

The use of the term "natural vegetation" may have come from the Hellbranch Run Watershed Protection Overlay, as it appeared in the Columbus City Bulletin of June 15, 2002, page 1250, Columbus City Code Section 3372.705 and 706.

The plan should use the term "native vegetation" in any recommendations and documents for the Big Darby Creek watershed. This would include those referring to riparian corridors and other open space.

Again, in this section the report should refer to the ODNR list of native plants recommended for use in native vegetation plantings in the ESDA.

3g Ownership 1. Homeowners associations/condominium associations

Homeowner or condominium associations are suggested as post-construction operators responsible for protection of open space. Ohio EPA should require other, appropriate parties to maintain these protections, as few, if any, homeowners associations are capable of the maintaining the necessary expertise and funds. Land conservation should be part of the mission of any organization assigned this responsibility. Also, homeowners associations often are not permanent. Open space is very difficult to monitor, and violations are frequent. For example, The Ohio Department of Natural Resources, Stream Management Guide No. 13, Forested Buffer Strips, has stated (“Erect Visual Barriers” page 3):

> “Easements alone are only lines on paper which have proven to be ineffective against encroachment. One study found that 90% of easement protected forested buffers had been encroached upon to some extent, with 45% severely degraded.”

Stewardship of open space has its costs, and each entity should have adequate stewardship funding identified.

3j Design and Review of Open Space

Item 2, “Identify areas for locations of homes” should also refer to other structures (e.g., other buildings, stormwater BMPs, parking facilities, etc.).

3k Management

The “Plan for Management of Open Space and Common Facilities” required by this section should address the same concerns stated above for section 3g.

Page 23
Criteria 7 – Set Back Distance from Streams, Big Darby Creek Watershed outside of Franklin County

Riparian setback requirements in the draft need to be updated, reflecting the latest ODNR recommendations, and all streams (including those with a use designation less than Exceptional Warmwater habitat) need to meet a higher standard that what was proposed.

Stream setbacks must be adequately wide for all use designations and protect downstream uses – The plan’s proposed widths are not adequate to protect downstream uses. Section 3.2.5 Protecting the Downstream Use of the Big Darby Creek Watershed TMDL states:

> “When a stream with a lower use designation flows into one with a higher use designation, the criteria of the downstream use needs to be maintained. Therefore, there are times when the applicable criteria in a waterbody may need to be more restrictive than those associated with its designated use in order to protect the designated use of the downstream segment or stream.”

Because streams meander based on physical conditions and not on Clean Water Act use designation, Warmwater Habitat (WWH) and Modified Warmwater Habitat (MWH) setbacks need to be the increased to the width proposed for Exceptional Warmwater Habitat (EWH) streams. Very importantly, this setback width is needed not just to protect the initial tributary, but also the stream and mainstem it flows into – in other words, it must protect the downstream use. Streams with smaller setbacks, such as proposed, are more likely to pollute key target streams, such as Hellbranch Run, Little Darby Creek or Big Darby Creek. Therefore, streams with these smaller setbacks, many of which are already in non- or partial attainment, are less likely to meet Clean Water Act goals. If these tributaries are only given these proposed narrow setbacks, the portions of the mainstems they flow into also are less likely to achieve goals. This is especially true outside of Franklin County (the area addresses in the section of the plan), where many sections of the mainstems of Big and Little Darby Creeks, and of major tributaries, are not in attainment of Clean Water Act goals. In contrast to what Ohio EPA is proposing, some streams might be presently classified at lower use designations because, at least in part, presently they have low-width and poor riparian

conditions, which the proposed lower riparian widths will perpetuate. Delivery to the receiving stream and hydrologic benefits of setbacks are the same.

This problem of lesser setbacks is especially notable because many of the streams outside of Franklin County do not have a use attainment assigned, and under this proposal would receive the lowest, and inadequate, stream setback. All setbacks should meet the proposed EWH setback for those outside Franklin County (the most protective in this draft permit).

The second sentence states: "The set back distance from the center line of the stream …" – This distance should be measured from the ordinary high water mark, not the centerline.

The Nature Conservancy
SAVING THE LAST GREAT PLACES ON EARTH

The Nature Conservancy
Ohio Chapter
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February 8, 2006

Re: General permit for Discharges of Storm Water, Big Darby Creek Watershed

Director Joe Koncelik
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Director Koncelik:

The following are comments on the Ohio EPA's draft stormwater permit for the Big Darby Creek watershed, issued for public notice December 30, 2005. We greatly appreciate the effort that has gone into creating this significant document. The fact that there is a draft permit geared specifically to the Big Darby watershed is significant in itself. Some other points, such as riparian protection goals, are necessary and we strongly support them. As you know, the outcome of this effort is critical to protection and improvement of stream quality in the watershed. Still, we have a number of concerns about needed improvements in the permit and ask that the Agency use the attached comments, and other beneficial material, to enhance the protection proposed.

Our comments are summarized as follows:

- A watershed permit with requirements beyond those already in place under NPDES Phase II is essential, and the proposal for such a permit is strongly supported.
- A watershed-wide permit approach is critical, as development in the watershed affects much more than Franklin County.
- We strongly encourage adequately protective goals, requirements and measures. The permit must ensure that construction and especially post-construction stormwater management meets TMDL and antidegradation goals, and protects rare and sensitive species. The permit must clarify how these points would be satisfied.
- Ohio EPA must use adaptive management (see Ohio EPA's 2004 document "Darby at the Crossroads"). Goals should be updated at least biennially to better ensure lasting environmental protection. Adequately protective margins of safety must be incorporated and clarified.
- This permit, and other approaches included in the Total Maximum Daily Load (TMDL) and Section 208 plan, must recognize and incorporate present degradation and what measures must be taken to achieve Clean Water Act use attainment and restore missing species.

Recycled Paper

- Riparian setback requirements in the draft need to be updated, reflecting the latest ODNR recommendations, and all streams (including those with a use designation less than Exceptional Warmwater habitat) need to meet a higher standard that what was proposed.
- Attachment B of this permit recommends use of "Over-wide channel design." This proposal is not acceptable because it commits streams to very low habitat design standards, and consequently low biodiversity.
- For groundwater recharge, the "pre-development" condition as goal must be much more conservative and protective than drained agricultural land, which is a very poor quality standard.
- The Agency should clarify how the proposed stormwater BMP release rates improve upon stream protection required for other Phase II stormwater permits in the rest of Ohio.
- The problem of increased water temperatures due to stormwater management needs to be addressed in the draft permit and TMDL.
- Monitoring of the watershed, last conducted in 2001, needs to be reinitiated, regular, and enhanced related to development impacts.
- This watershed permit should be updated within two years of becoming final.

Please see the attached detailed comments, and also the August 15, 2005, comments of The Nature Conservancy, Ohio Chapter, concerning the May 2005 draft Big Darby Creek Total Maximum Daily Load Report. Many of the same issues addressed in these comments on the draft stormwater permit were included in those TMDL comments, and additional points are covered.

Thank you very much for the Agency's outstanding effort to produce this draft permit, as well as the TMDL. Again, adequate effort is necessary to protect this outstanding Ohio natural resource so that it may be enjoyed by future generations. We look forward to seeing improvements in this stormwater permit, and to working with the Agency for protection of the Big Darby Creek watershed.

Sincerely,

Rich Shank
Director, Ohio Chapter

Attachments

cc w/attachments: Jason Fyffe, Ohio EPA, Division of Surface Water

**Comments of The Nature Conservancy, Ohio Chapter,
on the December 28, 2005, draft stormwater permit
"Authorization for Storm Water Discharges Associated with Construction activity Located Within the Big Darby Creek Watershed under the National Pollutant Discharge Elimination System"**

Meeting TMDL and biodiversity protection goals -

Decline in the Hellbranch Run watershed, especially for sensitive fish species and mussels, has been documented by Ohio EPA, ODNR and The Ohio State University. Thresholds to protect biodiversity might have already been exceeded. The permit should ensure post-construction performance of stormwater meets TMDL water quality goals. How is this demonstrated?

How does the draft permit ensure protection of rare and sensitive species? What evidence is the Agency using to demonstrate this? In what ways is this conservatively determined?

Meeting attainment goals

In addition to assuring the protection of the Big Darby watershed's rare and sensitive species, the permit should ensure the Big Darby Creek mainstem and tributaries reach, maintain and improve upon attainment of Clean Water Act use designations. For example, presently, the upper Big Darby mainstem in the Environmentally Sensitive Development Area is not reaching attainment. The draft permit does not clarify how attainment and other protection will be reached using the permit and other tools. Given staffing limitations, we suggest the Agency hire a highly qualified biological consultant to review the adequacy of the environmental protection adequacy of the overall development situation, present and future, and make further recommendations to the Agency. The key question to answer would be "Can this plan/proposal and accompanying environmental protections be shown to be adequate to protect and improve use attainment, antidegradation goals, and rare and declining species?"

Updating the permit

This watershed permit should be updated within two years of becoming final. Because development could proceed rapidly and exceed thresholds for ecological degradation, permits should limited and conservative, and be issued only with caution and full review. The adaptive management principle should be applied, with chemical and biological monitoring.

Page 9, III.B. Timing

"SWP3" shall be completed and submitted with the NOI" – We strongly support this requirement, which would provide more time for review. We encourage the agency to dedicate adequate staff to this very important review, and pay special attention to all plans and ensure their adequacy and compliance.

Page 9 III.C.2.a. Plan Availability

The Stormwater Pollution Prevention Plan (SWP3) should be made available to any person upon request, including state agencies such as the Ohio Department of Natural Resources, the Soil and Water Conservation District and the general public.

Page 11, III. F. Total Maximum Daily Load (TMDL) allocations

Because of needs identified in the TMDL, where more protective measures are identified, the director should require the permittee to revise the SWP3.

Page 13, III.G.1.I.xiii. "in-stream activities including stream crossings"
and **page Part III.G.2.g, "minimize the number of stream crossings"**

In addition to justifying why these crossings are minimized, the applicants should specify the BMPs proposed for these stream crossings, and explain why they are appropriate and best.

Page 14, III.G.2. Controls

This section refers to Ohio's "Rainwater and Land Development" manual. Where this manual provides multiple options for BMPs, <u>adequately protective performance or</u> <u>the most protective should be required</u> in the permit. The applicant should explain how treatment is optimized. BMPs should meet performance goals that are determined to be necessary to meet stream quality goals. Otherwise, damaging practices might be permanently established.

Also, Ohio's "current" "Rainwater and Land Development" manual was issued in the 1990s. It is unlikely this represents the most advanced methods of stream protection. Since this is not up to date, the Agency should refer to the current draft manual, or later version. The current draft is now available on the ODNR, Division of Soil and Water Conservation, WWW site. The State of Ohio should develop standard protocol for evaluating these controls' effectiveness.

Page 14, III.G.2.b. Riparian Setback Requirements

The November 2004 report “Environmentally Sensitive Development Area External Advisory Group Recommendations” (ESDA EAG) emphasized the need to establish native vegetation along stream corridors. The permit does not address this recommendation.

Franklin County setback increase needed - Franklin County stream setbacks are now proposed at distances less than those in other counties. Because of the negative impacts of threatening urbanization, this is unacceptable. All calculations need to increase Franklin County's stream setbacks to be at least the most recent formula used by ODNR in their 2005 draft “Rainwater and Land Development” manual –

$$W=133XDA^{0.43}.$$

The Big Darby watershed should not be held to a standard that is less protective than what is recommended for the rest of Ohio; instead it should have a more conservative standard to protect the community of rare and sensitive species.

In addition, since the Franklin County setback distances are supposed to be more protective because of the imminent threat of development, this same logic should be applied to other counties, since development can and will be just as much of a threat in these places. These other most active development areas include Logan County, Union County/Marysville, Plain City and West Jefferson. In fact, many of these areas are not in attainment of Clean Water Act goals, and need improvements from such measures as setbacks.

We appreciate the inclusion of stream setbacks. In 2004, the ESDA EAG recommended native vegetation within the riparian corridor defined here. This permit condition does not appear to include native vegetation within the setback distance. Without native vegetation, the stream setback will have much lower quality, and would defeat the purpose of the setback. How will the agency ensure the habitat goals of the TMDL and ESDA EAG are met? Others, such as the Hellbranch Watershed Forum also are recommending native vegetation in the stream corridor (see their 2005 recommendations to the Big Darby Accord).

Page 14, III.G.2.b.i. Riparian Setback Requirements

“The setback distance from the centerline of the stream …” – This distance should be measured from the ordinary high water mark, not the centerline.

Page 14, III.G.2.b.i.3.a. Riparian Setback Requirements

Within Franklin County, as with the other counties, the multiplier should be 133 in the formula determining the riparian corridor width ($W=117DA^{0.43}$). As proposed, the

formula for Franklin County calculates a smaller riparian setback than for other counties. The multiplier 133 was the current multiplier recommended by ODNR at the time, but the EAG used an out of date publication and failed to update this. This was brought to the attention of the ESDA EAG during its meetings.

Pages 15-16, III.G.2.b.ii.b. Riparian Setback Requirements

Stream setbacks must be adequately wide for all use designations – Because streams meander based on physical conditions and not on Clean Water Act use designation, Warmwater Habitat (WWH) and Modified Warmwater Habitat (MWH) setbacks need to be the increased to the width proposed for Exceptional Warmwater Habitat (EWH) streams. Very importantly, this setback width is needed not just to protect the initial tributary, but also the stream and mainstem it flows into. Streams with smaller setbacks, such as proposed, are more likely to pollute key target streams, such as Hellbranch Run, Little Darby Creek or Big Darby Creek. Therefore, streams with these smaller setbacks, many of which are already in non- or partial attainment, are less likely to meet Clean Water Act goals. If these tributaries are only given these proposed narrow setbacks, the portions of the mainstems they flow into also are less likely to achieve goals. In contrast to what Ohio EPA is proposing, some streams might be presently classified at lower use designations because, at least in part, presently they have low-width and poor riparian conditions, which the proposed lower riparian widths will perpetuate. Delivery to the receiving stream and hydrologic benefits of setbacks are the same.

This problem of lesser setbacks is especially notable because many of the streams outside of Franklin County do not have a use attainment assigned, and under this proposal would receive the lowest, and inadequate, stream setback. All setbacks should meet the proposed EWH setback for those outside Franklin County (the most protective in this draft permit).

Page 16, Part III.G.2.b.ii.3 Siting of stormwater BMPs

The draft permit states: "No structural sediment controls … or structural post-construction controls shall be used in a stream or the delineated setback. Mistakes such as stormwater ponds within floodplains have recently been allowed in the watershed in Franklin County, and we greatly appreciate Ohio EPA addressing this problem. Within this meander belt width and the floodplain, we strongly encourage Ohio EPA to not permit stormwater BMPs such as ponds and berms.

Pages 16, III.G.2.b.iii.1. Riparian Setback Mitigation

"in the form of stream mitigation in accordance with Attachment B of this permit" – This section recommends use of "Over-wide channel design." **This proposal is <u>not</u>**

acceptable because it commits streams to very low habitat design standards, and consequently low biodiversity. Such designs have not shown attainment of Clean Water Act standards, nor have they been shown to protect rare and sensitive species. The design would likely increase downstream temperatures and limit nitrate processing. Native vegetation is not encouraged. The Big Darby Creek watershed deserves much higher standards. Instead, Natural Channel Design should be required, and goals should be set at achieving EWH, or at least WWH where this is not achievable due to natural limitations.

Second, stream restoration is best when planned over a large area. This mitigation proposal does not address this need. Lengthy sections of streams in the Hellbranch Run watershed, as well as others such as Sugar Run, need to be restored. Restoring small sections of stream, such as implied by this proposal, is not nearly as effective as a larger, planned restoration which might involve multiple parcels. This proposal in the permit needs to build in additional flexibility, such as setting aside the corridor for restoration as part of a later, larger plan for a stream. The Agency might establish that, if the developer can assure that this section will be part of a required mitigation plan, and that plan can connect larger segments of stream, then mitigation may be delayed (within a time limit), as long as there is a method to assure it is part of a larger plan and implementation.

Third, the permit should allow restoration within the Riparian Setback zone, within the meander belt width. This zone could easily be larger than the "10 times the channel's self-forming width."

Attachment B - Stream Assessment, Part 1

Part 1 - “past channelization has not resulted incision” – This statement is incomplete and it is hard to tell what the criterion and the Agency’s intent is.

“drainage areas less than 16 square miles” – This condition is far too lenient and, because most tributaries drain far less than this area, sets an inadequately low and non-protective design standard for most tributaries of the Big Darby Creek. For example, almost half of the Hellbranch Run, and much of the Robinson Run and Sugar Run watersheds, all under the imminent threat of development, would be subject to this low standard. Numerous unnamed tributaries would be inadequately protected. Instead, all streams should have Natural Channel Design as the restoration goal.

Attachment B - Stream Assessment, Part 2

Natural Channel Design should be the restoration goal - . As stated above, the proposed “over-wide channel design” <u>is not acceptable</u> and would probably perpetuate low levels of biodiversity. The design for stream restoration in the Big Darby Creek watershed should be at the highest level possible, and strive to meet Exceptional

Warmwater Habitat. It should have goals of restoration of the highest use designation and of Natural Channel Design.

Unless the Ohio EPA has information that proves the proposed design will reach a use designation such as Exceptional Warmwater Habitat, it should not be set as the goal. Because of limited habitat development, the design proposed in Part 2 will perpetuate low biological diversity.

Page 17, III.G.2.c. Groundwater Recharge Requirements

"Pre-development" condition as goal for groundwater recharge - **A much more conservative and protective groundwater recharge goal needs to be set.** The draft permit sets a drained agricultural land condition ("pre-development") as the groundwater recharge goal. This is a goal which might have already exceeded a threshold necessary for biodiversity protection, and might lead to continued degradation, such as in the Hellbranch Run watershed, where most of the land is agricultural and extensively surface and subsurface drained. Like urbanization, such drainage can lead to hydrologic stress such as stream flashiness and lower baseflow, causing stream degradation and loss of biodiversity. Ohio EPA's own data have shown that drained agricultural land often performs as poorly as urban land in terms of biological diversity. The proposed recharge goal is not ecologically conservative, and risks permanently locking developed areas into a rate that is not protective of stream flow and sensitive species.

The most immediately at-risk watershed is that of Hellbranch Run. It is clear from Ohio EPA's 2004 "Biological and Water Quality Study of Big Darby Creek Watershed, 2001/2002" and from data maintained by OSU's Museum of Biological Diversity[1] that Hellbranch Run has declined in biological quality. Since at least part of this decline might have been caused by hydrologic stresses, stabilizing and improving conditions seem necessary. Setting a low bar, as proposed, for groundwater recharge does not seem appropriate. This drained agricultural land's recharge rate is equivalent to a very high rate of urbanization, around 65%, and that level of urbanization is well known to drastically reduce stream quality. At that level of impact, Ohio EPA data clearly has shown that Exceptional Warmwater habitat is not achieved, and Warmwater Habitat is very unlikely to be achieved.

In a narrative, the Agency should explain how it determined recharge rates, and how these rates were determined to be protective of biodiversity that the Hellbranch Run and Big Darby Creek supports or has supported. Please clarify how antidegradation goals are being met by this approach.

[1] See attached letter of 3/22/2002 from Dr. G. Thomas Watters, The Ohio State University, Museum of Biological Diversity - "Unfortunately, many of these 15 species appear to have been lost from Hellbranch Run just within the past decade or two."

The Agency must determine the adequate streamflow, with a margin of safety, needed to support sensitive species. For Ohio EPA's reference, a coalition of the University of Georgia and local governments in northern Georgia has recently recommended, through the "Runoff Limits Program," effective impervious surface limits for conservation of rare aquatic species in a developing area of the Etowah River watershed north of Atlanta. Please note that their suggested limits are very low and stringent, far less than Ohio EPA's proposal, and well below the 10% imperviousness threshold often cited as critical for stream degradation. We urge you to review and consider their approach in defining such limits.

The Ohio EPA should set additional performance standards designed to protect both water quality and stream channels. The model stormwater ordinance of the Metropolitan North Georgia Water Planning District (the "Metro District")[2], which is required by state law to be adopted by many of the counties and cities in the Etowah, is a good example of this more progressive ordinance. Its performance standards include:

- Water quality protection: capture and treat runoff from all storm events 1.2" or less, as well as the first 1.2" of runoff for all larger storm events.
- Channel protection volume: provide 24 hours of extended detention for runoff generated by the one-year, 24-hour storm event.
- Overbank flood protection: reduce the post-development 25-year, 24-hour storm event peak discharge rate to no more than the pre-development discharge rate.
- Extreme flood protection: design all stormwater management facilities to safely convey the runoff from the 100-year, 24-hour storm event.

Another recent study documents the low levels of imperviousness that result in degradation:

> "Degradation of stream ecosystems appears to occur early in the process of watershed urbanization. For example, macroinvertebrates species such as mayflies, stoneflies, and caddis flies which are sensitive to urban contaminants and habitat disturbance are reduced where as little as 3 percent of the land cover in the watershed is urban and population density is less than 300 people per sq. mile. Streams are noted as "fully degraded" where urban areas cover about 20% of the watershed and population densities are about 3,000 people per sq. mile (USGS 2004.) "[3]

The Agency must set a more conservative recharge goal based on protecting biodiversity. For example, in the Maryland Stormwater manual, Chapter 2, page 2.12 - "Basis for Determining Overbank Flood Protection Volume," it states:

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[2] Metropolitan North Georgia Water Planning District. 2004. Model Stormwater Management Ordinances. http://www.northgeorgiawater.com

[3] Keith W. Robinson, Sarah M. Flanagan, Joseph D. Ayotte, Kimberly W. Campo, Ann Chalmers, James F. Coles, and Thomas F. Cuffney. 2004. Water Quality in the New England Coastal Basins Maine, New Hampshire, Massachusetts, and Rhode Island, 1999–2001. U.S. Geological Survey Circular 1226. http://pubs.usgs.gov/circ/2004/1226/

> “When addressing the overbank flooding design criteria, the following represent the minimum basis for design:
>
> > “The standard for characterizing pre development hydrologic land use for non-forested vegetated areas (including agriculture) **shall be meadow** in good hydrologic condition."

Such goals are more conservative than that proposed and more likely to achieve Clean Water Act biodiversity goals.

In its November 2004 report (page 8), the ESDA EAG, as part of the Water Quantity Performance Goals, recommended the six performance goals for water quantity. Among them was:

> “Maintain where adequate or improve where inadequate the existing groundwater regime.”

The Agency needs to determine how this goal will be met, how the present hydrologic regime is inadequate to meet TMDL and antidegradation goals, and how it can be improved through mechanisms such as this stormwater permit. We encourage the agency to work with others, such as its biologists, ODNR and the U.S. Geological Survey, to determine what groundwater recharge is adequate to permanently protect high quality biological diversity.

Margin of safety - The groundwater recharge rates should have a margin of safety, and that margin should be appropriate for protecting Outstanding State Waters. Again, adaptive management must be applied.

Page 24, III.G.2.g. Stormwater release rates

Release rates must protect downstream channel integrity - The Agency should clarify how the proposed stormwater BMP release rates improve upon stream protection required for other Phase II stormwater permits in the rest of Ohio. The release rates must prevent unstable channels, and protect stream integrity and biological diversity. They should meet the November 2004 goal of the ESDA EAG report recommendations for channel stability (http://utilities.ci.columbus.oh.us/ project/docs/FinalReport.doc).

We greatly appreciate the portion of the draft permit on Page 25 which states "the post construction BMP(s) chosen must be able to detain storm water runoff for protection of the stream channels, stream erosion control, and improved water quality." All must be adequate to ensure Clean Water Act attainment (use designation and antidegradation) and protection of sensitive species.

Please provide an explanation of how these requirements in Table 5 protect streams at these levels.

Page 24, III.G.2.g Temperature impacts of stormwater BMPs

Stormwater management, such as that included in this section, typically increases water temperatures, which is detrimental to aquatic life. This problem needs to be addressed in the draft permit and TMDL. The “new characteristics of these permits” (general permits for stormwater) discussed in this section need to address temperatures, and ensure that stormwater temperatures are not damaging.

Because of the existence of many pollutants of unknown individual effects, stormwater discharge water quality requirements must be based not only on individual parameter goals, but also on cumulative and synergistic effects.

For an example partially addressing temperature, see the 2000 Maryland Stormwater Design Manual (http://www.mde.state.md.us) Chapter 3, page 3.1:

> "2) In USE III watersheds, temperature increases caused by development are a primary impact to the quality of receiving waters. Stormwater BMPs may contribute to this problem. Therefore, to minimize temperature increases caused by new development in USE III watersheds, stormwater BMP designs should:
> a) Minimize permanent pools,
> b) Limit extended detention times for Cp_v to 12 hours (see Appendix D.11),
> c) Provide shading for pools and channels,
> d) Maintain existing forested buffers, and
> e) Bypass available baseflow and/or springflow."

Page 24, Part III.G.2.g. Post-Construction Storm Water Management Requirements

Page 24 - Homeowners associations - In paragraph 2, homeowner associations are suggested as post-construction operators responsible for maintenance upon completion of construction. Ohio EPA should require other parties to maintain these operations, as few, if any, homeowners associations are capable of the maintaining the necessary expertise and funds, nor are they permanent entities.

Page 24 - Innovation or experimental post-construction storm water management technologies – While the use of these technologies should be encouraged, they must:

1. be reviewed by Ohio EPA under a strict review procedure established by the Agency prior to issuance of any permits;
2. be guaranteed to perform adequately;

3. assume conservative performance (less effective performance in reality than what might be theoretically estimated);
4. recognize declining performance over time; and
5. be required to include an adequate margin of safety;

Page 25 - Large Construction Activities – This paragraph appears to address the need to ensure channel stability (i.e., "protection of the stream channels"), but does not clearly establish what constitutes such protection. The Ohio EPA should establish release or discharge rates that are appropriate to ensure downstream channel stability.

Page 26, Table 5, Regression Constant … Draw Down Time

All BMPs in Table 5 should be encouraged to maximize groundwater recharge through infiltration. The Agency should clarify how this is established. In some cases, limited infiltration seems to be encouraged, such as in the case of constructed wetlands, where drain times are only 24 hours. Because groundwater recharge is so critical, these BMPs should be required to be designed for maximize infiltration.

If retention times are about the same as that required in Ohio EPA's standard stormwater permit, how does this encourage the necessary infiltration?

Temperature impacts - Stormwater management typically increases water temperatures, which is detrimental to aquatic life. This problem needs to be addressed in the stormwater permit and final TMDL. The "new characteristics of these permits" (general permits for stormwater) discussed in Section 5.2.2 of the draft TMDL of May 2005 needs to address minimizing temperature increases, and ensure that stormwater temperatures are not damaging.

Page 26, Part III.G.2.g. Alternative structural post-construction BMPs

"The permittee may request approval from Ohio EPA to use alternative structural post-construction BMPs" – Prior to any of these alternatives being approved, Ohio EPA should establish a protocol for this review, establishing when an alternative adequately meets this effectiveness goal.

"shall be exempt…if…part of a larger common plan … or … addressed in a regional or local stormwater management plan" – This exemption should not be granted when any stream is at risk from damage because it was not adequately protected under a regional or local plan. Such plans could leave certain streams or sections of stream inadequately protected.

Page 29, Part III.G.2.k. – Inspection record

"The permittee shall maintain for three years" – At the end of this period, the permittee also should be required to provide this record to Ohio EPA.

General comments on stormwater BMPs

Care must be taken to ensure that BMPs are designed to meet the performance standards and achieve adequate groundwater recharge and BMP discharge goals. For example, many design specifications for bioretention areas assume that the practice is for water quality treatment, not infiltration. However, other specifications for the BMP are designed to provide both services. Ohio EPA must establish adequate design specifications, and ensure developments use specifications that, although similar, may not effectively meet the performance standards.

As an example of how this might be addressed, Ohio EPA is encouraged to review the best and most relevant engineering specifications in the Design Manual for Infiltration and Evapotranspiration Stormwater Best Management Practices for the Etowah Habitat Conservation Plan in North Georgia.

Calculation of imperviousness – Lawns and other "unpaved" land surfaces in developed areas often are artificially drained at a rate greater than prior to development. The land is often regarded to encourage faster runoff, an, importantly, compacted by heavy equipment, which is compounded by poor soil quality with little organic content. Therefore, runoff is greater and groundwater recharge is less than what might be theoretically predicted. Therefore, Ohio EPA should build conservative estimates into any impervious surface calculations, and estimate runoff from areas such as lawns conservatively, assuming they do <u>not</u> optimize groundwater recharge.

Monitoring

Monitoring – While monitoring is not a substitute for adequate stormwater management and conservation, it is necessary to help determine impacts. As a result of urban development, Ohio already has observed significant reductions in biological diversity both statewide and locally, such as in the Hellbranch Run (see attachment referring to mussels). Monitoring already tells us that we must immediately institute much more protective measures, and restore such already damaged streams. Regardless, more monitoring is warranted. Under the TMDL program, Ohio EPA has not proposed another round of comprehensive monitoring in the Big Darby watershed until the year 2021. This will be far too late to address development impacts, and therefore monitoring specifically addressing development impacts must be immediately instituted.

Ohio EPA has not conducted significant biological monitoring in the watershed since 2001. Therefore, Ohio EPA should initiate stormwater BMP effectiveness monitoring,

and stream quality trend monitoring, among other types or monitoring, as soon as possible. Such efforts are encouraged by U.S. EAP in their guidance, “National Management Measures to Control Nonpoint Source Pollution from Urban Areas Management Measure 12: Evaluate Program Effectiveness,” November 2005, http://www.epa.gov/owow/nps/urbanmm/index.html.

THE OHIO STATE UNIVERSITY

Division of Bivalve Mollusks
Museum of Biological Diversity
College of Biological Sciences

1315 Kinnear Road
Columbus, OH 43212-1192
Phone 614-292-8560

25 March 2002

Received
MAR 2 6 2002

Mr. Gary Moore
The Nature Chapter, Ohio Chapter
6375 Riverside Dr.
Suite 50
Dublin, OH 43017

Gary:

Some time back you asked me to comment on the freshwater mussels of Hellbranch Run in the Big Darby Creek system. I apologize for the delay.

Hellbranch Run is one of the larger tributaries of the Big Darby mainstem. It is important for several reasons. For whatever reason, it is (or was) home to a rare Ohio mussel, the Pondhorn (*Uniomerus tetralasmus*). Although Darby has a disproportionate number of rare mussels for its size, this species is known only from Hellbranch Run. Based upon over 1,200 lots in the Museum, I can say that there is no evidence that it ever occurred anywhere else in the watershed in recent times. It is considered Threatened by the Ohio Division of Wildlife.

Hellbranch Run has 15 mussel species recorded from it, over a third of all species found in the entire watershed. This is more species than is found in all of Europe. Some of these mussels are quite uncommon to rare throughout the state; most are highly intolerant of habitat modifications and declining water quality. Unfortunately, many of these 15 species appear to have been lost from Hellbranch Run just within the past decade or two. A list of the species recorded from Hellbranch Run is attached.

Beyond the mussel fauna found within it, Hellbranch Run has a direct impact on the health of Big Darby and its mussels beyond its borders. Hellbranch Run empties into Big Darby Creek at the upper end of the range of the Northern Riffleshell, a federal and state endangered mussel. This mussel occurs in no more than a handful of sites in the world.

By any barometer of riverine health it is clear that Hellbranch Run has been dramatically degraded. Habitat loss, contaminants, urban sprawl, and a host of related insults have assailed Hellbranch Run. There is no doubt that the run has not only lost much of its mussel fauna, but that it is deleteriously affecting mussels (and other biota) downstream in Big Darby itself.

Sincerely,

G. Thomas Watters, PhD
Watters.1@osu.edu

THE OHIO STATE UNIVERSITY
MUSEUM OF BIOLOGICAL DIVERSITY
DIVISION OF MOLLUSCS

SPECIES LIST BY WATER BODY

Date Created: Monday 25 March 2002

By:

Species list for: HELLBRANCH RUN [--> Big Darby Cr. --> Scioto R.

fingernail clam

Sphaerium	*striatinum*		(Lamarck, 1818).
Alasmidonta	*viridis*		(Rafinesque, 1820).
Anodontoides	*ferussacianus*		(Lea, 1834).
Fusconaia	*flava*		(Rafinesque, 1820).
Lampsilis	*fasciola*		(Rafinesque, 1820).
Lampsilis	*radiata*	*luteola*	(Lamarck, 1819).
Lampsilis	*ventricosa*		(Barnes, 1823).
Lasmigona	*complanata*	*complanata*	(Barnes, 1823).
Lasmigona	*compressa*		(Lea, 1829).
Lasmigona	*costata*		(Rafinesque, 1820).
Ptychobranchus	*fasciolaris*		(Rafinesque, 1820).
Pyganodon	*grandis*	*grandis*	(Say, 1829).
Strophitus	*undulatus*	*undulatus*	(Say, 1817).
Toxolasma	*parvus*		(Barnes, 1823).
Uniomerus	*tetralasmus*		(Say, 1831).
Utterbackia	*imbecillis*		(Say, 1829).

The Nature Conservancy
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The Nature Conservancy
Ohio Chapter
6375 Riverside Drive, Suite 50
Dublin, OH 43017

tel [614] 717.2770
fax [614] 717.2777
nature.org/ohio

March 16, 2006

Re: General permit for Discharges of Storm Water, Big Darby Creek Watershed - Additional comments

Jason Fyffe
Division of Surface Water
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Fyffe:

The following are additional comments on the Ohio EPA's draft stormwater permit for the Big Darby Creek watershed, issued for public notice December 30, 2005. We also submitted other written comments dated February 8, 2006.

Biological importance of the Big Darby Creek watershed

Ohio EPA is well aware of the biological importance of the aquatic species richness in the Big Darby Creek watershed. To supplement your information, we are providing the attached letter of December 9, 2005, which The Nature Conservancy provided to Kevin Wheeler of the City of Columbus for use by the Big Darby Accord, regarding use of a biological analysis of watershed species by The Nature Conservancy. We emphasize the species richness of these streams, especially for rare species, and are providing maps of species richness prepared in 2005 by our aquatic ecologist, Jason Taylor. Many high quality, species-rich sections of these streams would be affected by stormwater runoff from any future development and therefore depend on the success of this stormwater permit. We encourage your further review of protection needs for rare and declining species in these areas using this and other information. We feel this information should make clear the need to protect the streams in the middle and lower reaches of the watershed.

Page 7, Part II, A. Deadlines for notification.

We support the requirement for providing an NOI 45 days before commencement of activity. We hope this will allow the agency sufficient review time. We ask that the public be able to review any NOI or SWP3 during this time.

Recycled Paper

Page 11, Part III, F. TMDL allocations

We support the reference to TMDLs, provided the TMDL is adequately protective. The permit should specifically state there must be required changes to SWP3 permits to meet future TMDL allocations.

Page 11, G. SWP3 Requirements, 1. Site description, h

The current conditions of receiving water bodies should be included in the site description. This should at least include use designations, 303(d) listings, TMDLs, and antidegradation designations. This will make environmental goals more clear, and determine if the applicant understands applicable requirements.

Page 14, Part III.G.2. Controls, a. Non-structural preservation methods

The Agency should include an incentive to not grade the entire area. Perhaps this could be included in calculations for stormwater management. The permit should encourage Low Impact Development site plans and use of such BMPs where they could be shown to be permanently effective (not subject to later undoing by subsequent property managers).

Page 16, Part III.G.2.b.iii. Riparian Setback Mitigation

Ohio EPA should clarify when "sufficient effort" is made to avoid mitigation before the applicant argues for using this methodology. There should be criteria regarding when intrusion into the setback zone is "necessary to accomplish the purposes of a project."

Page 21, Part III.G.2.f.b. Sediment Control Practices/Settling Ponds
If the performance standard of 45mg/l TSS is not met, can the Agency require better control practices in less than 10 days? This might be appropriate to avoid further degradation from BMP failure.

Page 24, Part III.G.2.g Post-Construction Storm Water Management Requirements

Concerning the post-construction "maintenance agreement," the agency should clearly specify who is to be held responsible.

Thank you very much for the Agency's outstanding effort to produce this draft permit. As we have said before, based on our years of experience working with these issues in this watershed, more protective measures are necessary to protect this outstanding Ohio natural resource. Please call me at 614-717-2770 X 23 if there are any questions.

Sincerely,

Anthony Sasson

Ohio Chapter, Freshwater Conservation Coordinator

Attachment

The Nature Conservancy
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The Nature Conservancy
Ohio Chapter
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Dublin, OH 43017

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fax [614] 717.2777

nature.org/ohio

December 9, 2005

Kevin Wheeler
Department of Development
Planning Division
City of Columbus
109 N Front St.
Columbus, Ohio 43215

Re: Biological data for the Big Darby Accord

Dear Kevin:

These comments are submitted with the intent of encouraging the Big Darby Accord to use more extensive biological information than we have previously seen in the public documents created for the Accord.

We heard at the December 7 ELO meeting that the Accord consultants had the Big Darby watershed mussel data from OSU's Dr. Tom Watters. (I assume they meant the electronic database, at least.) **The Nature Conservancy has compiled additional, more comprehensive information on fish and mussel species richness and occurrences, including electronic data and mapping, and asks that the Accord include more analyses for this very relevant and critical area.**

As The Nature Conservancy stated in our October 26 comments to the Accord, it appears that Big Darby Accord mapping relies on Natural Heritage data, which under-represents locations of rare and sensitive species. As the Conservancy also stated in August comments to the Accord, **we are able to supply extensive biological information for the Big Darby watershed,** with particular attention to the Big Darby and Little Darby Creek mainstems, with more comprehensive information than other readily available sources. This could enhance the biological mapping and other analysis of the Accord, and should more extensively show biological resources, specifically species richness and protection status (endangered, threatened, special concern). This information helps address the basic need for the Accord, the protection of this biodiversity. The Conservancy's aquatic ecologist, Jason Taylor (740-380-6796, jtaylor@tnc.org), is available to discuss the data and provide maps.

To provide some further information, I am attaching maps of species richness, listed below, along with some explanation of how the data was gathered, TNC's target species were selected, and indices and maps were created.

Recycled Paper

Further information, including GIS layers, and explanation will be provided by Jason Taylor. He may be contacted at 740-380-6796, jtaylor@tnc.org.

Thank you very much for you efforts in managing the partners in the Accord. The Nature Conservancy is willing to meet with the Accord's government representatives or the consultants concerning the content and interpretation of this information. We hope this additional information will be used to supplement the Accord efforts and help demonstrate the value of this outstanding natural resource.

Sincerely,

Anthony Sasson

Anthony Sasson

Freshwater Conservation Coordinator
Ohio Chapter

cc: Jason Taylor, TNC
Erin Sherer, Ohio EPA, DSW
Mike Gallaway, Ohio EPA, CDO
Chris Hermann, MSI

Attachment 1 - Maps

Map # and subject

3 Aquatic ecological system types for the Big Darby Creek watershed
4 Mussel richness, small river system, Big Darby
5 Target mussel occurrence, weighted target species index, small river system, Big Darby
6 Fish Richness, small river system, Big Darby
7 Target fish occurrence, weighted target species index, small river system, Big Darby
9 Mussel richness, medium sized stream system, Big Darby
10 Target mussel occurrence, weighted target species index, Big Darby
11 Fish richness, medium sized stream system, Big Darby
12 Target fish occurrence, weighted target species index, Big Darby

Attachment 2

Some explanation from TNC aquatic ecologist Jason Taylor regarding available Big Darby Creek watershed biological data, TNC's target species selection, indices and maps

Data development. Several sources of data were used to analyze patterns of richness and rare species for two important components of freshwater biodiversity, mussels and fish. Mussel data representing collection records from 1983 – 2003 were obtained from the Ohio State University Museum of Biological Diversity, Mollusk division. The mussel dataset was supplemented with several thousand additional records from Mr. John Tetzloff. Fish data representing collection records from 1981–2001 was obtained from the Ohio Environmental Protection Agency and was supplemented with additional records from Mr. Howard T. Albin (Aquatic Ecologist for Columbus MetroParks). Using ARCVIEW 3.3 (Redlands, CA), information for all collection locations was assigned an RF3 stream reach identification number. This allowed for all data to be combined for analysis of patterns of richness and rare species across reaches.

Target Species Index. To analyze patterns of rare species distributions within the aquatic ecological systems a simple index was developed. A list of target species (Table 1) was developed based on ODNR information, ecoregional target species lists developed by The Nature Conservancy, and expert consultation (Dr. Ted Cavender, OSU). Species rarity was determined based on Natural Heritage state rankings (Natureserve) or in some cases ODNR's state listing if species had not been ranked by Natural Heritage. Data on presence of target species and their corresponding rarity was summarized for each reach based on the following equation:

Weighted Target Species Index = Σ target species (1 / Srank)

where S1 = 1, S2 = 4 and S3 = 20.

For example, a reach with two S1 species, an S2 species and three S3 species would have a weighted target species index score of 2.35.

Analyzing patterns of biodiversity and reserve selection. Within each aquatic ecological system type, patterns of species richness and the target species index were analyzed visually in a Geographic Information System (GIS). Thresholds were set for separating reaches into five distinct categories of richness and the target species index using the Jenk's Natural Breaks method.

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Figure 3:
Aquatic ecological system types for the Big Darby Creek Watershed.

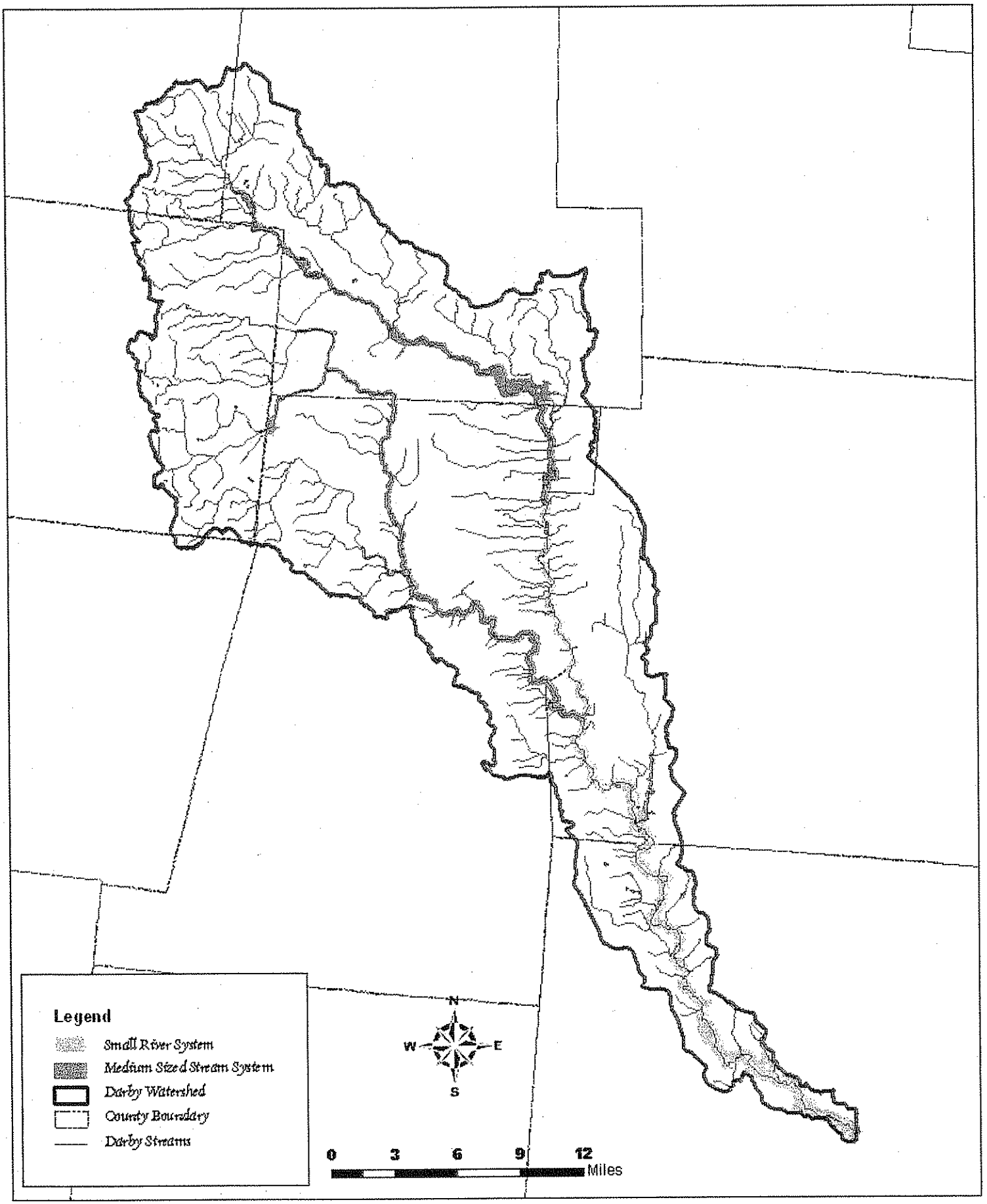

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Figure 4:
Patterns of reach level mussel richness within the small river and associated floodplain system of Big Darby Creek

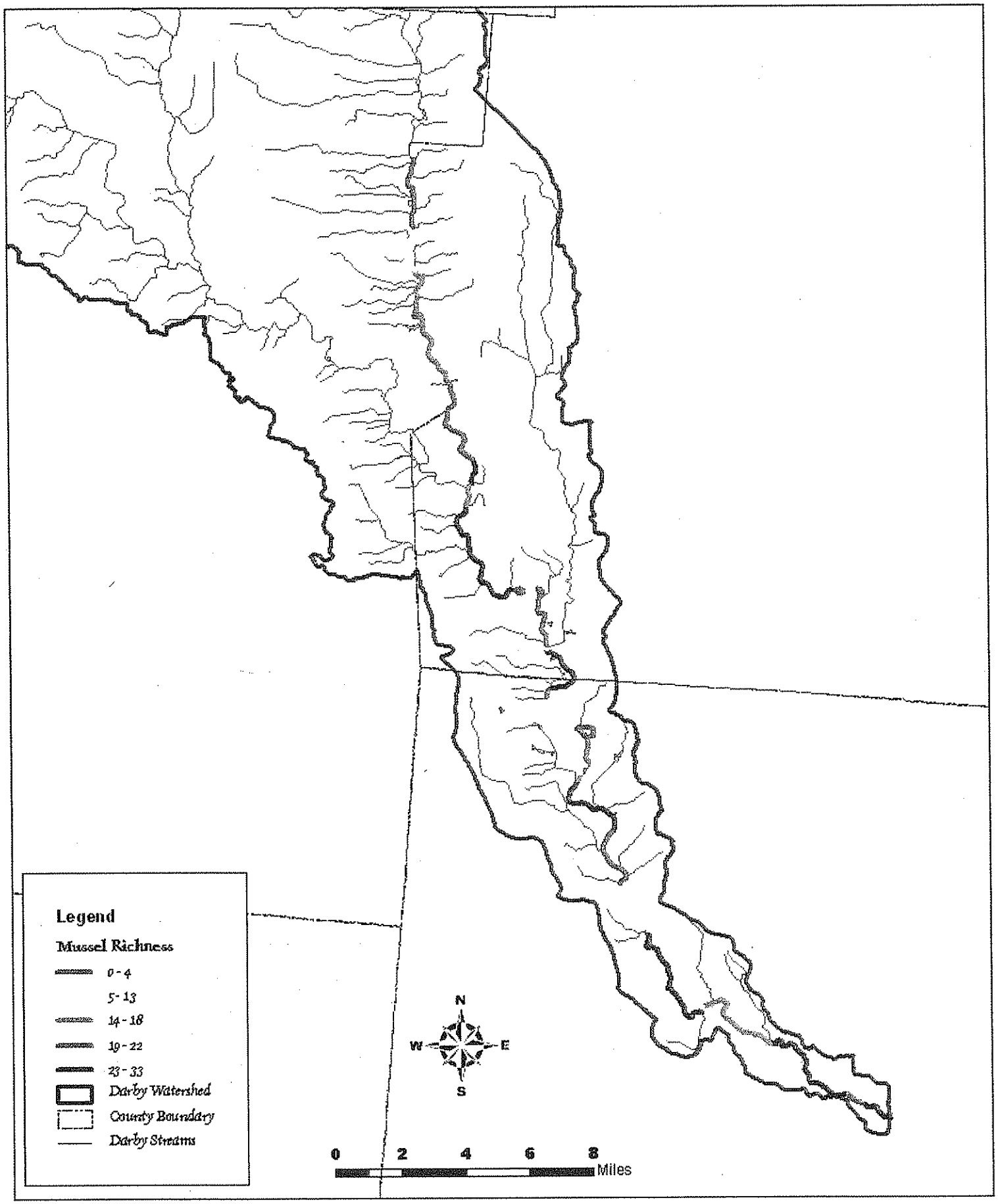

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Figure 5:
Patterns of target mussel occurance measured by the weighted target species index within the small river and associated floodplain system of Big Darby Creek

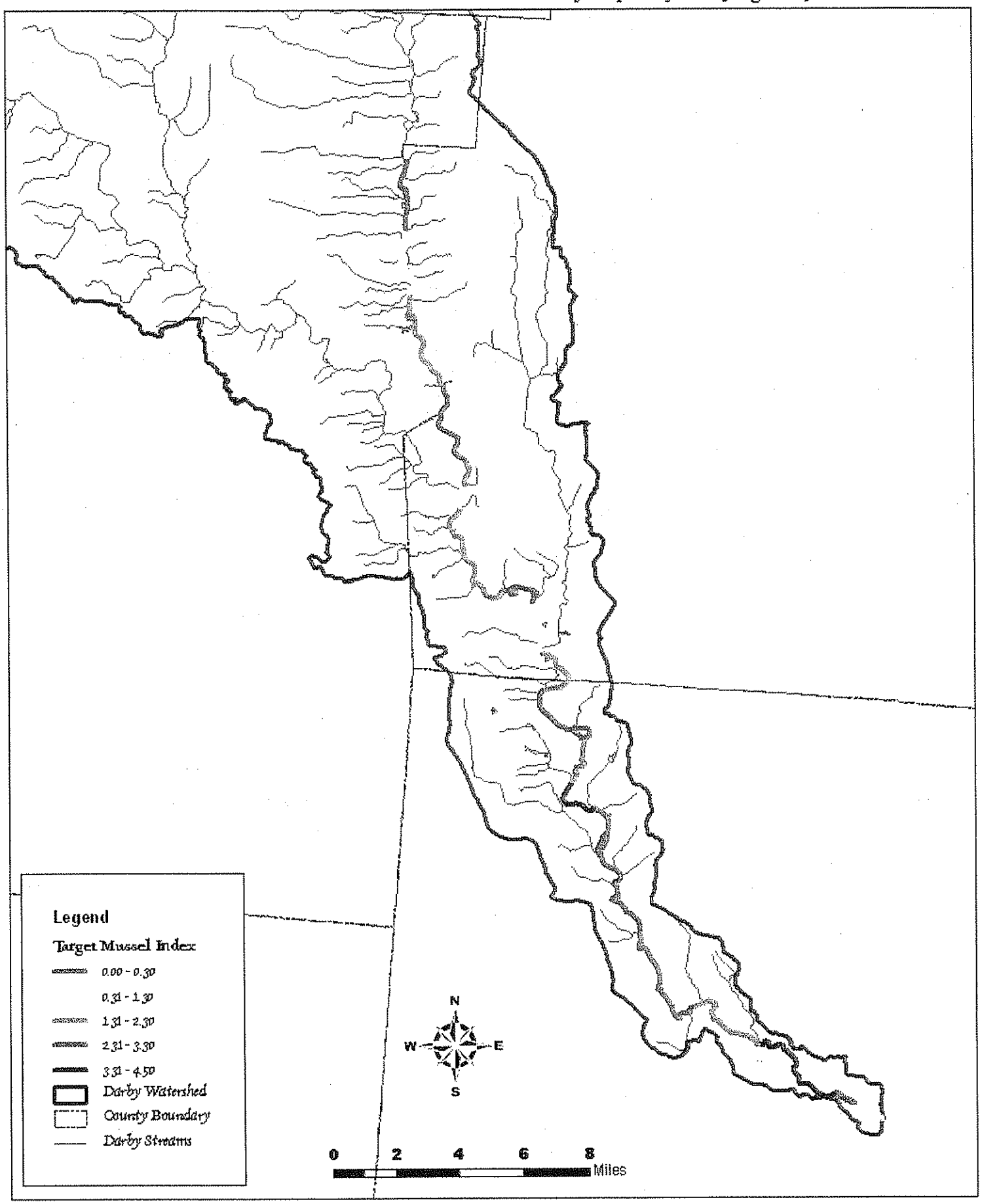

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Figure 6:
Patterns of reach level fish richness within the small river and associated floodplain system of Big Darby Creek

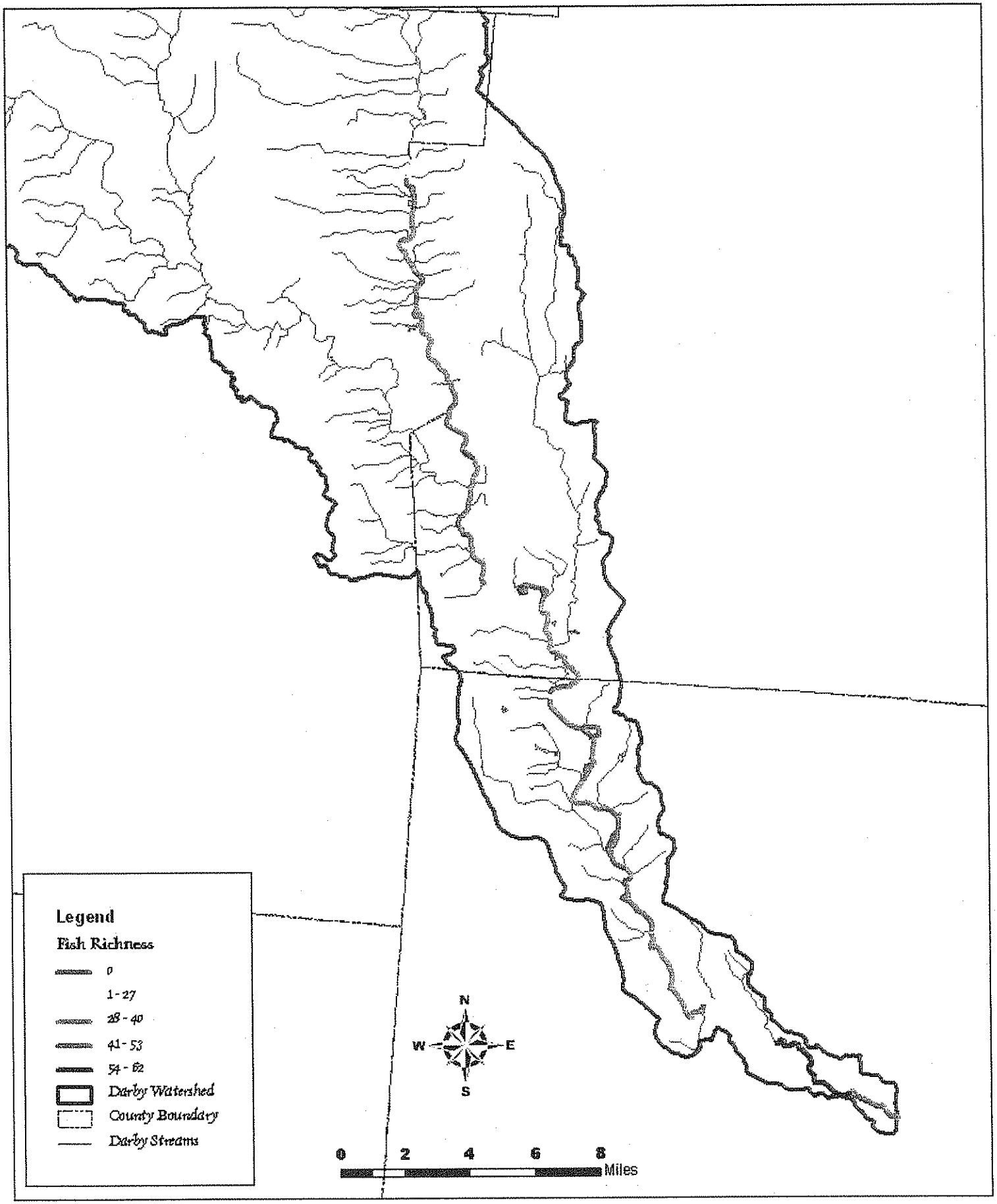

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Figure 7:
Patterns of target fish occurance measured by the weighted target species index within the small river and associated floodplain system of Big Darby Creek

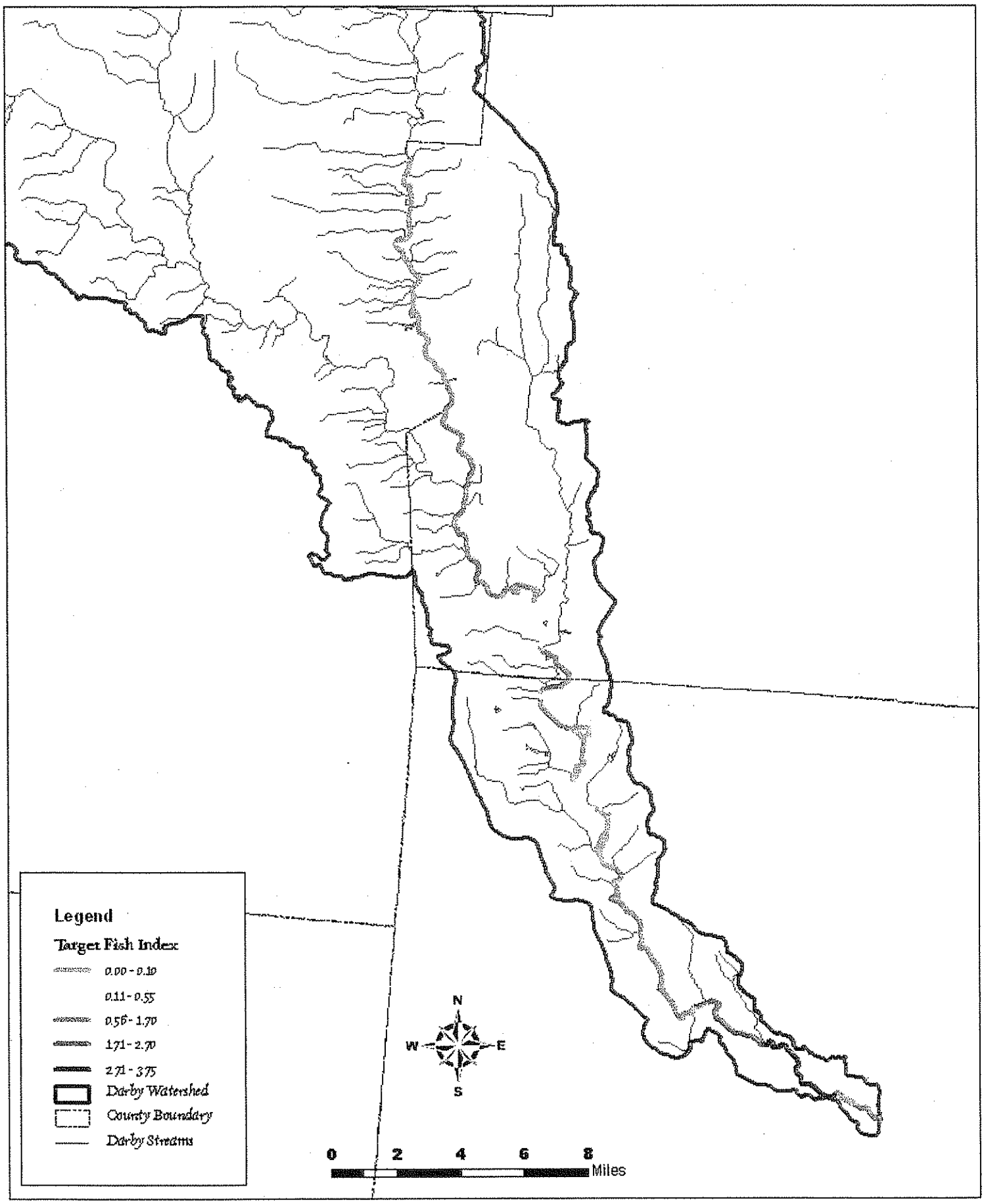

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Figure 9:
Patterns of reach level mussel richness within the medium sized stream and associated floodplain system of Big Darby Creek

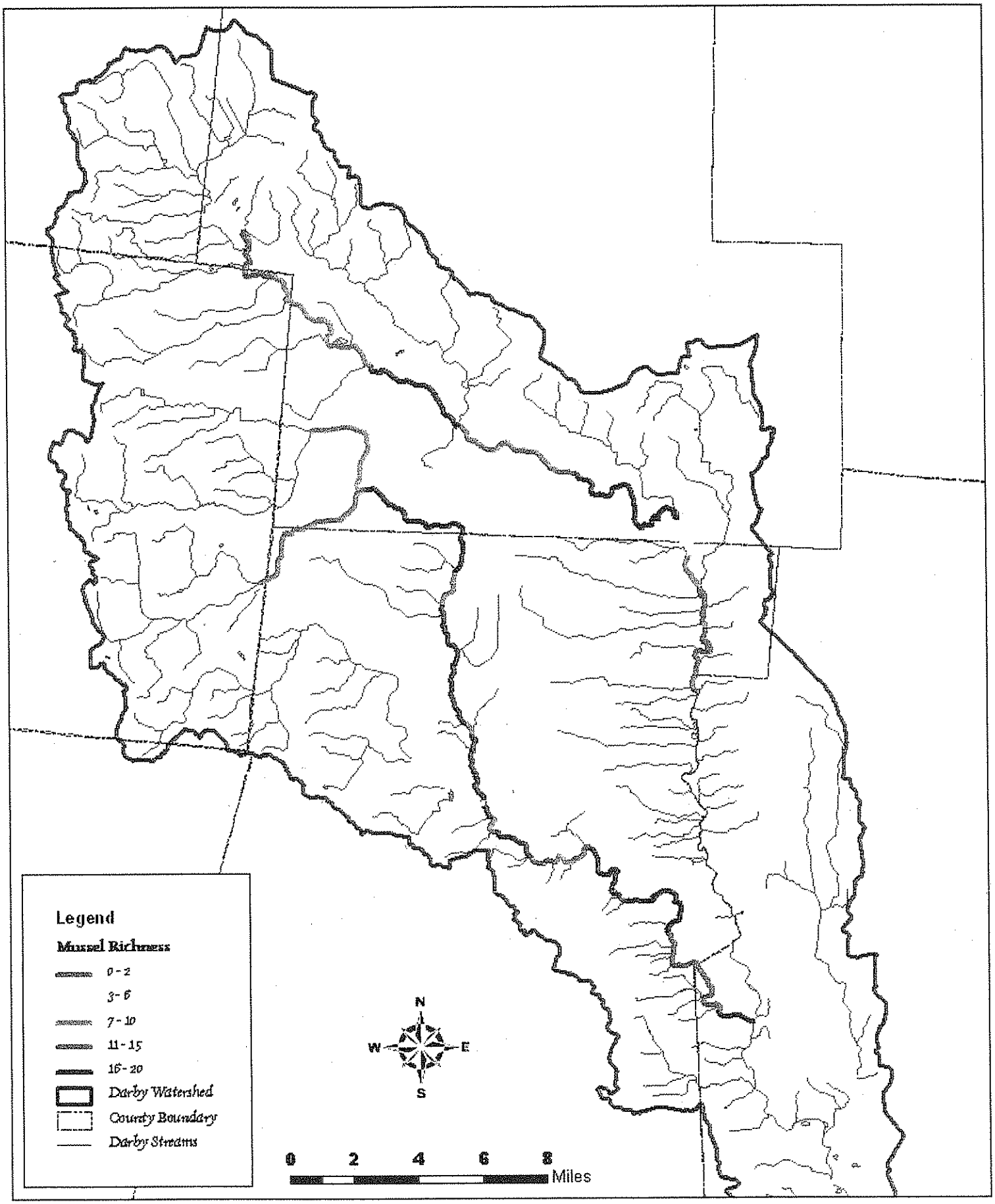

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Figure 10:
Patterns of target mussel occurance measured by the weighted target species index within the medium sized stream and associated floodplain system of Big Darby Creek

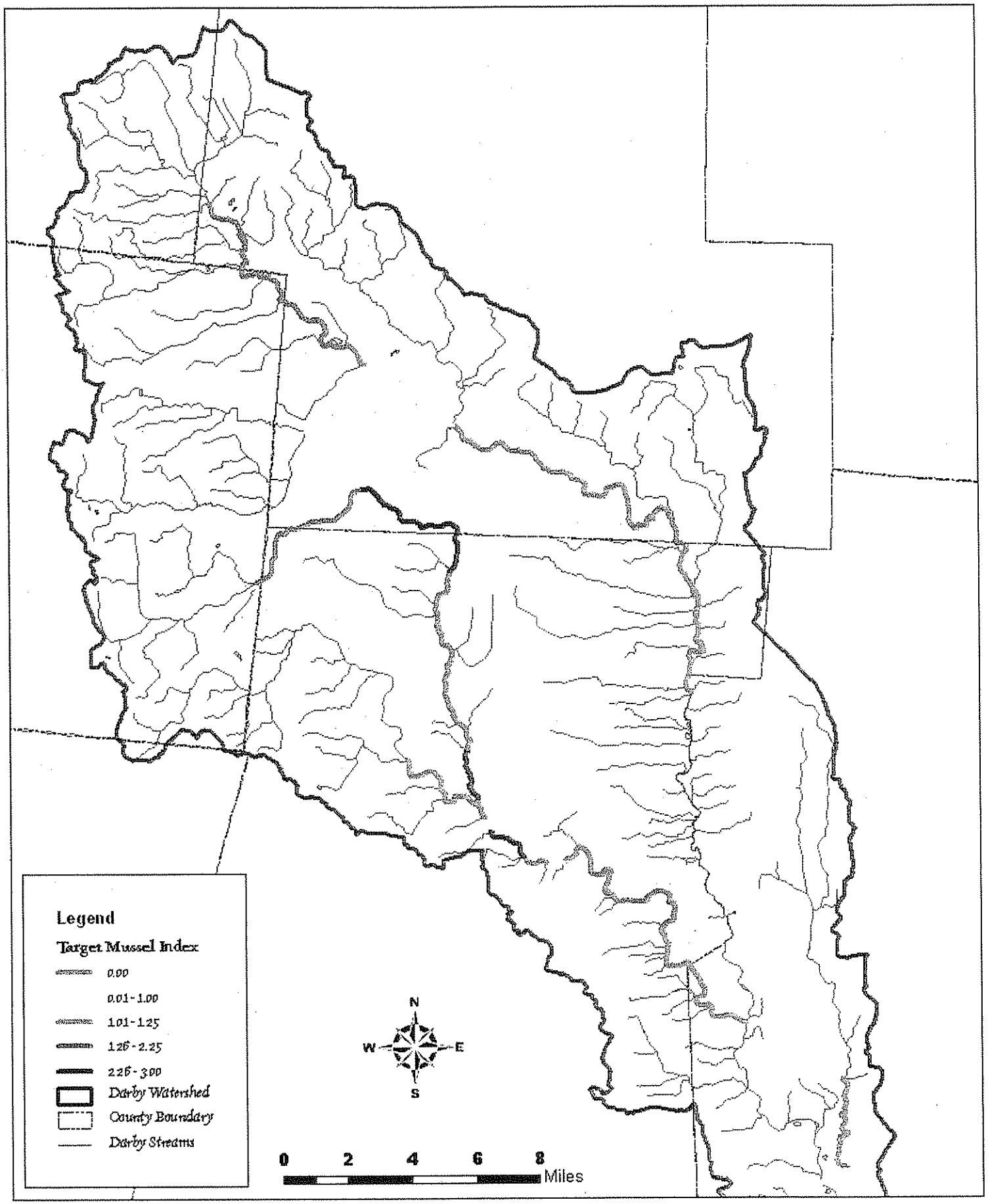

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Figure 11:
Patterns of reach level fish richness within the medium sized stream and associated floodplain system of Big Darby Creek

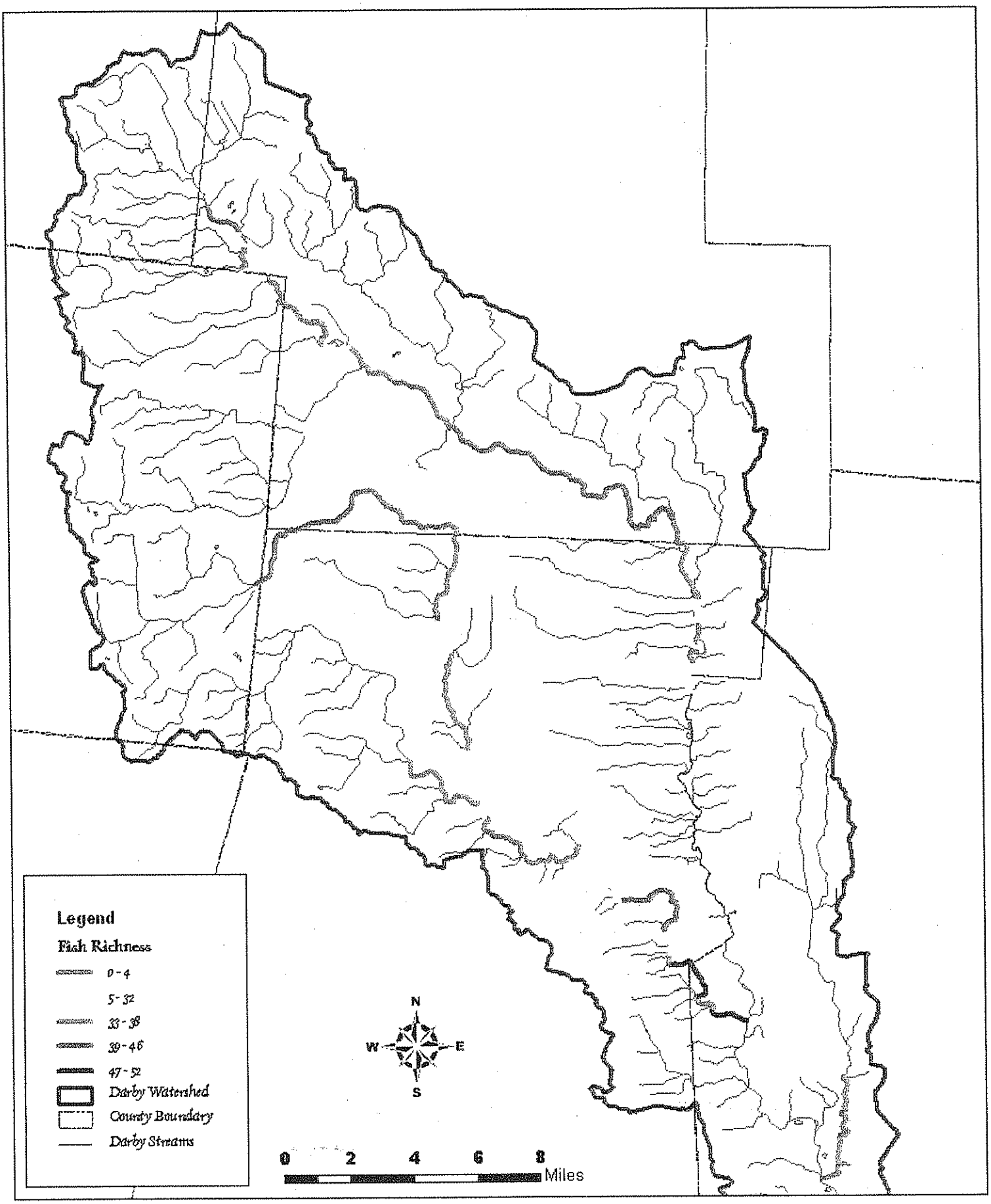

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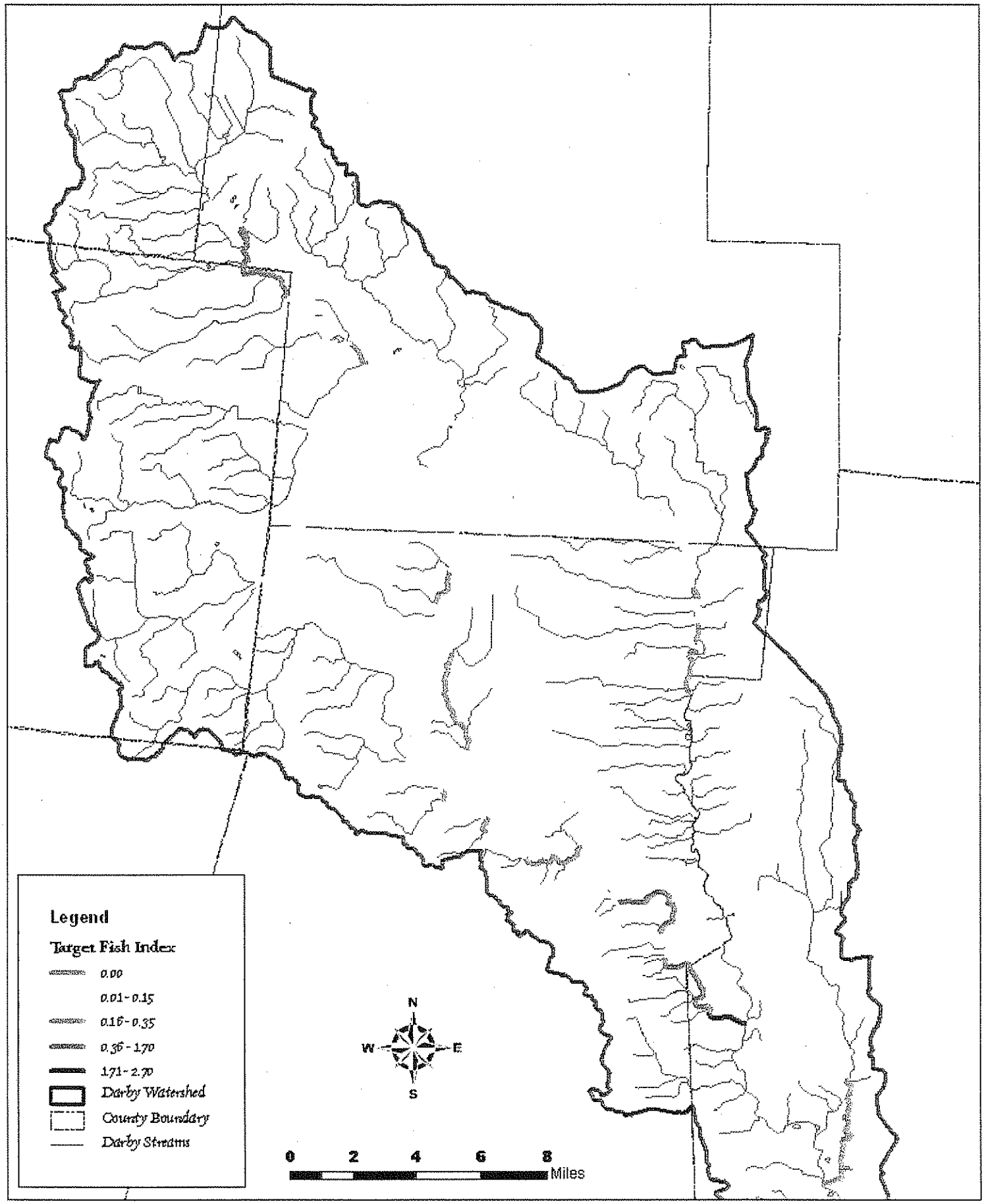
Figure 12:
Patterns of target fish occurance measured by the weighted target species index within the medium sized stream and associated floodplain system of Big Darby Creek



From: "Anthony Sasson" <asasson@tnc.org>
To: "Dan Dudley" <dan.dudley@epa.state.oh.us>
Date: Fri, Apr 21, 2006 12:01 PM
Subject: Comments on 208 plan, Big Darby Creek watershed

April 21, 2006

Dan:

Attached are The Nature Conservancy, Ohio Chapter's comments to Director Koncelik on the draft Ohio EPA 208 plan, Appendix 9-3, 208 Plan Prescriptions for Water Quality Protection within the Big Darby Creek Watershed, February 2006. The signed, hard copy original is in the mail to Director Koncelik. Also attached are previous related comments on the draft Big Darby Creek watershed stormwater permit and comments to Kevin Wheeler (City of Columbus, for the Big Darby Accord) related to biological richness and diversity found in the Big Darby and Little Darby Creeks. This last item is an important factor. In the 208 plan and other actions, we strongly encourage the Agency to consider for further analysis and protection measures, as it distinguishes the Big Darby watershed from most other Ohio streams.

Thank you for the extensive efforts you and other Agency representatives have dedicated to this effort to date. They are warranted and appreciated. We look forward to further refinements and the protection of this outstanding natural resource for future generations.

Sincerely,

Anthony Sasson

Freshwater Conservation Coordinator
The Nature Conservancy, Ohio Chapter
6375 Riverside Dr., Suite 50
Dublin, OH 43017
614-717-2770 X 23
fax - 614-717-2777
asasson@tnc.org
http://nature.org
http://bigdarby.org
http://nature.org/wherewework/northamerica/states/ohio/preserves/art165.html

CC: "Rich Shank" <rshank@tnc.org>, "Joe Koncelik" <joe.koncelik@epa.state.oh.us>, "Mike Gallaway" <mike.gallaway@epa.state.oh.us>

(42)

VAN KLEY & WALKER, LLC

132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235

FAX COVER SHEET

No. of pages including Cover Sheet: 17 April 20, 2006

To: Dan Dudley Fax: (614) 644-2745	From: Jack A. Van Kley Phone: (614) 431-8900 Fax: (614) 431-8905

Dan, here are comments on the 208 Plan for Darby Creek. Regards, Jack

****IF YOU DO NOT RECEIVE ALL PAGES,
PLEASE CALL (614) 431-8903 AS SOON AS POSSIBLE*****

THIS TRANSMITTAL IS CONFIDENTIAL AND INTENDED ONLY FOR THE PERSON TO WHOM IT IS ADDRESSED. IF YOU ARE NEITHER THE INTENDED RECIPIENT NOR A PERSON RESPONSIBLE FOR DELIVERING THIS TRANSMITTAL TO THE INTENDED RECIPIENT, YOU ARE ADVISED THAT ANY DISTRIBUTION OR COPYING OF THIS TRANSMITTAL IS PROHIBITED. PLEASE DO NOT READ THIS COMMUNICATION OR SHOW IT TO ANY OTHER PERSON. IF YOU RECEIVED THIS TRANSMITTAL IN ERROR, PLEASE NOTIFY US IMMEDIATELY.

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April 20, 2006

Dan Dudley
Ohio Environmental Protection Agency
Division of Surface Water
122 South Front Street
Lazarus Government Plaza
Columbus, OH 43216-1049

Re: Comments on Ohio EPA Proposed 208 Plan for the Big Darby Creek Watershed, Permit No. OHC100001

Dear Dan:

I am submitting these comments on the above-referenced 208 Plan on behalf of 36 landowners in the Big Darby Creek watershed. These landowners are as follows:

Janet Anderson
Jeff & Melissa Bennett
Bill & Dianne Bradford
Melinda Bradford
Derek Edwards
Lee & Kim Edwards
Glenn Elfrink
Jack Goldhardt
Ellie Jerman
Harold Jerman
Erv Kuhlwein
Glenn & Anne Marzluf
Dale Pfeifer
Janet & Charles Pfeifer
Dottie & Cal Richeson
Rich & Heidi Richeson
Richard Schellhaas
Gene L. Smith

Julie Vargo
Julius Vargo
Mike Vargo
Ellen Whittle
John Whittle
Jeff & Rosalee Williams
Richard & Jutta Zwayer
Rick & Tracy Zwayer

These landowners will be injured by a number of provisions in this 208 Plan if issued in its present form. As owners of land near Big Darby Creek and its tributaries, as well as land along ditches flowing to these streams, they will be harmed by the plan's proposed controls over activities on their properties. In particular, Ohio EPA's proposed land use restrictions in the watershed are onerous and impracticable, and the agency lacks the authority to impose them. These restrictions will impair the landowners' ability to build farm buildings and other structures on their land, as well as deprive them of retirement funds by decreasing their property values. Ohio EPA's proposed restrictions on farming activities in criteria 8 of the plan will also impair the landowners' ability to farm their land.

Many of our reasons for objecting to the proposed plan are described in more detail in the letter from Scott Doran to you from the Homewood Corporation and others ("Homewood") commenting on this 208 Plan. Except where Homewood's comments may be inconsistent with our comments as outlined above, we incorporate Homewood's comments herein by reference. Because the 208 Plan incorporates provisions and concepts from the agency's proposed stormwater construction permit, we also incorporate by reference the attached Brown Township landowners' letter to Jason Fyffe and the Homewood comments on that proposed permit.

Truly yours,

Jack

Jack A. Van Kley

(43)

Vorys, Sater, Seymour and Pease LLP

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Lowry F. Sater 1867-1935
Augustus T. Seymour 1873-1926
Edward L. Pease 1873-1924

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Theodore A. Boggs
Direct Dial (614) 464-8319
Facsimile (614) 719-4631
E-Mail · taboggs@vssp.com

April 18, 2006

VIA HAND DELIVERY
Dan Dudley
Ohio EPA, Division of Surface Water
122 S. Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Oak Hills Mobile Home Park, LLC;
Pleasant Acres Mobile Home Park;
Comments on the Draft Update to the State Water Quality Management Plan and Central Scioto Plan Update

Dear Mr. Dudley:

On behalf of the Oak Hills Mobile Home Park, LLC and Pleasant Acres Mobile Home Park, we hereby submit comments on the Ohio EPA draft Update to the State Water Quality Management ("WQM") Plan and Central Scioto Plan Update ("208 Plan") (or, collectively, the "Plans"). The Mobile Home Parks ("MHPs") are located in southwestern Franklin County, near Darbydale, Ohio.

Both MHPs are served by their own private wastewater treatment plants permitted by Ohio EPA. Franklin County has begun to construct public sewers in the area. The residents of the MHPs are low income families. Negotiations are ongoing between the County and both MHPs to connect to the new sewer system; however, there are many complicated issues involved, including, but not limited to, feasibility of the connection and affordability of the residents.

Appendix 9-1 of the Plans contains criteria for determining when a public sewer is available. This determination arises when certain sewer authorities seek to force a direct discharger to connect to the public sewer. It is understandable that Ohio EPA would want to clarify under what circumstances Ohio EPA can require a connection; however, the State WQM Plan and 208 Plan are not the appropriate regulatory vehicles to do so. This debate should ideally occur in the General Assembly or at least as part of a proposed rulemaking.

Several sections of existing Ohio law address this same issue, including R.C. 6117.51, R.C. 6119.06(Z), OAC 3701-29-02(L) and draft ODH rule OAC 3701-29-07(G) and (H). In addition, under Ohio EPA's NPDES Generic Permit Condition rules, a semi-public disposal system is required to connect to a public owned treatment works when such a system becomes "available and accessible." OAC 3745-33-08(C). A semi-public disposal system is defined as a disposal system which treats sanitary sewage discharged from publicly or privately owned building or place of assemblage, entertainment, recreation, education correction, hospitalization, housing or employment, but does not include a disposal system which treats sewage in amounts greater than 25,000 gallons per day. OAC 3745-08-01(KK).

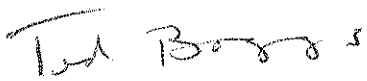
Ohio EPA has proposed in the Plans to require a connection when the pubic sewer easement is 200 feet from the nearest foundation point of the building or structure which will be served. Some of the existing laws cited above contain the "200 foot rule" for a required connection to a public sewer, but some do not. We request that Ohio EPA clarify whether the Agency is merely restating existing law or trying to create new authority by using the Plans to adopt new requirements. Ohio EPA's proposal goes well beyond incorporating the 200 foot rule by adding new substantive provisions for a required connection when the building is greater than 200 feet from the sewer line easement. It is inappropriate for Ohio EPA to include these new requirements into a 208 Plan or the State WQM Plan, or to try and use existing laws as their own authority.

Ohio EPA could define the term "available and accessible" as part of the Generic Permit Conditions rule, however, the rule does not apply to the larger systems with flows greater than 25,000 gallons per day, nor to non-semi public disposal systems. It is a good idea to have the term defined somewhere in the law, but Ohio EPA should not attempt to do so in water quality planning documents. The Agency should survey and review existing state laws governing the requirement to connect to a public sewer and approach the General Assembly to propose a statute addressing this issue, or propose a rule under the rulemaking procedures of R.C. Chapter 119.

Furthermore, Ohio EPA is not the appropriate agency to have this type of authority, as they do not own or operate public sewer systems. While the Agency is responsible for reviewing permit applications and issuing the permit, it should not possess any power or authority to require the connection. The required connection authority should be consistent throughout Ohio law, but such authority should be given only to the sewer agencies. Ohio EPA's State WQM Plan and 208 Plan should not attempt to create any new authority.

The Ohio EPA provisions go beyond the planning requirements under sections 208 and 303 of the Clean Water Act. These proposed requirements are very controversial and significantly affect rights of citizens as the Ohio EPA Director may not issue a permit (e.g., NPDES Permit for a Discharge or a sewer line extension Permit to Install [PTI]) which is in conflict with a 208 Plan. 33 USC 1208(e); R.C. 6111.03(J)(2)(J). The Ohio EPA provisions for sewer connection to a public sewer are functionally equivalent to Ohio EPA rules, regulations and standards. They have general and uniform operation and are "rules" as defined by R.C. §119.01(C). By not following the dictates of R.C. Chapter 119 the Director is intentionally circumventing the protections of the rulemaking procedures, including the mandatory review by the Ohio General Assembly Joint Committee on Agency Rule Review ("JCARR"). The Director should remove the public sewer connection requirements from the 208 Plan and State WQM Plan and seek a statutory amendment from the Ohio General Assembly, or propose them as rules following the procedures under Chapter 119 of the Ohio Revised Code.

Very truly yours,



Theodore A. Boggs

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April 21, 2006

Dan Dudley
Ohio Environmental Protection Agency
122 South Front Street
P. O. Box 1049
Columbus, OH 43216-1049

Re: Comments on the State Water Quality Management Plan (208 Plan)

Dear Mr. Dudley:

On behalf of MTB Corporation and the Weber Family LP ("Property Owners"), the following comments are provided on the draft State Water Quality Management Plan.

BACKGROUND AND GENERAL COMMENTS

The Property Owners collectively own in excess of 500 acres located in Brown Township in western Franklin County. Although the Property Owners are proponents of protecting water quality in the Big Darby Creek watershed and ensuring that development within this area will occur in a manner that will maintain present water quality use designations, they are gravely concerned by the prescriptions found in the proposed State Water Quality Management Plan ("208 Plan") that attempt to control land use and development within the Big Darby Creek Watershed. Ohio EPA is not the proper agency for implementing, reviewing or approving development standards, land use restrictions and/or zoning requirements. These authorities are entrusted by both the Ohio Constitution and the Ohio Revised Code to local governmental agencies including township, municipal and county governments. Stated quite simply, the burdensome and highly restrictive prescriptions placed on land use in the Big Darby Creek Watershed, particularly those that are unrelated to water quality, impermissibly, unlawfully and unconstitutionally, intrude upon the authority of local governments to direct and control local land use and planning. As such, the prescriptions found in Appendix 9-3, as well as the elements of the Central Scioto Plan Update approved by U.S. EPA in 2003 that restrict the availability of central sewer and land application systems in this area until local government authorities adopt development standards acceptable to Ohio EPA are unlawful and exceed the agency's authority. All of them should be removed from the 208 Plan.

As an initial matter, the draft 208 Plan, when considered in conjunction with the draft NPDES Stormwater Permit associated with Construction Activities within the Big Darby Creek Watershed, Permit No. OHC100001, ("Darby Stormwater Permit"), and the draft Biological and Water Quality Study of the Big Darby Creek Watershed, 2001-2002 (a.k.a. "Big Darby TMDL") present an unduly burdensome, complex and potentially inconsistent set of requirements for landowners. Further, since none of these initiatives have been adopted, the numerous cross-references in the documents create a potential "house of cards" that could collapse if any one of the initiatives is not adopted or does not survive legal challenge.

There is also no indication that the agency has considered the economic costs of these new requirements. Before creating complex and burdensome new regulatory requirements, the effectiveness of which to protect water quality has not been established, the agency must consider the economic impacts of its decision. As is the case in most permitting decisions, it is necessary for the agency to balance the competing interests that often accompany development. Due to the burdens imposed by these prescriptions and the failure of the agency to allow meaningful local flexibility, it does not appear that agency has made any effort to balance the rights of the landowners and local governments in the watershed with the need to protect water quality or considered the costs to both landowners and local governments attempting to comply with these requirements.

There are also several assumptions made in the prescriptions for the Big Darby Creek Watershed that are based on scientific concepts that are untested or inconsistent with Ohio EPA's own findings. This problem is only magnified by the agency's reliance on the recommendations of the External Advisory Group ("EAG"). Of the 34 members of the EAG identified on the City of Columbus website, only 1 represented landowners or development interests. Further, representatives of environmental groups outnumbered other members of the public on the EAG by more than 2 to 1. In fact, with the exception of local government representatives, environmental interests had the single largest number of representatives. There was not a single member of the EAG who represented the interests of landowners in the Big Darby Creek Watershed. It is therefore hardly surprising that the "consensus" recommendations of the EAG would result in overly burdensome requirements on development and, in instances where scientific evidence was lacking or contradictory, impose restrictions based upon ambiguous, vague, non-water quality based considerations -- such as "aesthetics" or "terrestrial wildlife." The composition of the EAG raises serious questions about whether any consideration was given to the rights of property owners within the watershed to develop their property in a manner which includes protection for water quality in the Big Darby Creek Watershed. The imposition of limitations on property use is a local issue that must be addressed locally. The 208 Plan is a water quality planning document and the agency is not authorized to consider and decide upon land use controls which create prohibitions upon property use, or which perpetuate a moratorium on development, when preparing the plan. Due to the composition of the EAG, and the apparent deference given to the recommendations of the EAG in the draft 208 Plan, the Property Owners request that Ohio EPA commission an <u>independent</u> review of the scientific basis for any prescription the agency plans to retain before the final adoption of the 208 Plan. Ohio EPA should not use internal resources for this review as several employees of Ohio EPA were

members of the EAG. Until the scientific basis for the prescriptions found in the draft 208 Plan are independently confirmed by a neutral expert, Ohio EPA should not include them in the 208 Plan. The agency should review applications for permits on a case-by-case basis in a manner consistent with Ohio EPA's general permitting authorities.

Ohio EPA's categorical refusal to issue Permit to Installs ("PTIs") for the extension of sanitary sewer lines until several conditions are met is unlawful. The agency's stated intent to link the issuance of PTIs to the adoption of local land use regulations is a *de facto* connection ban that violates Ohio Revised Code Chapters 119, 3745 and 6111. Such a categorical denial of PTIs without an application to review or the consideration of site specific facts constitutes an unlawful final action of the Director. As the Environmental Reviews and Appeals Commission has noted, the Director cannot impose a partial or complete connection ban through conditions placed on PTIs.[1] This argument is equally applicable to the draft 208 Plan in that the imposition of the connection ban on an otherwise adequately performing collection and treatment system which is subject to a valid NPDES permit is unlawful, particularly if it is done to support the agency's efforts to become a regional land use planning authority.

In addition, the "alternatives" proposed in the draft 208 Plan to local development standards are either vague or so uncertain that they do not offer a valid practical alternative to the mandatory implementation of Ohio EPA's development standards. According to the draft 208 Plan, Ohio EPA will not issue PTIs for sanitary sewer extensions until either: (1) appropriate local development standards have been implemented; (2) a local jurisdiction has demonstrated that its development standards are "as protective as" Ohio EPA's standards; (3) an applicant has submitted an application for an individual NPDES Stormwater Construction Permit with development standards that are "as protective as" as the draft 208 Plan prescriptions; or, (4) if local regulations are absent, and the Darby Stormwater Permit is adopted, Ohio EPA will consider individual applications for PTIs. These conditions on the issuance of a PTIs will effectively block developments utilizing central sewers for the foreseeable future. From a practical standpoint, since there is no certainty that the Darby Stormwater Permit will be issued final[2] or survive appeal, the final option is unavailable if local jurisdiction do not adopt Ohio EPA's development standards.

The "as protective as" standard is so vague that it provides no guidance upon which to base a development plan or to direct Ohio EPA in the review of alternatives to the prescriptions in the draft 208 Plan. This is particularly troubling given the fact that there is considerable scientific uncertainty about the validity of the standards proposed in the draft 208 Plan. For instance, as noted in the publication *A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation*, "A review of existing models for buffer width and effectiveness

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[1] *Monroe County Estates, Inc. v. Whitman* (March 20, 1974), EBR 73-29.

[2] Ohio EPA has in the past promised to issue rules and/or permits by a date certain only to miss the promised date. In the Central Scioto Plan Update ("CSPU"), Ohio EPA stated that it would issue rules covering the land application of treated wastewater by December 2003. As of the date of these comments, the agency has not adopted these rules.

showed that none are appropriate for county-level buffer protection."[3] This report goes on to state "buffers as narrow as 4.6 m (15 ft) have proven fairly effective in the short term…"[4] One author has noted that the difficulty in establishing universal river corridor protection requirements often results in "arbitrary" buffer widths.[5] The impact of land use changes on stream stability, ecological function and general health of the river system is very-site specific and may require detailed analysis by experts.[6] The EAG even considered testimony from Dr. Lance Williams stating that "for the protection of water quality, riparian zones should be 40-80 feet on either side (depending on slope)."[7] Since there is no consensus on what constitutes an appropriate buffer for the protection of water quality, the only criteria that Ohio EPA can consider, the "as protective as" requirement in the draft 208 Plan is too vague to provide a meaningful standard for future developments.

It is also inappropriate to set additional standards for the issuance of PTIs, which are not required under the Clean Water Act or Revised Code Chapter 6111, in a 208 Plan. By tying the issuance of PTIs to a federally approved 208 Plan, Ohio EPA is attempting to "federalize" a state law program without statutory authority. Implementing a new regulatory program through a 208 Plan is a violation of the mandates of the Clean Water Act concerning the development of rules, Ohio's statutory requirements for rulemaking, and the ability of interested parties to appeal decisions of the Director.[8] Further, by placing the restrictions on the issuance of PTIs in the draft 208 Plan, Ohio EPA is prejudging all applications -- not on the application's legal merits -- but on the agency's preconceived notions of appropriate land use restrictions. There is no statutory authority for this type of unilateral action and such intrusion into the authority of the local governments is both statutorily unauthorized and may interfere with the constitutional "Home Rule" authorities granted to municipalities. As has been noted in numerous contexts, Ohio EPA is not a land planning, regional planning agency, or zoning authority. In Ohio, administrative agencies are creatures of statute and they are limited to the specific authorities granted to them by the General Assembly. Ohio EPA has no authority to intrude into the local planning authorities of townships, municipalities and counties. Restricting or prohibiting development on a categorical basis and intruding into the authorities of the local land use and planning authorities and without considering site specific considerations is unlawful and unreasonable.

Another element that bears comment is the failure of the prescriptions in the 208 Plan to address the current conditions within the Big Darby watershed. The prescriptions found in the 208 Plan are based upon the assumption that future development within this area will not occur

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[3] *A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation,* Seth Wenger, Institute of Ecology, University of Georgia, Athens, Georgia (1999), Executive Summary. This document was considered by the EAG in reaching its recommendations on buffer width.
[4] *Id.*
[5] *See, Flood Plain Sice to Protect Stream Health,* Andy Ward, The Ohio State University, (August, 2001), pg. 1. This document was considered by the EAG in reaching its recommendations on buffer width.
[6] *Id.*
[7] *Environmentally Sensitive Development Area – External Advisory Group Recommendations*, November 2004, pgs. 9-10.
[8] The Property Owners note that Ohio EPA has not acknowledged that the 208 Plan can be appealed to ERAC. If the 208 Plan is unreviewable, the imposition of new substantive requirements may violate constitutional due process.

in a manner that is consistent with protection of the Big Darby watershed. There is no basis for this assumption. As can be seen by the efforts of the local governmental jurisdictions within the area, great care and consideration is being given to the health of the Big Darby watershed. This is being done by the governmental agencies that are directly responsible for planning and land use within the watershed. By interfering with the ability of these local authorities to regulate growth within their respective jurisdictions, Ohio EPA may actually force development into configurations that cannot be regulated by the local jurisdictions. For instance, under current zoning, it may be possible to develop subdivisions with home sewage treatment and disposal systems ("HSTDS"). Since local governments are unlikely to "down" zone properties, particularly since such changes could constitute an unlawful taking under both the Ohio and United States Constitutions, the inability of owners of property to develop environmentally sound subdivisions because a local government fails to adopt land use standards acceptable to Ohio EPA may lead to a proliferation of HSTDS.[9]

It is also important to note that in the Big Darby TMDL many of the water quality impairments in the Big Darby Creek watershed are due to current land use patterns, including agriculture, land application of manure and inadequately treated waste from currently existing HSTDS's. The draft 208 Plan does little to address these concerns, and may in fact exacerbate them by forcing landowners to continue practices that have a negative impact on water quality. The Draft 208 Plan should not allow current land uses to continue to the detriment of the Big Darby Creek while at the same time removing the flexibility local jurisdictions need to encourage environmentally friendly development. If local jurisdictions are given the flexibility to implement land use decisions (as they are constitutionally and statutorily authorized to do) development within the Big Darby Creek may result in an improvement of water quality. The draft 208 Plan is an impediment to environmentally friendly development and creates burdens that render such environmentally friendly development unreasonable, uneconomical and impractical.

With respect to the carry-over of the prescriptions found in the 2003 Central Scioto Plan Update ("CSPU"), specifically the bans on sewer connections and land application of treated wastewater, the agency should remove these prescriptions. In addition to being illegal and unconstitutional, they longer serve any legitimate purpose. The local governments in the watershed are more than capable of ensuring environmentally sound development, and the failure of the agency to propose and adopt land application rules, notwithstanding the agency's commitment to do so in 2003, suggests that this rulemaking is either beyond the agency's current capabilities or the state of the scientific evidence is insufficient to support a rules package. The failure of the agency to adopt land application rules coupled with the categorical rejection of any PTI proposing one has placed an unfair burden on land owners who do not have access to central sewer services.

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[9] The property owners are aware of the restrictions placed upon HSTDS by the Franklin County Health Department and are also aware of the development of a new Sanitary Code by the Ohio Department of Health. The chances of asserting a successful regulatory takings claim increases if Ohio EPA and the Ohio Department of Health implement standards and requirements that effectively render all development impossible on a particular parcel of property.

SPECIFIC COMMENTS ON BUFFERS

The 208 Plan contains a series of requirements for the creation of buffers around streams in the Big Darby Watershed. As discussed above, there is no scientific consensus on the appropriate size of a riparian buffer necessary to protect water quality. Notwithstanding this lack of scientific consensus, Ohio EPA arbitrarily has established 100 feet as the minimum set-back from every stream, including perennial, ephemeral, and intermittent streams. This minimum set-back distance does not take into consideration the size of the stream, the slope of the stream bank and other site specific considerations, all of which are necessary to determine a scientifically valid buffer for the protection of water quality. Further, if Ohio EPA relied upon the recommendations of the EAG, the 100 foot minimum riparian buffer may be based on other criteria beside the protection of water quality, including aesthetics and terrestrial wildlife diversity. It bears repeating that the 208 Plan is a water quality planning document and other considerations are not appropriately included in it. From the information and testimony provided to the EAG, a riparian buffer of significantly less than 100 feet on each side is more than adequate to protect water quality.[10] A review of some of the scientific literature and testimony collected by the EAG suggests that riparian buffers of 40 feet (and perhaps even less) are sufficient to protect water quality.[11] Any riparian buffer requirement found in the 208 Plan that exceeds what is necessary to protect water quality is unreasonable given the purpose of the 208 Plan.

The other two mechanisms included in the 208 Plan for identifying the width of the riparian buffer are also inappropriate for protecting water quality. The 100-year flood plain, as determined by FEMA, is a risk-based planning tool for protecting people and their property from flood events. It has nothing to do with water quality. The Property Owners, although unsure of the validity and applicability of the formula proposed as the third alternative for calculating set-back distances, believe that a model that takes into account site specific conditions, including bank slope and drainage area is a more appropriate mechanism for protecting water quality. This approach may be consistent with the concept of the active floodway. Ohio EPA should commission the development of such a model, but in the interim, the agency can not substitute an arbitrary standard such as the 100-year flood plain or 100 feet.

The application of these prescriptions on development only in western Franklin County is fundamentally unfair and ignores the source of the other water quality impairments in the watershed. Western Franklin County comprises approximately 15% of the Big Darby Watershed. It is clear from the Big Darby TMDL that the sources of water quality impairment are not predominately found in western Franklin County. Once again, Ohio EPA is imposing requirements and significant burdens on future development while not addressing the principle sources of impairment in the watershed.

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[10] *See, e.g. A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation,* Seth Wenger, Institute of Ecology, University of Georgia, Athens, Georgia (1999), Executive Summary; *Environmentally Sensitive Development Area – External Advisory Group Recommendations*, November 2004, pgs. 9-10.
[11] *Id.*

COMMENTS ON OPEN SPACE AND GROUNDWATER REQUIREMENTS

Ohio EPA's attempt to regulate open space in western Franklin County far exceeds the authority and expertise of the agency. Ohio EPA can not demand that local jurisdictions adopt these highly burdensome and vague standards for "open space and conservation subdivisions." The 208 Plan is not an appropriate vehicle for implementing such a far reaching set of requirements or expanding the legal authority of the agency. There is no precedent for such an expansive new requirement.

Further, when coupled with the draconian riparian buffer zone requirements, the inclusion of wetlands, "healthy forest", "significant natural features" and "prime" agricultural lands as conservation areas, will reduce development options and in the case of some parcels completely remove the ability of the landowner to use the property, thereby effectuating a governmental taking of property without compensation. Land use, zoning and development standards are community based, and the need for open space is properly left to the local jurisdictions.

Ohio EPA's attempt to regulate land use (in particular forests, significant natural features and prime agricultural lands) has no support in law. In addition to this obvious lack of authority, these terms are so vague as to provide little or no guidance for future development and the agency does not have the authority or experience to provide such guidance. The agency has also provided no information that links these open space requirements to water quality. In fact, since the Big Darby TMDL identifies agriculture as a significant source of water quality impairment, it is internally inconsistent with the stated goals of these prescriptions and unreasonable to protect agricultural lands that are harming water quality, yet that is exactly what these prescriptions do. It is also unreasonable and unfair to impose these open space requirements solely on landowners in western Franklin County.

To the extent the agency will attempt to justify these requirements by suggesting that groundwater infiltration is a critical component to protecting water quality in the Big Darby Watershed, the agency has not developed the necessary scientific evidence to support such a far reaching program. As noted in several of the comments provided in response to the Darby Stormwater Permit[12], the link between groundwater and water quality in the Big Darby Watershed has not been developed to the extent necessary to support such requirements. For instance, at what linear distance from a particular stream does groundwater infiltration impact water quality? It is highly unlikely that groundwater infiltration happening at a significant distance from a stream has any impact at all on water quality in the Big Darby Creek.

With respect to applying the groundwater infiltration criteria to western Franklin County, the agency has failed to establish what the hydro-geologic conditions are that link groundwater

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[12] *See, Comments of Homewood Corporation, et al. on Big Darby Stormwater Permit,* by Scott Doran, dated March 16, 2006; *Comments of Building Industry Association of Central Ohio on Big Darby Stormwater Permit,* by James Hilz, dated March 16, 2006.

recharge and water quality in the Big Darby and whether these hydro-geologic conditions exist in western Franklin County. The Big Darby TMDL report notes that the influence of groundwater on water quality is principally found in the headwaters of the Big Darby Creek (WAU 05060001190) and the Little Darby Creek sub-watershed (WAU 05060001210).[13] Very little of western Franklin County is found in either of these sub-watersheds and the agency has made no effort to explain the hydro-geologic conditions that support imposing these groundwater infiltration requirements universally. Until the agency determines what geologic or hydro-geologic features contribute to this phenomena, and whether these conditions exist in any particular area in the watershed, it is arbitrary and unjustified to impose groundwater infiltration requirements on areas where it may have absolutely no impact on water quality.

Ohio EPA should not implement the new concept of groundwater infiltration requirements for development via the Darby Stormwater Permit and the 208 Plan, with the attendant significant burdens on development, without a more scientifically justifiable rational. Do the Property Owners believe that groundwater in certain hydro-geologic settings has a positive influence on the water quality of some portions of some streams in Ohio? Yes. Does this justify the imposition of burdensome requirements throughout the entire Big Darby Creek Watershed or even western Franklin County? Absolutely not. The agency needs to provide significantly more scientific evidence to justify such a far reaching new burden on development, and it should do so in consultation with groundwater scientists, other experts and the regulated industries potentially impacted by such new requirements.

CONCLUSION

Ohio EPA is not a land use, zoning or regional planning agency and it should not attempt to become one. Although the Property Owners appreciate the need to protect the water quality of the Big Darby, Ohio EPA can not unilaterally and without statutory authority dictate development trends in this watershed. This is not the role of the agency. It is unlawful for the agency to attempt to use a planning tool, the 208 Plan, to create new substantive requirements that allow the agency to intrude into the authorities of other governmental agencies. Ohio EPA can not use the 208 Plan and the Darby Stormwater Permit to create new authorities, circumvent procedural requirements and intrude into the authorities of other agencies. If Ohio EPA wishes to implement measures establishing riparian buffer or groundwater infiltration requirements, the proper vehicle for doing so is the adoption of rules, not the 208 Plan or a general permit. Due to the lack of authority and expertise, Ohio EPA should not get into the business of regulating land use. This is not the mission of the agency.

It is time for the agency to "release" western Franklin County from the unlawful connection ban imposed under the Central Scioto Plan Update in 2003. It is also time for Ohio EPA to live up to its previous commitment to develop rules on land application of treated wastewater. Finally, it is time for Ohio EPA to recognize that local land use decisions are the sole prerogative of the local government agencies. Ohio EPA should remove the prescriptions found in the 208 Plan, or, in the alternative, Ohio EPA must affirmatively state that the proposed

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[13] *Big Darby TMDL,* pg. A.164.

standards are guidelines only and that local conditions and local authorities are the appropriate determiners of how the Big Darby Creek will be protected.

Respectfully submitted,

Robert J. Schmidt, Jr.

RJS:mcw

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April 21, 2006

Dan Dudley
Ohio EPA, Division of Surface Water
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Re: Landowner Comments on the Darby Creek "Prescriptions" in the Section 208 Plan

Dear Dan:

On behalf of the Homewood Corporation, Planned Development Company of Ohio, Danken, LLC, George Secaris and Fred Simon (the "Property Owners"), the following comments are submitted on the "Prescriptions" for the Darby Creek Watershed as set forth in the Central Ohio Section 208 Plan.

As we have discussed, the Property Owners own or control approximately 800 acres of land adjacent to or in the immediate vicinity of the Hamilton Ditch located in the easternmost portion of the Darby Creek Watershed. The Section 208 Plan will have a direct and significant impact on the Property Owners. In addition, it significantly affects the local planning process and, we believe, substantially exceeds the Agency's statutory authority. While the Property Owners are committed to the protection of the Darby Creek and its tributaries, they believe that there are far more workable, technically supportable and easily implemented standards to accomplish this goal.

I would request that, after Ohio EPA's review of these comments, we have the opportunity to meet with the Ohio EPA to discuss a reasonable resolution of both the legal and

technical deficiencies of the proposed 208 Plan as well as the provisions of the proposed general storm water permit. I will plan to contact you to arrange for a meeting to discuss these issues.

Very truly yours,

Scott M. Doran

SMD/vla
Enclosure

cc: John Bain

INTRODUCTION

Ohio EPA's State Water Quality Management Plan ("WQM Plan") is required to be prepared under sections 208 and 303 of the Clean Water Act ("CWA"). The sections are referred to as the "area wide continuing planning process" a process which is required to be developed and implemented by states to meet the goals of the CWA. The CWA states that it is the national policy that area wide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each state. CWA section 101(a)(5).

The CWA continuing planning process is the organizational and procedural umbrella under which Ohio EPA's substantive CWA programs operate. The components of the 208 Plan include descriptions of various programs, such as for the Construction Grants for Treatment Works Programs under Subchapter II of the CWA and the NPDES Permits program. The continuing planning process is required to be consistent with section 201 of the CWA which also addresses planning requirements for waste treatment plans and treatment works. The planning process requires lists to be developed, certain items to be identified and processes developed that form the framework for the substantive programs. The planning process is not a vehicle for Ohio EPA to adopt new substantive rules and standards for a particular program. Rules and standards are addressed in Subchapter III of the CWA and are required to be initially adopted by states as rules and standards, not in a state WQP or 208 Plan. These Rules and standards are subject to the legislature's grant of authority to Ohio EPA, JCAAR Review and appeals to the Environmental Review Appeals Commission ("ERAC"). Imposing these substantive requirements through the 208 planning process certainly skirts the first two of these requirements and the Ohio EPA has yet to acknowledge that issuance of the 208 Plan as an act of the Director appealable to ERAC.

Ohio EPA is misusing the 208 planning process and state WQM Plan in attempting to create new legal authority. Ohio EPA is trying to accomplish through the waste water planning process what it cannot accomplish under state law. The planning process should simply record and re-state what water quality substantive programs are being implemented and how, not actually create them. The CWA continuing planning process does not provide the Director of Ohio EPA with legal jurisdiction over areas which fall outside of the scope of his authority under state law. The laws of the State of Ohio do not authorize the Ohio EPA to act as a watershed zoning authority. Rather, the agency is authorized to regulate the collection and discharge of waste water and storm water. To the extent that it believes it is necessary to regulate land use and to require such things as "conservation development," the legislature must first authorize it.

For example, the planning process is not authority for Ohio EPA to force local governments to adopt legislation in connection with land use development standards or restrictions. Ohio EPA has no legal authority to do so, but it does have jurisdiction over the processing and approval of permits for waste water treatment plants or sewer line extensions. The planning process is designed to be collaborative with local

governments. Any land use development standards or restrictions need to be accepted by the local government rather than forced upon them through the threat of denial of permits.

Moreover, requiring local governments to duplicate the review that Ohio EPA will perform under its general storm water permit is unnecessary, costly and will lead to differing requirements at the state and local levels. Many of the affected local entities do not and will not have adequate experience or resources to design and implement these requirements. Ohio EPA will already review riparian set back, post-construction storm water controls and infiltration. Why should this also be done by the local governments?

The City of Columbus stated this month for the first time that it may not have the waste water treatment capacity to serve more than 3,000-5,000 units. Yet, by-right zoning in the Darby Creek Watershed in Franklin County allows for approximately 15,000 units at one unit per acre. Does the Ohio EPA really want to encourage the installation of up to 12,000 septic systems in the Watershed? At a minimum, the Plan should directly recognize that alternative waste water treatment systems (i.e. spay irrigation, wetland treatment) are an acceptable option in the Darby Creek Watershed.

The Darby Creek prescriptions of the 208 Plan also conflict with the regional approach envisioned by the Darby Accord process. No Darby prescription should be put in place until the Ohio EPA has considered whether the protections mandated by the Accord are sufficient, in whole or in part, to protect the Darby Creek. The entities involved in the Accord process have recognized that regional solutions have the greatest potential to protect the Darby Creek. The Darby Creek prescriptions will severely complicate, if not obviate, the solutions currently under consideration in the Accord process.

Below are comments on the specific provisions of the Darby Creek Watershed "prescriptions" of the 208 Plan. The comments have been highlighted in **bold** type.

Criteria 1 - Adoption of Institutional Mechanisms

Within the Franklin County portion of the Big Darby Creek watershed the EAG process and continued governmental cooperation on land use planning has fostered a good understanding among political leaders that local governmental jurisdictions should carefully plan for growth in western Franklin County. Many local officials are also aware of the value and importance of adopting local regulations to protect water quality. Based on the unique water quality of the Big Darby Creek watershed and development pressure within Franklin County the State 208 Plan calls upon all local political jurisdictions in this area to adopt the appropriate institutional mechanisms in their communities to comply with criteria 1a,1b and 1c.

1a A political jurisdiction shall adopt at least one of the following institutional mechanisms as a means to implement stream set back requirements and open space

preservation requirements within Big Darby Creek watershed in western Franklin County prior to the extension of centralized sanitary sewer service:

- watershed based zoning;
- subdivision zoning, storm water and/or flood plain regulations; flood plain regulations;
- council resolution; and/or
- ordinances.

Ohio EPA has recognized that some jurisdictions may not implement a program that meets the proposed standards. Many jurisdictions will not have the capability to draft and implement these programs. Yet the proposed 208 standards state that the political jurisdictions <u>shall</u> adopt at least one of the following institutional mechanisms. Is Ohio demanding that local jurisdictions implement these programs in order to allow for any development? Has Ohio EPA evaluated the costs of the design and implementation of these requirements? Ohio EPA should not force communities to commit significant resources to these programs, potentially resulting in an increased tax burden and inconsistent standards.

<u>1b</u> All political jurisdictions in the Big Darby Creek watershed in western Franklin County are strongly encouraged to have, to update and to use comprehensive land use planning to support zoning and other local regulations.

<u>1c</u> Institutional controls for riparian corridor protection should include a purpose statement with the following three elements:

1. maintain and improve biological diversity and aquatic life use designations;
2. achieve sediment, pollutant and nutrient removal; and
3. maintain stream functionality.

Recommended language for the purpose statement is as follows:

It is the goal of the control to establish riparian buffer restrictions to maintain and improve biological diversity and aquatic life use designations, achieve sediment, pollutant, and nutrient removal, and maintain stream functionality.

The purpose statement should include a statement such as "incorporate <u>flexible</u> riparian corridor requirements which will provide for full protection of the stream and water while allowing for properly designed development."

<u>Review of Central Sewer Line Projects</u>

The institutional control mechanisms developed by local jurisdictions are expected to meet and implement the more specific criteria listed in categories 2 and 3. Ohio EPA will review the control mechanism adopted by local jurisdictions to see if that is the case. Once the existence of acceptable locally adopted implementation mechanisms are confirmed the Ohio EPA will approve central sewer line projects provided all

engineering aspects of the project meet specifications and the land development project or projects associated with the sewer line extension have obtained coverage under the new NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed.

See criterion 5a regarding options on developing "as protective as" local regulations. See criteria 6a through 6b regarding options in the absence of acceptable locally implemented regulations.

We are not aware of any statutory authority which authorizes Ohio EPA to review and approve of local zoning or development requirements. EPA cannot bootstrap this authority on the back of its authority to issue Permits-to-Install for sanitary sewer lines. Additionally, Ohio EPA has not provided any guidance or standard for what will constitute an acceptable local program. How will that decision be made? Who will make it? If a local program is not approved, is there an opportunity for an appeal? Certainly, Ohio EPA cannot have complete discretion to decide whether a plan meets with its "requirements" particularly where the proposed requirements generally lack specific criteria.

Criteria 2 - Set Back Distances from Streams and Associated Development Restrictions, Franklin County

2a Applicable Streams - Streams requiring protection under this section are defined as perennial, ephemeral, or intermittent streams with a defined bed, bank, or channel. NRCS soil survey maps should be used as one reference and the presence of a stream requiring protection should also be confirmed in the field. A drainage way along side a road shall not be considered a stream, except in the situation where it is located between two segments of a stream that were not constructed for roadside drainage.

Ohio EPA prepared a map using a number of data sources including the NRCS soil mapping and GIS files provided by the Franklin County Engineers Office and the Franklin County Soil and Water Conservation District Office. This map was shared with and discussed by the EAG. However, the EAG did not endorse the map or reach consensus regarding how a pre-determined map would be applied by each jurisdiction.

The streams depicted in Figure 3 are the best approximations that Ohio EPA can provide using readily available information. Ohio EPA will apply Figure 3 as the benchmark for an initial determination of whether or not a land parcel contains a stream subject to these requirements. The Ohio EPA, an applicant for a permit, or a third party may present additional information that may be considered in making a final conclusion on whether a stream as defined above exists on the property.

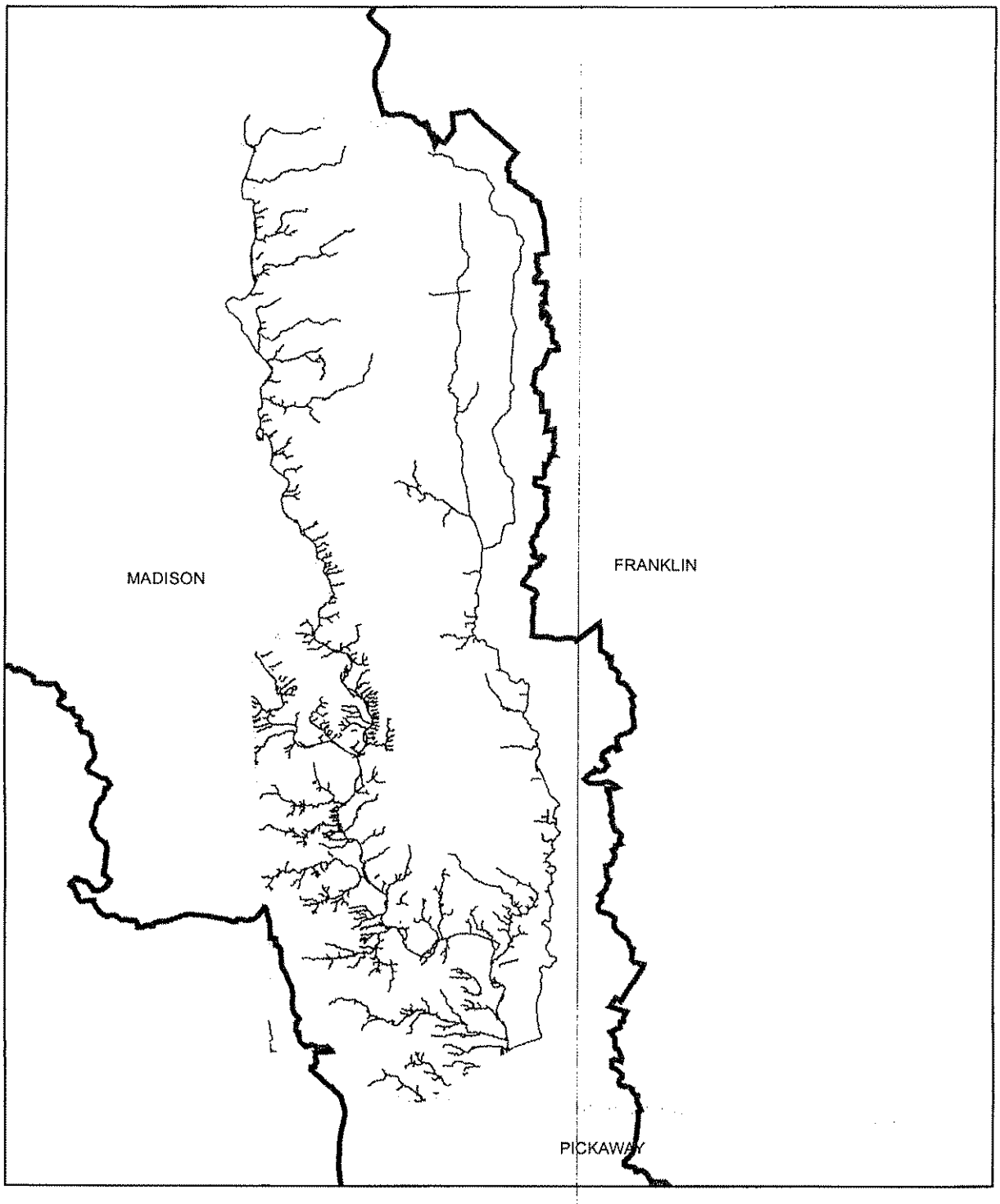
Greater flexibility should be afforded for impacts to ephemeral streams. Given that the definition of what constitutes an ephemeral stream seems to broaden every day, and in light of the extremely limited aquatic value of many of these

streams, a different set back distance (25 feet) should be provided for an ephemeral stream.

2b Size of the Set Back Distance - The set back distance from the center line of the stream is to be sized as the greater of the following:

1. the regulatory 100 year flood plain (based on FEMA mapping);
2. a minimum of 100 feet (on each side);
3. the following calculated width, where DA = Drainage Area, and W = total width of the buffer. W should be divided by two (2) in order to calculate the buffer for one side of the stream:
   a. Where DA is less than or equal to 16 square miles (mi):
      $W = 117DA^{0.43}$
   b. Where DA is greater than 16 mi^2
      $W = 87DA^{0.43}$

Fig. 3. Map showing the best approximation that Ohio EPA can provide of the streams in western Franklin County subject to set back requirements.



Legend

Corrected Watershed Boundary

Streams Subject to Set Back Requirements

county

We refer you to our comments submitted to the Agency in connection with the Ohio EPA's proposed general storm water permit for the Darby Watershed (the "Storm Water Permit") (a copy is attached). The 100 year floodplain is simply an inappropriate riparian set back standard. There is no data indicating that protection of this area is necessary to protect habitat or water quality. We agree that it is important to protect the active floodway and would accept the calculation of riparian set backs using the proposed formulas.

Similarly, establishing a defacto 100 foot set back (on either side) on most ephemeral and intermittent streams is unnecessary and unsupported. When taken together with the aggressive permanent storm water controls and Ohio EPA's proposed "conservation development" requirements, adding this type of unnecessary restriction may significantly affect property owners' ability to make any economic use of their property for development purposes.

2c Permitted Uses - The local zoning regulation applicable in western Franklin County should, at a minimum, specify the following permitted uses within the stream set back distance. Uses that are passive in character shall be permitted in stream corridor protection zones, including, but not limited to, passive recreational uses, as permitted by federal, state and local laws, such as hiking, fishing, hunting, picnicking and similar uses. Permitted uses are as follows:

1. Passive recreational activity. Unpaved public or private trails are included in this definition as a permitted use. Paved trails are a conditional use (see criteria 2d below). The following conditions apply to unpaved trails as a permitted use in the riparian buffer:
   a. Trail Surface: unimproved/earthen
   b. Trail Width: minimum 3 feet, maximum 5 feet
   c. No clearing of woody vegetation shall be permitted
   d. Distance from edge of stream: Minimum 125 feet; unless developed as a river access point.
2. Removal of damaged or diseased trees.
3. Revegetation or reforestation
4. Provided that disturbances due to construction are minimized and mitigated per the requirements in the NPDES General Permit for Storm Water Related to Construction Activity for the Big Darby Creek Watershed (OHC100001, arterial streets are classified as a permitted use.
   To the extent that property is isolated by intermittent or ephemeral streams, roads to access this property should be a permitted use.
5. Provided that disturbances due to construction are minimized and mitigated per the requirements in the NPDES General Permit for Storm Water Related to Construction Activity for the Big Darby Creek Watershed (OHC100001, installation and maintenance of public utilities is classified as a permitted use.
6. Disturbances of the riparian buffer zone necessary to accomplish the uses described in paragraphs 2c1-2c5 are also authorized. However, all such

disturbances shall be minimized and any necessary disturbances shall be mitigated.

Provided that the above changes in the riparian set back requirements are implemented, we do not object to the sited permitted uses.

2d Conditional Uses - The local zoning regulation applicable in western Franklin County should, at a minimum, specify the following conditional uses within the stream set back distance. Conditional uses are activities that local zoning or other ordinances may permit after undergoing a review process that evaluates the extent of damage to the buffer that the use may cause if the activity is permitted, and that provides for mitigation of that damage. The review process should also detail conditions under which a conditional use application will be denied. Conditional uses are as follows.

1. Streambank stabilization/erosion control measures which are ecologically compatible and substantially use natural materials and native plant species where practical and available is an approvable conditional use of the riparian buffer. Providing that separate authority exists, such streambank stabilization/erosion control measures shall be approved of the local jurisdiction, the Director of Public Utilities of City of Columbus or the Director of Ohio EPA. All streambank stabilization plans should provide long-term streambank protection. In reviewing this plan, the local jurisdiction or the director may consult with representatives of the Ohio Department of Natural Resources, Division of Natural Areas and Preserves; the Ohio EPA, Division of Surface Water; Franklin County Soil and Water Conservation District; or other technical experts as necessary. The local jurisdiction should provide language stating that erosion control measures be limited to the purposes of water quality protection, the prevention of flooding, or the protection of existing structures.

This provision should be modified to specifically reference stream restoration projects rather than only streambank protection. In many instances, particularly in the Hell Branch watershed, significant in-stream work may be required to restore an active flood plain and rehabilitate the stream.

2. Construction of paved trails in the riparian buffer to further passive recreation uses shall be an approvable conditional use. However, trails that become damaged due to natural erosion shall not be repaired but shall be moved upland or removed altogether. The following conditions shall apply to paved trails in the buffer:
   - Trail surface: (hard) asphalt or concrete
   - Trail width: minimum 10 feet, maximum 12 feet

   Why establish a minimus trail size? This seems at odds with efforts to minimize riparian zones.
   - Clearing width: maximum 20 feet (clearing not included as part of overall buffer width)
   - Distance from edge of stream: minimum 300 feet

- River access points may be developed but must be unpaved
- Private trails should not have stream crossings, and crossings on public trails are a conditional use and will be permitted only if they are part of a comprehensive trail plan.

In many instances, only a small section of a trail may become damaged, leaving significant upstream and down stream sections of the trail intact. In those instances, the trail cannot simply be "moved." In addition, once a property is developed, the options for "moving" the trail will be very limited. We suggest that this be rewritten to state that the trail will be moved, if practicable, and if rebuilt it will be done in a manner that addresses the cause of the erosion.

A 300 foot distance from an ephemeral or intermittent stream is impracticable. The buffer itself may be only 50 feet (or 100 as proposed by Ohio EPA) yet the trail will be 200 feet farther away. The minimum distance should reference a specific (and reasonable) number of feet from the edge of the riparian set back.

3. Unpaved Trails as a component of a paved trail system may be necessary for Americans with Disabilities Act compliance. For an approvable conditional use in the riparian buffer, those trails should have the following conditions:
    - Trail surface: (soft) compacted gravel
    - Trail width: minimum 5 feet, maximum 12 feet
    - Clearing width: maximum 20 feet (clearing not included as part of overall buffer width)
    - Distance from edge of stream: minimum 200 feet, unless developed as a river access point under d.2.e. above.
4. A driveway or non-arterial roadway may be an approvable conditional use so long as the following conditions are met. A new crossing or new roadway for a street other than an arterial may be permitted to cross the stream corridor protection zone only in those circumstances when the parcel has no other existing access or when such crossing is necessary for public health or safety. In addition, the applicant must demonstrate that the new crossing or new roadway in the buffer is necessary to achieve important ecological protection, or maximizes ecological benefit. Such activity shall minimize disturbance to the riparian buffer and shall mitigate any disturbances.

In many instances, construction of road crossing to allow for access to a property or to meet necessary public health or safety requirements will not "achieve important ecological protection or maximize ecological benefit." Yet these remain very important public goals. We suggest that this provision be rewritten to allow for crossings for public health or safety, to provide access <u>or</u> if the applicant demonstrates that the crossing in the buffer is necessary to achieve important ecological protection or will maximize ecological benefit. This will also

allow for flexible development design which recognizes that constructing stream crossings in one area may allow for the protection of much more valuable resources in another area of the development. For example, a significant area of mature woods might be saved at the cost of a stream crossing over an ephemeral or intermittent stream.

2e Prohibited Uses - The local zoning regulation applicable in western Franklin County should, at a minimum, specify the following prohibited uses within the stream set back distance.

1. Construction within the riparian buffer zone is a prohibited use. This restriction applies to new construction, and does not apply to existing residential structures and associated appurtenances.

Will this allow for additions to existing buildings and residences?

2. Dredging and filling is a prohibited use in the riparian buffer zone.
3. Motorized vehicles shall be a prohibited use, with the exception of emergency vehicles when necessary for public health and safety.
4. There shall be no disturbance of natural vegetation in the riparian buffer zone at any time during development on the remainder of the site, except for such conservation maintenance that the landowner deems necessary to control noxious weeds (as defined by ODNR, DNAP); for such plantings as are consistent with these regulations; and for the passive enjoyment, access and maintenance of lawns and landscaping on existing parcels. If natural vegetation does not exist, replanting is required with native vegetation in accordance with a plan approved by the local jurisdiction.

What authority does Ohio EPA or a local jurisdiction have for requiring replanting with native vegetation absent a request for a permit? Wouldn't this prohibit the work necessary to accomplish stream restoration?

5. Parking lots in the riparian buffer are a prohibited use. There shall be no parking lots or other human made impervious cover.

Paved trails are a conditional use and include asphalt or concrete cover. Please modify this provision to reflect that use.

6. The riparian buffer shall not be used for the application and/or spraying of wastewater treatment plant residuals.

2f Delineation of the Riparian Buffer - The boundary of the buffer is required to be clearly delineated on plans and prominently displayed in the field prior to development. No later than the end of construction, the applicant shall permanently delineate the stream corridor protection zone in an aesthetically harmonious manner, approved by

[insert the appropriate position for the individual jurisdiction] such that the location of the zone is apparent to the casual observer and that permits access to the zone.

2g Replacement of Damaged Trails - Trails located within the stream set back distance that are damaged shall not be rebuilt, but shall be removed, or moved upland.

As previously noted, it will often be difficult, if not impossible, to "move" a trail to an upland area. In addition, trails always need maintenance and this provision is inconsistent with Ohio EPA's recognition that trails can be permitted or conditional uses. This provision should be removed or revised to state that trails which are repeatedly damaged by stream flows (versus regular maintenance) should be moved to an area which will not be affected by such flows. Moreover, this will only affect the segment which is repeatedly damaged not the entire trail.

2h Inspection of the Riparian Buffer - Periodic inspections of riparian corridors is required of the local jurisdiction. Each jurisdiction should define how often such inspections will be conducted.

If a local jurisdiction does not implement these requirements, what entity would be responsible for the periodic inspection of riparian corridors?

Criteria 3 - Providing Open Space Preservation and Conservation Subdivisions

Ohio EPA simply has no authority to demand that local communities adopt these intrusive and ill-defined standards for "open space and conservation subdivisions". Moreover, Ohio EPA does not have the expertise, experience or capabilities for determining what constitutes acceptable conservation development or for determining whether a community has adopted an acceptable conservation development plan. Protecting stream habitat and water quality is one thing, establishing development standards is another. A Clean Water Act Section 208 Plan is not an appropriate vehicle for implementing such a far reaching set of requirements. We are unaware of any similar requirements being imposed for a 208 Plan throughout the State of Ohio and, for that matter, anywhere else in the United States.

Moreover, the inclusion of wetlands, "healthy forest", "significant natural features" and "prime" agricultural lands as conservation areas, in addition to the broad riparian setback requirements already being proposed will most certainly diminish the viability of the development of many parcels of ground and, in some instances, directly effect a taking. Rather than these broad and ill-defined requirements, communities should be encouraged to adopt meaningful open space requirements which reflect their community values and needs.

In fact, these conservation development requirements are being addressed in the Darby Accord process through a collaborative effort. The 208 Plan requirements threaten to disrupt this process just as it appears to be coming to fruition.

In addition, no matter what form of "conservation area" designation may ultimately be used on a local basis, it is critical to provide a procedure to grant a variance to these requirements. Prescriptive approaches will ultimately result in unnecessary regulatory and legal disputes, ill-designed developments and the potential loss of other, potentially more valuable environmental resources. It is short sighted to believe that specific resources can be designated for conservation without an evaluation of both on-site and off-site resources that may be impacted.

3a Acceptable Open Space: Primary Conservation Areas - The following elements should be, considered as primary conservation areas and should be included in the open space:

1. All land area within the set back distance from streams defined by criteria numbers 2a and 2b;
2. Slopes which include NRCS designated Highly Erodible Land (HEL) plus a 50-foot setback from the top of the slope;
3. Wetlands as defined by the Army Corps of Engineers or the EPA;

An extensive permit process already exists for evaluating whether wetland impacts will present an unreasonable adverse impact on the environment. Requiring local communities to impose these restrictions flies in the face of the state permitting program. It would essentially prohibit any wetland impact in the Darby Watershed regardless of the existing state and federal permitting programs. This provision must be removed.

4. Populations of endangered or threatened species as defined by either the state or the federal government; and

The 208 Plan is an inappropriate mechanism for addressing endangered species issues. These are already addressed by a variety of state and federal laws. This provision must be removed.

5. Healthy forests of at least one contiguous acre.

What constitutes a "healthy forest"? Must it be a mature forest? What if a site is predominately forested? Does this mean it is undevelopable? What criteria has the agency used to make this determination? No data has been presented that forested areas which are not proximate to a stream protect water quality. This requirement is not justified.

3b Acceptable Open Space: Secondary Conservation Areas - The following elements should be' considered as secondary conservation areas:

What is the difference between secondary conservation areas and primary conservation areas? Secondary and primary conservation areas appear to be

treated equally. Please distinguish how the two areas would be treated and whether additional flexibility will be provided for secondary conservation areas."

1. Existing healthy forests less than one contiguous acre;
2. Other significant natural features and scenic viewsheds; and

The 208 Plan is not a vehicle providing authority to preserve "natural features and scenic view sheds." Moreover, most local municipalities will not have the legal authority to enact this type of regulation.

3. Prime agricultural lands of at least five acres contiguous area.

What is prime agricultural land? Given that a good portion of the land in the Darby Creek Watershed is a productive agricultural property, this provision is likely to have a dramatic impact on the value of this property. Moreover, many, if not most, of the problems with water quality in the Darby Creek and its tributaries are directly related to agriculture activities. Its seems imprudent to adopt requirements that assure that these impairments continue.

3c Open Space Requirements for Infiltration - The Big Darby Creek watershed TMDL provides for the management of storm water such that a shallow ground water recharge rate target is maintained in the Hellbranch Run watershed (220-010). Open space in conservation subdivisions shall be managed such that this recharge rate is maintained or improved If onsite infiltration is infeasible, or if open space is inadequate to maintain this infiltration rate, mitigation with off site infiltration will be required. See the NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed for specific requirements.

See comments on the Darby Creek General Stormwater Permit.

3d Permitted Uses - The local zoning regulation applicable in western Franklin County should, at a minimum, specify the following permitted uses within the open space in a conservation development subdivision:

1. Passive recreation
2. Removal of damaged or diseased trees
3. Revegetation and reforestation
4. New arterial streets (provided that disturbances due to construction of arterial streets are minimized and mitigated); and
5. Disturbances of the open space necessary to accomplish the permitted uses described in this criteria above are also authorized. However, all such disturbances shall be minimized and mitigated.

Again, a variance procedure must be authorized to address site specific conditions and impacts. In addition, the construction and maintenance of public utilities in open space should be a permitted use. Roads or driveways to access otherwise isolated property should be a permitted use.

3e Conditional Uses -The local zoning regulation applicable in western Franklin County should, at a minimum, specify the following conditional uses within the open space in conservation development subdivision. Conditional uses are activities that local zoning or other ordinances may permit after undergoing a review process that evaluates the extent of damage to the open space that the use may cause if the activity is permitted, and that provides for mitigation of that damage. The review process should also detail conditions under which a conditional use application will be denied. Conditional uses are:

- Streambank stabilization (includes the conditions listed under criteria 2d1,
- Erosion control measures (includes the conditions of criteria 2d1),
- Paved trails (includes the conditions of section criteria 2d2),
- Storm water best management practices.

3f Prohibited Uses - The local zoning regulation applicable in western Franklin County should, a minimum, specify the following prohibited uses within the open space in a conservation development subdivision:

1. Construction of structures
2. Dredging and filling
3. Motorized vehicles
4. Disturbance of natural vegetation
5. Parking lots, and
6. Application or spraying of wastewater treatment plant residuals.

To the extent that conservation development restrictions are ultimately approved, there is no reason to prohibit the application or spraying of waste water treatment plant residuals in these areas. Properly treated and applied, this material presents no risk of harm to human health or the environment. Given the stringent development restrictions that have been proposed, there is unlikely to be any other land available in development for application of these materials. This provision must be removed.

3g ownership - Development plans should indicate which of the following are planned to be utilized to protect the open space. The following are acceptable owners of the open space:

1. Homeowners associations/condominium associations;
2. Political jurisdictions; or
3. Third party land trusts.

What is the rationale for requiring a third party to hold a conservation easement over a conservation area? In many instances, a homeowners association will not be formed and neither a municipality nor a land trust will have any interest in holding the easement. Perhaps this provision could be modified to read that it is preferred that a third party hold a conservation easement, but not required.

3h Permanent Protection - Conservation easements are an acceptable form of permanent protection so long as enforcement of the easement is undertaken by one of the ownership options listed in criteria 3g.

3i Contiguity - At least 75% of the Open Space shall be a contiguous tract. The Open Space shall adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space. The contiguity requirement may be waived if the use of the open space in another fashion is necessary to achieve important ecological protection or to maximize ecological benefit.

This requirement flies in the face of reality. To the extent that wetlands exist on the property, there are often in small, isolated pockets and cannot be contiguous. It is unacceptable to require contiguity to potential conservation areas on adjacent property. Basing development decision on the potential development of neighboring properties is not technically justified. This requirement, again, goes far beyond the planning authority of a 208 Plan.

3j Design and Review of Open Space - The following principles should be specifically included in zoning or other ordinances used by the local jurisdiction to control conservation development. While the four principles must be included, use of the principles in the order presented is strongly encouraged, but not mandatory.

1. Identify areas to be conserved;
2. Identify areas for location of homes,
3. Placement of roads and other infrastructure, and
4. Drawing of lot lines.

3k Management - The applicant for development shall submit a Plan for Management of Open pace and Common Facilities that maximizes ecological function of the open space, has been prepared by a qualified person or entity, and contains at least the following:

What "maintenance" does the agency anticipate requiring? Given that little to any activity can take place in designated open space areas, it is difficult to evaluate what maintenance will be necessary and its potential costs. Please clarify this provision.

Once the plan is submitted by the entity developing the property, it is difficult to imagine what type of "enhancement" could be required or implemented. Please clarify.

1. Allocates responsibility and guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;

2. Estimates the costs and staff requirements needed for maintenance and operation of, and insurance for, the Open Space and outlines a means by which such funding will be obtained or provided;
3. Provides for any changes to the Plan to be approved by the [local governing body]; and
4. Provides for enhancement of the plan.

In the event the party responsible for maintenance of the Open Space fails to maintain all or any portion in reasonable order and condition, the appropriate governing body may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the homeowners association, or to the individual property owners that make up the homeowners association and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

This provision is illegal. There are no laws in effect which provide either the state or local jurisdictions to enter onto private property to maintain "open space." This provision must be removed. Implementation of this type of program will require modification of state and/or local laws.

Criteria 4 - Issue and Comply with Storm Water Permit for Construction Activity

Please see comments on the General Storm Water Permit. Additionally, some of the smaller municipalities may not yet be required to establish local storm water regulations. Ohio EPA has addressed this situation by establishing its own general permit in requiring individual review of all storm water permit applications. This provision should not mandate additional costly requirements on these small local communities.

The EAG considered the need for comprehensive storm water management in western Franklin County and recommended that Ohio EPA develop the appropriate means to manage and control storm water runoff to the degree necessary to ensure that the health Darby Creek is improved and maintained. The findings of the Big Darby Creek TMDL provide the foundation to accomplish this task.

The requirements of the NPDES General Permit for Storm Water Related to Construction Activity for the Big Darby Creek Watershed (OHC100001) will include these general requirements

4a Sediment Controls During Construction - In order to reduce current sediment loading to the Big Darby Creek Watershed in accordance with the Big Darby Creek watershed TMDL, additional controls during construction are necessary. The following issues shall be addressed in the NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed:

1. Timing of controls - at the beginning of site development, storm water controls must be installed first, prior to other site development activities. (See OH000001 Part III.B.)

2. Stream setbacks - For the purposes of protecting important stream habitat and functions critical to the health of the Big Darby Creek Watershed including providing additional filtering capacity, and to provide for a margin of safety during construction, the permittee shall adhere to the stream setbacks outlined in criteria 2b (Franklin County) and criteria 7 (remainder of watershed). (See OH000001 Part III.G.2.b.)

3. Monitoring of storm water - Sampling of discharges from storm water controls shall occur sufficient to demonstrate the effectiveness of the controls. Monitoring during the construction phase shall be for Total Suspended Solids (TSS), and all monitoring results shall be maintained at the construction site and available for inspection during the course of the development. (See OH000001 Part III.G.2.f.)

4. TSS Effluent Quality Target - At no time shall the discharge from any storm water control in the Big Darby Creek watershed exceed 45 mg/l TSS. (See OH000001 Part III.G.2.f.)

5. Sediment Storage Volume - The required sediment storage volume of 67 cubic feet per acre of drainage shall be increased as necessary to achieve the TSS effluent quality target. The permittee shall evaluate, based on site conditions, the extent to which a volume representing a 'margin of safety' shall be added to the above volume, to compensate for volume lost by sediment accumulation during the course of the project. The expected duration of the project would be an important consideration in the development of a margin of safety volume. (See OH000001 Part III.G.2.f.)

6. Alternate Control Measures - If at any time storm water effluent quality exceeds 45 mg/l TSS, the permittee shall implement alternate control measures to ensure that storm water does not exceed the target. Initial alternate control measures shall include increasing storage volume in affected detention basins such that the effluent will no longer exceed 45 mg/l TSS. Any other alternate control measures deemed necessary by the permittee to control storm water quality shall be promptly installed. (See OH000001 Part III.G.2.f.)

4b Post Construction Controls - Post construction controls shall be established sufficient to protect or improve long term water quality in the Big Darby Creek watershed. The following post construction issues shall be addressed in the NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed:

1. Minimization of Peak Flow Impacts to Hydrology and Channel Form - Storm water retention and release controls at the development site (or mitigated off site) must improve, or minimally result in no further negative impacts, upon the channel forming hydrology. (See OH000001 Part III.G.2.g.)

2. Infiltration/Groundwater Recharge Requirements - In order to ensure appropriate base flows in the watershed, the development plan shall ensure that the ground water recharge rate within the watershed does not fall below the target range established in the Big Darby Creek TMDL report. Off-site mitigation may occur if within the small watershed (14 digit HUC). (See OH000001 Part III.G.2.c.)

This provision is ambiguous, at best. The TMDL did not address watershed wide groundwater recharge rates, but instead generally reviewed the contribution of groundwater to the Darby Creek base flow. These requirements are already addressed in the Darby Creek Storm Water Permit and this provision should be removed. Local communities do not have the capabilities to evaluate pre and post-construction infiltration rates.

Criteria 5 - Options for "as protective as" Local Regulations and Individual Projects

5a Alternative Local Regulations - The water quality protection criteria listed under categories 2 and 3 provide local communities and developers a consistent set of guidelines upon which to adopt local community development and building standards in the Big Darby Creek watershed that are protective of water quality. Some communities may adopt the criteria exactly as recommended by the EAG and reported here. However, we recognize that local jurisdictions may develop slightly different standards that are just as protective as the ones listed here. Therefor any jurisdiction in western Franklin County may ask the consider a deviation from adopting these exact criteria. Such requests must provide sufficient evidence regarding it's ability to be "as protective as" what is listed here. Furthermore, before submitting the request to the Director, the local jurisdiction must provide notification and public involvement in developing the proposal.

5b Alternative Performance Criteria for Individual Projects - It is the Agency's intention that the water quality protection criteria listed under categories 2 and 3, and the requirements to be placed in the NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed, will apply to the majority of permitting situations in western Franklin County. However, we recognize there may be situations where the specific requirements are not well suited to a particular development site. In such situations the permit applicant may elect to develop a project proposal designed to be "as protective as" the criteria set forth here.

The mechanism to pursue this option is to apply for an *individual NPDES storm water construction permit.* The applicant must submit an Environmental Site Management

Plan (ESMP) as part of the Storm Water Pollution Prevention Plan. The ESMP must describe riparian corridor preservation and mitigation activities, describe the water quality performance targets, describe the methods that will be employed to measure site performance and resulting water quality, and describe the steps to be taken, if necessary, to modify the site design and or practices to attain the performance targets.

The ESMP must include an acceptable mitigation plan if there must be deviation from stream set back distances (criteria 2b and 7), open space conservation (criteria 3a, 3b), infiltration and groundwater recharge requirements (criteria 3c, 4b2), or the loading targets for phosphorus and total suspended solids found in the Big Darby Creek TMDL. The benchmark for achieving the "as protective as" status for individual projects is demanding because of the unique resource and the uncertainty about how the system will respond. Therefore, the default benchmark for "as protective as" is a 3 to 1 ratio of land conserved as stream set backs or open space for each linear foot or acre of land removed from the stream set back or open space conservation, respectively. This mitigation must occur within the Franklin County portion of the Big Darby Creek Watershed.

As an alternative to the default approach, an applicant may submit a site specific "as protective as" demonstration as part of the ESMP. Any such plan submitted to Ohio EPA would be judged using these performance criteria:

1. Setbacks - Post development land use shall be protective of the flood plain. Where necessary to intrude into the flood plain to achieve the purposes of the project, off site mitigation may be included in the plan at a rate substantially greater than the level of intrusion into the flood plain, so long as it is within the same 14 digit H C.

   This requirement must be limited to the "active" floodplain.

2. The post development storm hydrograph shall be the same or improved (reduced peak flows) compared to the pre-development hydrograph of runoff from the site.

3. Post development infiltration shall equal or exceed pre-development infiltration.

This stringent requirement should only be applied within a reasonable distance of an intermittent or perennial stream. No evidence has been presented regarding the contribution of infiltration distant from a stream. Without some technical justification, this restriction is unwarranted and unsupportable.

4. Post development pollutant loadings for total phosphorus and TSS shall be minimized to the greatest extent feasible. The overall design and post

development management plan for the site shall achieve the most restrictive of the following pollutants loadings targets:

a. For un-managed lands (forest, brush, or farm land that has been fallow for 5 or more years), post-development pollutant loadings shall be no more than predevelopment pollutant loadings;
b. Total phosphorus loading rate of 0.1 kg/acre/year; and
c. TSS loading rate of 6 kg/acre/year.

The values listed in b and c are derived from the Hellbranch Run allocations found in the Darby TMDL report. The ESMP must include a monitoring program to document attainment of these targets.

The proposed numeric restrictions are far too restrictive and may be unreachable. For example, a TSS loading rate of 6 kg/acre/year (less than 3 pounds per acre per year) is exceptionally low. Moreover, much of the land which may be developed in the future is currently in intensive agricultural production. The TSS loadings from these properties are currently vastly greater than the proposed loading rates. Applying the allocations for the degraded Hellbranch run is not appropriate for the entire Darby Watershed.

How long must monitoring continue? If two to three years of post development monitoring demonstrates the effectiveness of the storm water treatment system, it should not be necessary to continue monitoring indefinitely. Please provide a mechanism for terminating or modifying the monitoring required.

Criteria - Options for Projects when Local Regulations are Absent

The Agency also recognizes that there may be situations where local zoning may not be in place, or that local jurisdictions may potentially lack legal authority to implement the necessary protections. In some cases, it may therefore be appropriate to grant approval to an applicant in the absence of locally adopted stream set back and open space development requirements. This section describes the conditions under which an applicant may request approval for development using central sewers in western Franklin County in the absence of appropriate requirements adopted at the local level.

6a <u>All Permits Must be Approved Before Commencing Construction</u> - All necessary permits must be approved before commencing earth disturbing activity. These permits include, but are not limited to:

1. coverage under the NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed;
2. permit to Install (PTI) for sewer installation;
3. 401 certification, if applicable;
4. NPDES direct discharge permit, if applicable; and
5. Approval from ODNR, DNAP, Scenic Rivers, if applicable.

6b <u>Environmental Site Management Plan</u> –

The Storm Water Pollution Prevention Plan (SWP3) required under the NPDES General Permit for Storm Water Associated with Construction Activity for the Big Darby Creek watershed shall be expanded to be an Environmental Site Management Plan (ESMP). This plan should include all the requirements from the storm water permit plus the ESMP must provide information that explains and demonstrates how the project will comply with criteria 2a through 2g and 3a through 3k in the absence of locally enacted regulations. The applicant may choose to prepare an ESMP following criteria 5b in lieu meeting some or all of the requirements found in criteria categories 2 and 3.

Please provide a time frame for the review and approval of the Environmental Site Management Plan. In addition, please confirm that the denial of an Environmental Site Management Plan can be appealed to the Environmental Review Appeals Commission.

Criteria Set Back Distances from Streams, Big Darby Creek Watershed outside of Franklin County

Required set back distances from streams in the Big Darby Creek watershed outside of Franklin County shall be derived from the recommendations and targets found in the TMDL report. The set back distance from the center line of the stream is to be sized as the greater o the following:

1. the regulatory 100 year flood plain (based on FEMA mapping);
2. a minimum of 100 feet (on each side);
3. the applicable riparian buffer width using the following equations:
   a. Exceptional Warmwater Habitat
      $W_{EWH} = 133\ DA^{0.43}$

   b. Warmwater Habitat
      $W_{WWH} = 67^{\ 0.43}$

   c. None or other aquatic life use
      $W_{MWH} = 40\ DA^{0.43}$

   where: DA = drainage area (mi^2)
   W = total width of buffer (ft)
   (W should be divided by two (2) in order to calculate the set back distance for one side of the stream)

The previously stated comments regarding the use of either the 100 year flood plain or a minimum of 100 feet on each side are equally applicable to this provision.

Criteria 8 - Recommended Riparian Land Use Practices for Agricultural and Undeveloped Land

Underdeveloped land within the Big Darby creek watershed is primarily row crop agriculture with some forested and open brush land. A healthy riparian corridor exists along some segments of Big and Little Darby creeks and their larger tributaries. Retention and expansion of these corridors, along with improved land management, is essential to the health of the watershed. A naturally vegetated buffer system along all perennial streams should include the 100-year flood plain, steep slopes, and nearby wetlands.

Where agricultural practices occur in proximity to streams (i.e., the distances set forth in criteria 7), land owners and local policy makers should focus on a long term decision making process to move intensive agriculture production activity away from the stream where feasible. Landowner conservation plans should be prepared or updated with the assistance of local NRCS and SWCD offices to account for the specific needs of the producer. A few top priority agricultural land use practices are as follows:

- limit livestock access to streams;
- place grass buffer strips in upland areas (drainage areas less than 5 sq. mi.); and
- keep or plant wooded buffer strips along larger streams.

It is regrettable that so little attention is paid to one of the primary causes of impairment in the Darby Creek. Despite the lack of direct authority over these activities, a much greater effort should be made to educate landowners regarding the steps that could be taken to help protect the Darby Creek. In addition, significant additional funding should be directed toward promoting conservation practices in the Darby Creek Watershed.

Criteria - Installing Clay Check Dams along Sewer Trenches

A cut off dam of native clay or impervious soil shall be placed across and along the sanitary sewer trench as necessary to retard and resist the movement of ground water through the trench granular bedding or backfill material. The dams shall be carefully compacted and shall be six (6) feet in thickness as measured along the service center line and shall be constructed against the undisturbed trench sides from the sub-grade or bottom of the stone foundation, whichever is lower, to the limit of 36 inches over the top of the pipe. Dams shall be placed where storm sewers or water lines cross sanitary sewers, and upstream from the main line sewer connection.

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March 16, 2006

VIA HAND DELIVERY

Jason Fyffe
Ohio Environmental Protection Agency
Storm Water & Enforcement Section
122 S. Front Street
Lazarus Government Plaza
Columbus, OH 432316-1049

Re: Ohio EPA Proposed NPDES Storm Water Permit Associated with Construction Activity within the Big Darby Creek Watershed Permit No. OHC100001 (the "Permit")

Dear Mr. Fyffe:

On behalf the Homewood Corporation, Planned Development Company of Ohio, Danken, LLC, George Secaris and Fred Simon (the "Property Owners"), the following comments are submitted on the above referenced General NPDES Permit for Construction Activity in the Big Darby Creek Watershed.

The Property Owners own or control approximately 800 acres of land adjacent to or in the immediate vicinity of the Hamilton Ditch located in the easternmost portion of the Darby Creek watershed. The Hamilton Ditch is a deeply entrenched waterway with little meaningful riparian buffers. It is presently a very "flashy" waterway and suffers from significant sedimentation loads, both of which result, in large part, from the surrounding agricultural land use. In the upper reaches of the Hamilton Ditch watershed, there is limited flow during dryer periods of the year. The Hamilton Ditch provides little in the way of aquatic habitat.

The Property Owners are certainly proponents of protecting the aquatic resources of the Big and Little Darby Creeks (the "Darby Creek"). The Property Owners also believe that development can occur in a manner which will allow the Darby Creek to function at or above its present level and continue to provide high quality aquatic habitat. The key to protecting the Darby Creek will be regional and local land use planning efforts and implementation, not prescriptive site-by-site

developments standards and restrictions. To that end, the Property Owners have been both diligently working with the City of Hilliard (the relevant municipal jurisdiction) and cooperating with the Darby Accord process to realize a development plan which has the potential to significantly improve the Hamilton Ditch and, thereby, downstream water bodies as well. The Permit, as presently written, will hamper, if not eliminate, the Property Owners' ability to implement these plans due to both regulatory constraints and the economic limitations which are the inevitable result of the Permit.

Moreover, the Permit fails to differentiate between the form and function of the Hamilton Ditch and that of the Darby Creek and some of its upstream tributaries. The Hamilton Ditch is a storm water conveyance; it is not a "stream" as most people would consider. What it needs is not protection, but rehabilitation. This can only be accomplished if reasonable development of property in the Hamilton Ditch watershed is allowed to provide for the funds necessary to complete the necessary work.

The Property Owners have consulted with environmental consultants and others knowledgeable about the steps necessary to protect the Darby Creek and the technical bases, or lack thereof, for the requirements set forth in the Permit. While some of these standards are appropriate, others go far beyond what would be considered necessary or reasonable, particularly in the Hellbranch Creek watershed, including the Hamilton Ditch and the Clover Groff Ditch. They incorporate standards, such as the reference to the 100-year floodplain as an appropriate stream buffer, which were generated for regulatory reasons wholly unrelated to environmental protection. In other instances, such as the referenced pre-development infiltration rates, the assumptions are contrary to data published by both the Ohio EPA and its sister agencies.

The Ohio EPA's authority, under the storm water permitting program, extends only to protecting water quality from impacts associated with construction activity. It does not, and cannot, extend to a regulation of land use. There are many other effective and accepted measures available to address land use requirements. The proposed storm water standards establish far reaching directives on land use, including post-construction requirements and the imposition of conservation easements. In more than a few instances, the reach of the Permit's restrictions will undoubtedly effect a takings of property in violation of state and federal law. Moreover, given the apparent lack of technical support for some of the Permit's requirements, the courts may find a taking based solely on the lack of a rational basis for prohibiting the development of some properties. The Permit must be better focused to address issues related to the discharge of storm water from construction sites, not long-term land use decisions.

The following will provide a discussion of these issues.

RIPARIAN BUFFERS

The proposed 100-year floodplain riparian setback provisions in the Permit would establish certain distances next to streams within which no construction or development could occur without meeting prescribed mitigation requirements. The proposed setbacks would be established based on formulas related to drainage area size, "100-feet on each side" of the stream, or the "regulatory 100-year floodplain", whichever is ***greater***. In the Hamilton Ditch watershed, this would, in effect, establish the 100-year floodplain (which includes the flood fringe outside of the floodway), where it has been mapped, as the "default" setback limit for stream protection during construction. Under the terms of the proposed Permit, no development or construction activity could occur within the entirety of the 100-year floodplain without excessive mitigation, even though such activities may otherwise be allowed by the Federal Emergency Management Agency (FEMA) or local FEMA delegates, the regulatory agencies truly responsible for floodplain regulation. This restriction would prohibit development on 270 acres of the 800 acres owned or controlled by the Property Owners. In Franklin County, this requirement would effectively limit the development of over 2,900 acres outside of the floodway.

The use of the 100-year floodplain to establish stream setbacks for the Hamilton Ditch is particularly inappropriate. As a deeply incised, generally manmade drainage feature, it rarely, if ever, floods. The Hamilton Ditch would be best served by re-establishing a functioning floodway. Given the excessive and expensive mitigation requirements set forth in the Permit, it is very unlikely that any public or private entities would undertake this work.

Inclusion of the entire 100-year floodplain as a stream setback limit in a National Pollutant Discharge Elimination System (NPDES) permit intended to protect against the temporary sedimentation impacts of construction activity is both unnecessary and inappropriate. The "100-year flood" is an abstract, risk-based concept developed as a threshold for protection under the National Flood Insurance Rate Program (NFIRP). It is simply the flood event with a 1 percent or "one in a hundred" chance of occurring in any given year. Similarly to the "10^{-6}" or "one in a million" standard widely used in risk assessments involving chemical contaminants, it is a somewhat arbitrarily settled upon threshold for dividing "risky" from not so risky flood hazard zones for insurance purposes.

Although its impacts may be catastrophic to humans, the extreme infrequency of the "100-year flood" renders it relatively insignificant from a fluvial geomorphologic standpoint. Observations of natural stream systems consistently show that it is more moderate, but more frequent, discharge events that play by far the greatest role in sediment transport and other processes responsible for shaping and maintaining not only the character and health of the active channel, but also the riparian zone (e.g. Leopold et al 1964, Rosgen 1996). The limits of the "100-year floodplain" *may* coincidentally correspond with geomorphically relevant features on the landscape (e.g. valley walls or terraces), but they may also exist purely in the abstract, as a calculated elevation with no particular geomorphic or ecological significance. While the "100-

year floodplain" certainly encompasses the channel and truly related riparian zones, it also generally encompasses lands and features which exert no more influence on a stream than lands in the remainder of the watershed. Thus, FEMA does allow for fill of the floodway fringe in appropriate circumstances.

In contrast, the concept of an "active floodplain" zone adjacent to natural stream channels that *is* physically identifiable and geomorphically *critical* to stream stability and health is well recognized. This zone accommodates the more moderate flood events which occur frequently enough to actually influence both the channel and associated riparian zones. Although this "active floodplain" zone can only be definitively delineated based on site-specific geomorphic surveys (similar to wetland delineations), the proposed "streamway" calculation formulas proposed in the Permit represent a reasonable and practicable approximation of this "active floodplain" zone for "natural" stream systems. Based as they are on observed relationships in relatively undisturbed stream systems (Ward et al., 2002) there is significant question regarding the applicability of the active floodplain concept to agricultural ditches and other highly modified channels such as the Hamilton Ditch. However, given the necessity of developing practicable, as well as technically defensible, regulations, there is support for the use of the drainage area equations set forth in the Permit.

Even Ohio EPA appears to question the legitimacy of extending setback limits to the limits of the "100-year floodplain" for water quality protection purposes. On page B-5 (Appendix B) of the final TMDL report for Big Darby Creek (OEPA, 2006), Ohio EPA responds to comments by Lenny Losh ("LL") as follows:

> *"The active floodplain formula used in the TMDL report to establish recommended setback widths defines an area that is, or should be, frequently flooded. The purpose of this particular setback width is to establish and protect the 'streamway' - the corridor the stream naturally undulates in over time. Protecting this particular area will reduce a source of sediment by reducing bank erosion and it will also increase the capacity of the stream to assimilate sediment by providing areas to deposit it outside of the main channel. The FEMA 100-year floodplain is intended for a different purpose – that of defining an area of catastrophic flooding so that human life and economic interests are protected. Thus the two definitions are needed to protect for different concerns."*

On Page 3-9 of the final TMDL report, where the basis of proposed "streamway" formulas is discussed, Ohio EPA further states:

> *"Watershed groups and other interest groups such as the Hellbranch Environmentally Sensitive Development Area (ESDA) External Advisory Group may choose to increase the minimum recommended widths needed based on* ***additional justifications*** [emphasis added]."

While the EAG did not reach a consensus on this issue, it is our understanding that certain groups have voiced a desire for prohibiting development within the entire 100-year floodplain, but no technically supported rationale for this approach have been reported. Certainly , a requirement with such far reaching consequences should be supported by reams of data and published studies, but it is not.

The Property Owners are not opposed to appropriate public debate on floodplain management or land conservation issues within the Big Darby Creek Watershed. The Permit is not the appropriate vehicle.

INCLUSION OF "100 FEET ON EACH SIDE" CRITERIA IS ARBITRARY AND REDUNDANT

The proposed riparian setback requirements include a "100-feet on each side" [of the stream] criteria which, like the "regulatory 100-year floodplain" limit is unrelated to stream or riparian zone geomorphology, ecology, or function. It is an arbitrary, outdated number which has been (and is still) used for convenience and as a compromise in the absence of better criteria and data about stream health and channel/riparian zone interrelationships. However, the "streamway" calculation formulas (with the aforementioned reservations regarding their applicability to constructed or highly modified channels) are an example of just such "better" criteria. The "streamway" setback formulas are valid and sufficient, in and of themselves, to provide adequate protection from construction stormwater impacts.

CALCULATED SETBACK DISTANCES ARE BASED ON RELATIONSHIPS OBSERVED IN UNDISTURBED STREAM SYSTEMS AND MAY NOT BE APPLICABLE TO HIGHLY MODIFIED CHANNELS

As previously mentioned, we have some reservations regarding the applicability of the "streamway" calculation formulas to constructed ditches or other highly modified channels. The formulas were developed based on observed relationships in "natural" stream systems (i.e. relatively unimpacted, unconfined systems). Constructed and highly modified channels typically do not resemble "natural" streams in form, and therefore, it may be reasonably assumed, do not necessarily resemble them in process or channel/floodplain relationships either. Results of a study conducted on agricultural drainage ditches in northern Ohio confirm this, indicating that, while certain predictable patterns appear to be evident, they are not necessarily consistent with those observed in natural streams (Ward et al, 2002). Most notably, ditches and modified channels are often constructed or altered to accommodate both base and flood flows within a single relatively narrow, deep channel, rather than divided between a smaller "bankfull" channel and a larger surrounding floodplain.

On balance, the use of the "streamway" formulas is a reasonable, practicable basis for establishing riparian setbacks in the proposed storm water Permit. However, the potential inappropriateness of applying them to constructed and highly modified channels is obvious. More data is needed on this subject, and the Property Owners encourage the Ohio Department of Natural Resources, Ohio State University and others in their further research efforts in this area.

SETBACK MITIGATION REQUIREMENTS ARE UNNECESSARILY COMPLICATED, PRESCRIPTIVE, AND CONTAIN UNPROVEN MITIGATIVE TECHNIQUES

The proposed setback mitigation requirements are unnecessarily complicated, prescriptive, and require use of an unproven "over-wide channel" design protocol for *"previously channelized low-gradient headwater streams (drainage ditches)"*. We are aware of a monitoring program which proposes to collect data regarding the performance of this technique in coming years (ODNR 2005); however, *requiring* its use at this time is, in our opinion, premature.

The proposed setback mitigation requirements should be advanced as guidelines, not inflexible, prescriptive measures. As proposed, the mitigation provisions are based solely on meeting certain arbitrary area-based ratios ranging from 4 to 1 to 2 to 1, depending upon distances from the stream edge. While this type of approach has merit as an expedient and readily verifiable *guideline* for setback mitigation proposals, to prescriptively *require* that setback mitigation proposals meet these limits, at minimum will serve to stifle potentially innovative, more meaningful proposals that focus on actual riparian functions and values, which do not necessarily meet area ratios. This project-specific approach will seriously undermine the efforts of the Darby Accord process to develop regional, cost-effective solutions. It will also tax Ohio EPA's ability to timely review storm water permit applications and require long-term oversight.

The proposed Permit would require Stormwater Pollution Prevention Plans (SWPPPs) to be submitted to the Ohio EPA for review at least 45 days (six weeks) prior to beginning any subject construction activities, including a description of proposed setback mitigation measures where these are necessary. There is no reason why the Ohio EPA could not review and approve alternative, as well as standard, setback mitigation proposals within this time frame.

THE GROUNDWATER RECHARGE REQUIREMENTS WERE DEVELOPED WITHOUT THE INPUT OF GROUNDWATER SCIENTISTS

Based on the Acknowledgements presented in the Darby Creek TMDL, no specific technical services were provided by groundwater personnel. Groundwater expertise is locally available from scientists at the Ohio EPA, ODNR, USGS, or the consultant community. Without oversight by a qualified groundwater scientist (presumably a hydrogeologist), the validity of groundwater information presented in the TMDL, and the subsequent SWP3, is questionable.

Review of the groundwater section in Section A of the TMDL illustrate a misunderstanding of the general hydrogeologic principles and specific hydrogeology of the Big Darby study area. For instance, the statement "Hydraulic conductivity is a better measure of the connectivity between ground and surface water..." is not true. Hydraulic conductivity only quantifies the capacity of a specific medium (such as a bedrock aquifer) to transmit water, and is not a measurement of groundwater/surface water interaction.

NO RATIONALE OR SUPPORT DOCUMENTATION IS PROVIDED FOR THE DERIVATION OF LAND USE-SOIL GROUPS PRESENTED IN TABLE 1

The rationale for relating groundwater recharge to land use by soil group is not presented. The TMDL contains no land use-soil group data as presented in the SWP3. The presumed support document for groundwater recharge, *Use of Streamflow Records and Basin Characteristics to Estimate Ground-Water Recharge Rates in Ohio* (Ohio Department of Natural Resources Bulletin 46), estimates groundwater recharge on the basis of characteristics that include long-term mean annual precipitation, soil infiltration rate, glacial geology, thickness of glacial deposits, bedrock geology, and physiography. Land use was specifically excluded as a recharge characteristic.

RECHARGE RATES FOR LAND USE-SOIL GROUPS NOT CONSISTENT WITH AVAILABLE PUBLISHED DATA

The recharge rates listed in Table 1 of Part III.G.2.c.i are not substantiated by information presented in the TMDL and referenced supporting documents. The only supporting groundwater document specifically identified in the TMDL is Ohio Department of Natural Resources Bulletin 46, *Use of Streamflow Records and Basin Characteristics to Estimate Ground-Water Recharge Rates in Ohio*. According to Bulletin 46, recharge rates in Ohio range from 3 to 16 inches per year, with a median of 6 inches per year. Bulletin 46 further indicates that average groundwater recharge within the Big Darby watershed is 6 inches per year, exclusive of land use. This sharply contrasts with the Table 1 values, which range up to 17 inches per year of groundwater recharge. Given the potentially far reaching land use impact on this requirement of the Permit, it must be based on sound technical grounds.

Similarly, Ohio EPA's own guidance (see VAP Guidance Document VA30007.05.003 "Acceptable Ground Water Recharge Rates for SESOIL Modeling") provides that conservative estimates for ground recharge rates range from 4-10 inches and silts and silty clays to 2-4 inches in tills and clay silts. This is clearly inconsistent with the recharge rates provided in the Permit.

The Permit should both incorporate realistic recharge rates and allow applicants to make site-by-site evaluations of infiltration rates and the potential for groundwater recharge or contribution to stream base flows. A generic and overly constrictive standard is unsupportable.

GROUNDWATER RECHARGE MITIGATION ACROSS THE UNITED STATES TYPICALLY REQUIRED ONLY IN CONNECTION WITH PRESERVATION OF A GROUNDWATER RESOURCE, OR WHERE A GROUNDWATER RESOURCE DIRECTLY IMPACTS A SURFACE WATER RESOURCE

Based on review of the TMDL, the Ohio EPA has not quantified the actual relationship between surface waters within the Big Darby watershed and the underlying regional limestone aquifer. This could have been accomplished by obtaining simple stream gain and loss measurements. It is therefore impossible to establish that discreet plots of recharge will have a direct impact on surface waters within the Big Darby watershed. Therefore, contrary to the purpose of groundwater recharge mitigation, it appears that the only purpose of mitigation within the Big Darby watershed is to set aside land through conservation easements and not to preserve meaningful recharge to the regional limestone aquifer. This is particularly true given that the requirement applies throughout the watershed, regardless of the land's proximity to the Darby Creek or its tributaries.

THE OHIO EPA HAS LIMITED AUTHORITY TO REGULATE GROUNDWATER RESOURCES

The Ohio Department of Natural Resources is the established authority for groundwater resources within the State of Ohio; the Ohio EPA has authority over groundwater and surface water quality. There is no quantitative evidence establishing a firm link between regional groundwater resources and quality of surface waters within the Big Darby watershed. Therefore, the Ohio EPA does not have the authority to enforce aquifer recharge mitigation in the absence of related water quality issues.

SEDIMENT SETTLING POND CONSTRUCTION AND MONITORING REQUIREMENTS

It is not disputed that sediment ponds are more effective than silt fencing for control of sediment discharges or that a larger sediment pond is better that a smaller unit. However, neither the proposed Permit nor the Ohio EPA's January 6, 2006 final report entitled *Total Maximum Daily Loads for the Big Darby Creek Watershed* (TMDL) provide the basis for requiring sediment ponds to be larger than the 67 cy/acre sizing required by the existing general NPDES permit for construction activities in the state of Ohio (Permit no. OHC000002) or the recommended 67 cy/acre sizing contained within the Ohio Department of Natural Resources' *Rainwater and Land Development*[1] manual for sediment and erosion control design.

The proposed Permit specifies that all sediment ponds maintain a target discharge performance standard of 45 mg/l Total Suspended Solids ("TSS") and that failure to achieve this standard requires the "*permittee to modify their SWP3 and install/implement new control practices within 10 days to ensure the TSS performance standard is maintained.*" The basis for this standard does not appear within the proposed Permit or the TMDL. Section 5.2.2 of the TMDL references that a water quality based effluent target will be included in the proposed Permit, but the basis for the proposed standard has not been provided. Moreover, we understand that USEPA's researchers have found that effectively-implemented BMPs result in discharges with approximately 80 mg/l TSS. Has the Ohio EPA conducted any studies to determine if this level can be met?

It is agreed that sediment ponds are considered to be a Best Management Practice for sediment control at construction sites. However, without adequate available data, it is highly questionable that properly sized and maintained sediment ponds can consistently achieve this level of performance. Without considering the level of sediment control that is achieved by this technology, the proposed standard may be placing prohibitive costs onto permittees to develop and maintain levels of storm water treatment that are not practical.

For these reasons it is requested that justification be provided for (1) increased sizing criteria for sediment ponds, and (2) the 45 mg/l target performance standard being placed on sediment pond discharges.

The proposed effluent sampling is also problematic. How will employees be trained in the appropriate sampling methods? Will all sediment ponds at a site require sampling? What if there is no discharge in a dry quarterly monitoring period? Storm water permits have always been based on best management practices, not numeric effluent limitations. The USEPA considered but rejected establishing effluent limits. Given the aggressive BMPs required by the Permit, it is certainly not necessary to experiment with numeric effluent limitations now.

SUMMARY OF PROPOSED POST-CONSTRUCTION STORM WATER MANAGEMENT REQUIREMENTS

Both the existing general NPDES permit for construction activities (Permit no. OHC000002) and the proposed Permit for the Big Darby Creek watershed require that consideration be given to water quality impacts following construction. A formula for determining a storm water quality volume (WQv) for treatment is provided from the Water Environment Federation and American Society of Civil Engineers manual entitled *"Urban Runoff Quality Management."* The determined WQv is then to be treated through a passive treatment process (ponds, vegetated swales, wetlands, etc...) before discharge to the receiving stream. Noted variances between the existing general NPDES permit and the proposed Permit are as follows:

1. The proposed Permit utilizes a different formula for determining the WQv.
2. The SWP3 for post-construction must provide a description of funding for maintaining the permanent storm water management facilities.
3. Table 5 of the proposed Permit has removed the use of extended detention basins (dry basins) from the listing of approved methods for post-construction storm water treatment.

RETENTION POND SIZING CRITERIA

Table 5 of the proposed Permit differentiates the required WQv drain time and regression constant based on whether the basin is being established for solids removal only or a combination of solids and dissolved nutrient removal. It is unclear from the Permit on which criteria the pond sizing is to be based. Please clarify or explain how the permittee is to determine whether a retention pond's WQv is to be established for solids removal only or solids and dissolved nutrient removal.

This determination will be critical in development of the SWP3 since the pond sized for dissolved nutrient removal will be roughly three times that for solids removal alone.

USE OF EXTENDED DETENTION BASINS (DRY BASINS)

The use of extended detention (dry) basins has noticeably been omitted from the list of approved methods for post-construction treatment control practices (Table 5) within the proposed Permit. This omission is questioned since extended detention basins are approved for use under the general NPDES Permit No. OHC000002 and provide a level of suspended solids removal that is equivalent to or surpasses the solids removal capabilities of retention ponds, vegetated swales, filter strips, and media filters, all of which are included in Table 5. Detention basins also provide an equivalent level of dissolved constituent removal to that of vegetated swales, filter strips, and media filters.

Please explain why extended detention basins are not a preapproved method for post-construction treatment control practices listed in Table 5 of the proposed Permit.

Very truly yours,

Scott M. Doran

SMD/dlc

cc: John Bain, Homewood Corporation
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Washington, D.C. 20036-5109
Tel 202.467.8800
Fax 202.467.8900

CLEVELAND
2100 One Cleveland Center
1375 East Ninth St.
Cleveland, OH 44114-1724
Tel 216.479.6100
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CINCINNATI
Suite 2000, Atrium Two
221 E. Fourth St.
PO Box 0236
Cincinnati, OH 45201-0236
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ALEXANDRIA
277 South Washington St.
Suite 310
Alexandria, VA 22314
Tel 703.837.6999
Fax 703.549.4492

AKRON
106 South Main Street
Suite 1100
Akron, OH 44308
Tel 330.208.1000
Fax 330.208.1001

Scott M. Doran
Direct Dial (614) 464-8248
Facsimile (614) 719-4692
E-Mail · smdoran@vssp.com

April 21, 2006

Dan Dudley
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Comments on Central Ohio Section 208 Plan

Dear Dan:

Enclosed please find a copy of the comments of the Ohio Home Builders Association ("OHBA") on the Central Ohio Section 208 Plan. OHBA's members are very concerned by the Ohio EPA's blatant attempt to intrude upon the longstanding authority of local communities to regulate land use planning and development in the Darby Creek Watershed. Ohio law simply does not provide the Ohio EPA with the authority to regulate these activities. In particular, Ohio EPA's efforts to impose "conservation development" standards on both land development interests and local communities are not related to the agency's mission of protecting water quality. These initiatives must be considered on a local basis unless the legislature otherwise provides for Ohio EPA's authority.

Additionally, many of the proposed requirements of the 208 Plan are substantive standards applicable statewide. These are precisely the types of standards and requirements that must go through formal rulemaking including an analysis of the economic impact of these requirements and a review by JCAAR. It is inappropriate and unlawful for Ohio EPA to attempt to circumvent this process through inserting these requirements in the 208 Plan.

In addition to the concerns expressed in the attached comments, OHBA's members strongly object to the Agency's proposed criteria for determining when public sewers are "available," thereby potentially triggering mandated sewer connection with the extraordinary expenses attendant with this requirement. This is exactly the type of requirement which should be subjected to public rulemaking to allow the affected members of the public to comment on the proposed criteria. To insert this type of requirement in the statewide 208 Plan (which would not otherwise garner wide public interest and review) is inappropriate.

As you will note, we have provided general comments as an "Introduction" to the comments on the specific provisions of the 208 Plan. The specific comments are highlighted in bold and interlineated below the specific provisions of the Darby Creek Watershed "Prescriptions."

The OHBA certainly hopes to have the opportunity to meet with you to discuss how we might resolve these issues.

Very truly yours,

Scott M. Doran

SMD/vla
Enclosure

cc: Vince Squillace (w/encl.)
Brock Wanless (w/encl.)

(47)

The Home Builders
The Building Industry Association of Central Ohio
Affiliated with the National Association of Home Builders and the Ohio Home Builders Association

OHIO EPA - DSW
2006 APR 21 PM 4:32

Dan Dudley
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Central Ohio Building Industry Association
Comments to the Section 208 Plan

Dear Mr. Dudley:

Enclosed please find the comments of the Central Ohio Building Industry Association to the proposed Darby Creek prescriptions as set forth in the Section 208 Plan. We believe that Ohio EPA is significantly overstepping its statutory authority, particularly with respect to the "Prescriptions" for the Darby Creek Watershed. After you have had an opportunity to consider these comments, we would appreciate the opportunity to meet to discuss the potential for resolution of these issues short of a formal legal challenge.

We look forward to speaking with you soon.

Very truly yours,

Jim Hilz

Jim Hilz

The Building Industry Association of Central Ohio
495 Executive Campus Drive ■ Westerville, Ohio ■ 43082
Phone: (614) 891-0575 ■ Fax: (614) 891-0535
www.biahomebuilders.com

The Home Builders

The Building Industry Association of Central Ohio

Affiliated with the National Association of Home Builders and the Ohio Home Builders Association

47 pat

March 16, 2006

VIA HAND DELIVERY

Jason Fyffe
Ohio Environmental Protection Agency
Storm Water & Enforcement Section
122 S. Front Street
Lazarus Government Plaza
Columbus, OH 432316-1049

Re: Ohio EPA Proposed NPDES Storm Water Permit Associated with Construction Activity within the Big Darby Creek Watershed Permit No. OHC100001 (the "Permit")

Dear Mr. Fyffe:

On behalf of its members, the Building Industry Association of Central Ohio (the "BIA") appreciates the opportunity to submit the following comments on the draft Permit.[1] The BIA's members recognize the importance of proactive efforts to protect the unique resources in the Big and Little Darby Creek watersheds (the "Darby Creek"). At the same time, the BIA encourages the Ohio EPA to protect these resources in a manner that recognizes the rights of property owners to make reasonable economic use of their property and allows environmentally sound and cost effective development of property. Accordingly, we believe it is important to submit these comments on the Permit and we look forward to working with the Ohio EPA and other interested parties to assure protection of both the Darby Creek and property rights.

A number of the BIA's members, who also control property in the Darby Creek watershed (in the Hamilton Ditch watershed) are also submitting comments on the Permit. Rather than reiterating the very valid concerns expressed in those comments, with their permission we have attached their comments to this letter and fully support them and incorporate them in the BIA's comments. In addition, the BIA commented on the draft Darby Creek TMDL in a letter to Mr. Galloway dated August 15, 2005. Many of these comments are directly

[1] The BIA is submitting these comments on behalf of its membership. These comments do not constitute the positions of individual BIA members, nor should they in any way be viewed to preclude individual builders or developers from taking contrary positions or otherwise challenging the ultimate findings and recommendations set forth in the Permit and/or other standards ultimately imposed by the Ohio EPA or local communities.

relevant to the technical underpinnings of the requirements proposed in the Permit and these are incorporated herein as well. A copy of those comments is attached.

Protection of the Darby Creek is obviously a difficult and multifaceted process. It involves multiple local jurisdictions, changing land use patterns and the continued adverse effect of agricultural uses and failing septic systems. The BIA is concerned that the Ohio EPA is looking to commercial and residential land developers and builders to bear an undue burden in the State of Ohio's effort to protect the Darby Creek. There are so many activities which have the potential to adversely affect the Darby Creek (and which, in many instances, are already adversely affecting the Darby Creek), that it is unreasonable to expect property owners and the real estate development community to bear the entire burden. The Ohio EPA is authorized to establish standards in the Permit to assure that the discharge of storm water during construction (and to a limited extent post-construction) will not degrade the water quality in the Darby Creek. Obviously, the Permit goes far beyond regulating storm water discharges and into areas of land use planning. Our members are certainly willing to work with the Ohio EPA and the many other interested parties to devise strategies to protect the Darby Creek. They are not willing to accept unreasonable, unsupported or unnecessary requirements or those which exceed the Ohio EPA's statutory authority.

As the Ohio EPA has repeatedly heard in various forums, there are many individuals and entities in the watershed which have relied upon their land holdings to serve as a source of retirement funds or investment. To the extent that the Permit's requirements unreasonably limit the ability to realize the reasonable investment-backed expectations of the value of this property, it will obviously raise the issue of taking and we urge you to consider both the legal and personal ramifications of the Permit's requirements.

Our members continue to believe that flexible regional solutions will be far more likely to protect and improve the Darby Creek than individual, project-specific standards. Regional solutions are part of the process in the Darby Accord in which the relevant communities in Central Ohio have committed substantial time and financial resources. The project-specific requirements being proposed in the Permit will significantly hamper the Accord members' abilities to craft regional solutions and/or for property owners and land development interests to implement innovative and cooperative efforts to manage storm water, protect riparian areas and protect open space. For instance, a recent project adjacent to the Clover Groff Ditch involved the restoration of a significant length of the "stream" to reestablish a meaningful floodway, meanders and riparian corridor. This effort was supported by the ODNR. Under the Permit, the additional requirements imposed on this effort would have made it infeasible. Similarly, the Accord's efforts to establish a "Town Center" type of development will be constrained by the proposed infiltration requirements.

The Permit should provide that certain requirements may be presumed necessary, but that the Permit applicant can provide information to the Ohio EPA confirming that an alternate storm water management, stream buffer or infiltration method will be as or more protective of the Darby Creek. The land within the Darby Creek watershed includes a diverse array of land forms and land use and flexibility will be the key to maximize the efforts to preserve the Darby Creek.

Permit Application and Review

It will be quite burdensome and costly to prepare the materials necessary to submit a complete storm water application (or NOI) to the Ohio EPA. We encourage you to consider, both now and in the future, whether there are mechanisms available to simplify this process.

In addition, the Permit requires submission of the application 45 days prior to a site disturbance, more than double the timeframe of the statewide general permit. A delay of a month-and-a-half in initiating work at a site can be extremely costly to applicants given the relatively short construction season in Ohio. Developers already face lengthy delays in local zoning and planning approvals and stream and wetland impact permitting. Adding an additional month-and-a-half to this process may cause the loss of a construction season. We encourage the Ohio EPA to complete the process in 30 days or less. In addition, due to the seemingly inevitable delays in the regulatory process, we also expect that the Permit will be considered effective 45 days after its receipt by the Ohio EPA if the Ohio EPA does not formally act on the application or notify the applicant of substantive deficiencies.

The Permit requires applicants to identify streams and wetlands within 200 feet of the development site. Obviously, our members rarely have the authority to unilaterally enter neighboring properties to conduct wetland and/or stream verifications. This provision should be eliminated from the Permit. It bears no relation to the management of storm water on the parcel to be developed.

Riparian Setback Requirements

We fully agree with views expressed in the attached letter that the use of the 100-year floodplain to designate riparian setback distances is inappropriate and technically unsupported. First and foremost, the preservation of the 100-year floodplain simply has no

demonstrated relationship between water quality and/or storm water management concerns.[2] This requirement must be removed from the Permit. We agree that there is some technical support for the preservation of the "active floodplain" and that the use of the drainage area formula as provided in the Permit may, in many instances, be an appropriate tool to designate riparian setback zones. However, we continue to believe that flexibility should be encouraged to address unique circumstances. For example, there may be instances where it is much more important to establish or preserve a greater riparian setback on one bank of the stream than the other. As written, this would not be allowed by the Permit. It also does not allow for holistic and regional watershed based approaches which may allow for preservation of significant areas of high quality riparian corridor while providing for a smaller riparian corridor in other, less sensitive, areas.

The mitigation requirements are excessive and ill-defined. The agency has not provided any basis on which to evaluate what will be required to successfully demonstrate that impacts have been mitigated. Is planting required? Will planting of native species be acceptable? Is monitoring required? We are very concerned that this issue will prove to be difficult to deal with on a site-by-site basis and may result in excessive delays in Permit approval. This requirement also does not take into account the fact that many of the streams in the Darby Creek watershed presently have no meaningful riparian buffer and/or have been historically channelized. To the extent that incursion is necessary into these non-existent or low quality buffer areas, less stringent mitigation standards should be applied, including reduced mitigation ratios (i.e., 1:1 or less if no meaningful buffer is present) and/or less aggressive planting requirements.

Groundwater Recharge Requirements

We again echo the concerns expressed in the attached letter from the Hamilton Ditch property owners. We also note that there is certainly a lack of consensus on the importance of watershed-wide groundwater recharge to the Darby Creek water quality. While there may be some areas in which it is important to encourage aggressive preservation of infiltration zones, there are certainly other locations in which this is of less importance. In that regard, we agree with the statements of representatives of the Ohio State University in a memorandum to Darby Accord representatives (copy attached) which states:

> While providing as much open space as possible would be very positive, we are less concerned with limiting the amount of imperviousness within any give

[2] Use of the 100-year floodplain to designate stream setbacks was a topic of much discussion during meetings of the ESDA External Advisory Group ("EAG"). However, based on the lack of technical justification for this approach, consensus was never reached on this issue. The Ohio EPA must base its decisions on sound, defensible technical principles, not the goals of certain participants in the EAG.

> [sic] development as we are with ensuring adequate treatment to reduce total suspended solids, all potential pollutants and thermal fluctuations.

Absent the data to support this extremely aggressive requirement, it appears to be targeted more at limiting development and controlling land use than protection of water quality, particularly with respect to water quality discharges from construction sites. This requirement exceeds the Ohio EPA's storm water permitting authority.

Finally, to the extent to which off-site mitigation of groundwater recharge is established, it will in many instances be very difficult to identify a third party to accept a conservation easement. Before the Ohio EPA adopts a widespread requirement to protect mitigation/open space areas with a conservation easement, it must identify an entity that will be willing to hold these easements throughout the watershed. Without such a default entity, a storm water permit could be held up for months, if not permanently, dependent upon the identification of an amenable third party. In the alternative, third parties could charge excessive fees to accept an easement. Please reconsider this requirement or identify an entity to hold these easements throughout the watershed.

Sediment Settling Ponds

The Permit requires the periodic sampling of each sedimentation pond outfall for total suspended solids ("TSS"). Because most of our members are not experienced in the collection and/or analysis of surface water samples, we could appreciate it if the Ohio EPA could provide additional guidance on the sampling techniques, appropriate analytical methods and how to properly transport the samples to an acceptable laboratory. While the Permit references 40 CFR § 136 for the proper sampling procedures, many of our members will not have access to this publication. We would also appreciate a better understanding of the costs of analysis.

The Permit essentially doubles the size of the sediment ponds when compared to the sizing provided in the statewide general storm water permit. No rationale has been provided for doubling the size. This requirement will significantly increase the cost of site development and complicate the logistics of site development. To the extent that the Ohio EPA included this requirement on a belief that "bigger is always better," we would ask that the agency reconsider its position. If the agency is relying on sound technical data, we would appreciate receiving a copy of these data or studies.

Conclusion

We appreciate the Ohio EPA's commitment to preserving the Darby Creek and its tributaries. The BIA's members are committed to this goal as well. Our members are also concerned, however, that the broad and direct impact of the Permit's requirements on future development has, in essence, taken the form of land use restrictions rather than storm water discharge controls. These land use controls exceed the Ohio EPA's authority under the storm water permitting program which is limited to assuring that the discharge of storm water from construction sites of one acre or greater will not adversely impact water quality. It does not, in our view, extend to mandating post-development riparian buffers, infiltration rates and the like. We have similar concerns with respect to the proposed 208 Plan for Central Ohio. Unfortunately, there are many external factors that affect the Darby Creek, including intensive agricultural use, historically channelized streams, significantly elevated fecal coliform levels, nutrient loading and lack of riparian buffer. Our members can and will assure that discharges of storm water during and after construction do not adversely impact the Darby Creek. They should not be forced to shoulder the cost of resolving the current and historical adverse impacts caused by other interests.

I reiterate the offer made in our comments to the draft Darby Creek TMDL Report that we would be pleased to meet with the Ohio EPA's staff to discuss a resolution of these issues.

Very truly yours,

James Hilz

Village of
GALENA
FOUNDED 1809
9 West Columbus Street,
PO Box 386
Galena, Ohio 43021
740-965-2484 740-965-5424 (fax)
galena@copper.net www.galenaohio.org

May 3, 2006

Mr. Dan Dudley
Division of Surface Water
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43215

Re: On Lot Treatment within Village Approved Water Quality Management Area

Dear Mr. Dudley,
The Village appreciates the opportunity to present its concerns about the sanitary sewage situation in its wastewater management area. Please accept these comments as a follow-up to our meeting with your agency, the Village of Sunbury and the City of Delaware on April 19, 2006. As you know, the Village has previously submitted comments on the Draft State Plan.

Enclosed is information concerning the Delaware General Health District and the Delaware County Regional Planning Commission's recent approval of subdivisions known as: *Cheshire Woods Estates and Cheshire Woods* located in Berkshire Township. As you can see from the minutes of the Regional Planning Commission the subdivision is split down the middle with the west half being served by Delaware County Sewers and the eastern half approved for individual on-lot disposal systems. The eastern half will contain 50 on-lot systems.

The entire subdivision lies within the Village of Galena water quality management facilities planning area. The subdivision is one property away from being contiguous to the Village Corporation limits. During the review and approval process, Village representatives and I met with a sanitarian from the Delaware General Health District. The Village explained its concerns and declined to provide a waiver of sewer service for the next five years as suggested by the health authorities. The Village declined because it could not, in good faith, guarantee central sewer service from the Village would not be provided or made available within the next five-years. On the contrary, since the subdivision is but one property away from being contiguous to the Village, it is quite possible for this area to be served with central sewers in much less than five years. The Village understands the Delaware General Health District approved the use of on-lot systems for half of this subdivision. The Village has a Sanitary Sewer Master Plan with proposed sanitary sewer service shown for the area of the subdivision. The Village has an NPDES permit for expansion of its WWTP facilities, and is in the engineering and design phase of the expansion to a .5 m.g.d. membrane bioreactor facility.

In principle the Village objects to the use of on lot sewage systems for major subdivisions within its water quality management planning area. This objection is raised because the Village's approved water quality management plan places a high priority on protecting the waters tributary to Hoover Reservoir. The overly permissive use of on-lot systems for major

subdivisions in the Village water quality management area marginalizes the Village's ability to meet this important environmental planning objective. It has also noted by OEPA that the existing water quality in the Big Walnut basin suffers from pollution chiefly caused by on-lot sewage systems. Therefore, if the improvement of water quality is the desired goal by OEPA, the City of Columbus and the Village, then the creation of new on-lot systems by Delaware County for major residential subdivisions seems counter productive to regional water quality attainment and local environmental planning goals.

Additionally, the Village objects because on-lot systems admittedly are only a temporary solution and a last resort for handling sewage wastewater. When failure occurs, (and it has been widely stated by Delaware County authorities that only about 2% of the soils in Delaware County are suitable for on-lot treatment systems) the Village will be held responsible by OEPA and County authorities for providing a remedy for a situation not of its creation. The use of on-lot treatment systems for major subdivisions within an approved water quality management area close to existing WWTP providers, and Hoover Reservoir, is not good planning and not good for the environment. This short sighted and economically motivated subdivision approval process also burdens homeowners, since they may be required to pay for two sewage systems, once for the on-lot system and then for central sewage when the on-lot system fails. The Village feels the use of on-lot systems for large subdivisions within existing approved water quality management areas does not serve the long-term public interest, and does very little to protect the environment.

The Village notes neither the widely disseminated *2004 Delaware County Sewer Master Plan* nor the more secretive and covert *2005 Delaware County Sewer Master Plan* update shows any inclination to provide central sewers or WWTP capacity for the next decade or longer to the fast growing Central Big Walnut Service Area. Instead the 2005 County Plan proposes a phantom regional plant to be built at an unspecified location and at some distant time in the future. The intention of the County Plan appears to be to consolidate the Village of Sunbury and Galena's existing and expanding wastewater treatment facilities into one overall regional treatment facility for the Big Walnut Watershed. It seems the best solutions for area sewage needs are quite obvious and are currently in existence. Unfortunately the solution is being totally overlooked and purposely ignored in the Delaware County sewer master planning process. Instead Delaware County has publicly stated its policy to "wall off" existing municipalities with systems that fall within the generic prescriptions permitted in the Draft State 208 Plan, including but not limited to the widespread use of on-lot systems. As you are aware, the Delaware County Commissioners have stated their unqualified support for the *Final Draft State Water Quality Management Plan* and the generic prescriptions listed for Delaware County. The Delaware County Commissioners have vociferously declined to meet with representatives of the Villages of Sunbury, and Galena and the City of Delaware to discuss area wide water quality planning and management issues. This disinclination on the part of the County to intelligently discuss area planning and management needs with existing providers, combined with the widespread encouragement of on-lot sewage systems for major subdivisions within existing water quality management areas does not appear to bode well for the environment.

This correspondence is presented in the hopes your agency will consider the special environmental needs of the fastest growing county in Ohio. Our streams and waters are tributary to our capital city and supply much of its drinking water. So please reconsider the generic prescriptions and the impact of change in the balance of powers between municipal

and county governments and as proposed in the Draft *State Water Quality Management Plan,* item number 10 in Table 9.1. Hopefully, as a result of our recent meeting, your agency now has a better understanding of the very real challenges the incorporated municipalities in Delaware County face in light of Delaware County's intransigence and anti-municipal sentiment.

Thank you for considering the Village's comments and position in this regard.

Sincerely,

Thomas Hopper, Mayor

CC: Village of Sunbury
City of Delaware
Delaware General Health District
Poggemeyer Design Group
Ken Molnar, Village Solicitor
Ohio Municipal League

Attach: DCRPC Agenda for April 27, 2006
Map Water Quality Management Area Village of Galena
Plate 3 } From "Sanitary Sewer Master Plan" village of Galena, March 2006
Plate 5 }

Delaware County Regional Planning Commission

109 N. Sandusky Street, Delaware, Ohio, 43015
Phone 740-833-2260 Fax 740-833-2259
www.dcrpc.org

Scott B. Sanders, AICP, *Interim Executive Director*

Preliminary AGENDA
Thursday, April 27, 2006 at 7:00 PM
Delaware Hayes Services Building,
140 N. Sandusky Street, Conference Room G-35, Delaware, Ohio 43015

I. ADMINISTRATIVE BUSINESS

- Call to order
- Roll Call
- Approval of March 30, 2006 RPC Minutes
- Executive Committee Minutes of April 19, 2006
- Statement of Policy

II. VARIANCES *(none)*

III. PUBLIC CONSTRUCTION PROJECTS *(none)*

IV. ZONING MAP/TEXT AMENDMENTS

16-06 ZON	Troy Twp. Zoning Comm. – Comprehensive Plan amendment – Planned Industrial District area
17-06 ZON	Nancy Zaiser – Berlin Twp. – 0.564 acres from NCD to OCPUD
18-06 ZON	Wayne Homes – Berlin Twp. – 2.1 acres – development plan amendment

V. SUBDIVISION PROJECTS

			Township	Lots/Acres
Preliminary				
08-06	T	AVK Development	Concord	04 lots / 08.00 acres
07-05.1.B		Nelson Farms, Section 1, Phase B	Liberty	08 lots / 11.75 acres
09-06		Olentangy Falls East	Liberty	05 lots / 05.78 acres
06-06		Trenton Park	Trenton	37 lots / 75.13 acres
Preliminary/Final *(none)*				
Final				
01-05.1		Cheshire Woods, Section 1	Berkshire	94 lots / 80.27 acres
05-06		Fenstermaker	Concord	03 lots / 06.20 acres
34-98.20.B		Tartan Fields, Phase 20, Part B	Concord	17 lots / 10.57 acres
13-05.1.B		The Oaks, Section 1, Phase B	Concord	20 lots / 13.32 acres
02-05		Estates at Medallion	Genoa	12 lots / 07.68 acres
18-03		Keller Pines	Harlem	31 lots / 22.40 acres

T=TABLED, W=WITHDRAWN

VI. EXTENSIONS

18-04	Olentangy Falls	Orange	132 lots / 211.50 acres
14-05	Olentangy Crossings South	Orange	43 lots / 41.33 acres
09-02.5-8	Glen Oak, Sections 5-8	Orange	132 lots / 91.28 acres
09-02.9	Glen Oak, Section 9	Orange	07 lots / 03.18 acres
10-05	Lake Shore	Orange	41 lots / 30.88 acres

VII. OTHER BUSINESS

VIII. POLICY / EDUCATION DISCUSSION

- 2006 Subdivision Regulations

IX. RPC STAFF AND MEMBER NEWS

- Personnel

#01-05.1 Cheshire Woods, Section 1 – Berkshire Twp. – 94 lots / 80.269 acres

RPC Minutes: 1/27/05 (overall)

01-05 Cheshire Woods, Sections 1-4 – Berkshire Twp. - 271 lots / 228.68 acres
06-05 Cheshire Woods Estates – Berkshire Twp. - 50 lots / 139.30 acres

Applicant: James Wilson
Subdivision Type: Single-family Residential
Location: 1850, 1738 Rome Corners Road, Berkshire Twp.
Current Land Use: Agriculture, farmhouse and buildings, woods, and air strip
Zoned: Planned Residential District, (PRD)
Utilities: Del-Co water and County sewer (Cheshire Woods), on site sewage disposal (Cheshire Woods Estates)
School District: Big Walnut and Olentangy
Engineer: Advanced Civil Design (Cheshire Woods)
Hockaden (Cheshire Woods Estates)

I. Staff Comments

Cheshire Woods (271 lots/228.68 acres) and Cheshire Woods Estates (50 lots/139.3 acres) combine to form a 321-lot subdivision on 268 acres (an overall density of 0.87 du/acre). The development is located south of Cheshire Road and between Rome Corners Road and Interstate 71. The lots in Cheshire Woods are typically between 12,000-13,000 s. f. (90' X 135') and are served by County sewer. Lots in Cheshire Woods Estates are a minimum 2 acres and will utilize individual on lot sewage disposal systems. The entire development contains 133.45 acres of open space (36%) scattered in 13 reserve lots (Cheshire Woods – 121.32 acres, Cheshire Woods Estates – 12.13 acres). Reserve B in Cheshire Woods is a 58+ acre reserve along the western boundary providing a buffer from I-71. Existing wetlands are preserved within open space and woods are maintained where possible by "No-build" easements if outside open space.

Summerford Drive provides access to Cheshire Woods from Cheshire Road and extends through the middle of the site toward the south boundary. Wrenbury Drive is a long perimeter loop street on the west side. Broxton Lane, Lawton Street and Grafton Lane connect Cheshire Woods and Cheshire Woods Estates. Adlington Drive extends to the north boundary for potential future development of the adjacent land. Hatherton Place and Lawton Street connect to Rome Corners Road providing access to Cheshire Woods Estates. A mulch walking path will be provided throughout the open space in Cheshire Woods with an asphalt bike path constructed along one side of the streets within Cheshire Woods Estates. Sidewalks are provided within Cheshire Woods only. Retention ponds are located within open space in both subdivisions.

Cheshire Woods will be developed in 4 sections while Cheshire Woods Estates will be developed in 3. This site was rezoned to PRD in 2004 (RPC # 09-04 ZON). Surrounding land use is predominately agricultural with scattered single family lots along Cheshire Road and Rome Corners Road. Most of the area is still zoned Agricultural (A-1) but a number of smaller residential lots between 1-5 acres are zoned Farm Residential (FR-1).

A technical review was held on January 18, 2005, after which the applicant has addressed all of the required changes.

II. Staff Recommendation

Staff recommends *Preliminary Approval* of **Cheshire Woods, Section 1-4** to the RPC.
Staff recommends *Preliminary Approval* of **Cheshire Woods Estates** to the RPC.

Commission / Public Comments

Mr. Jim Whitacker of Advanced Civil Design was present to represent the applicants of Cheshire Woods, Section 1-4.

Mr. Mike Bauder, nearby resident of Woods of Rome Corners, stated that this project contains some significant deep ravines where the access comes out. He also questioned the safety issues regarding sight distance. Mr. Whitaker stated that a traffic study was completed and the road would be widened on Rome Corners and Cheshire Rd.

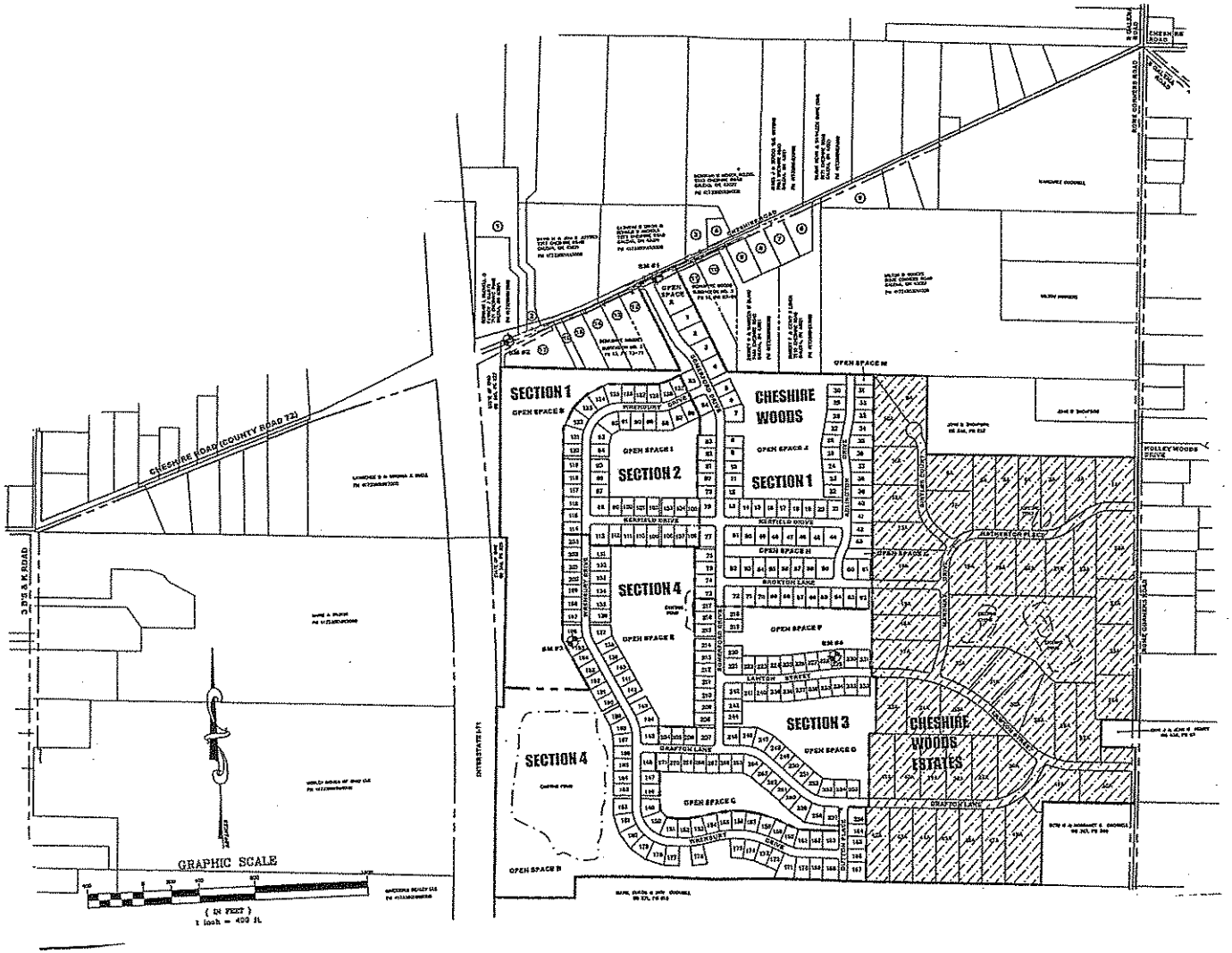
Mr. Gladman made a motion for Preliminary approval of Cheshire Woods, Sections 1-4. Mr. Shoaf seconded the motion. VOTE: Majority For, 0 Opposed, 1 Abstained (Mr. Hopper). Motion carried.

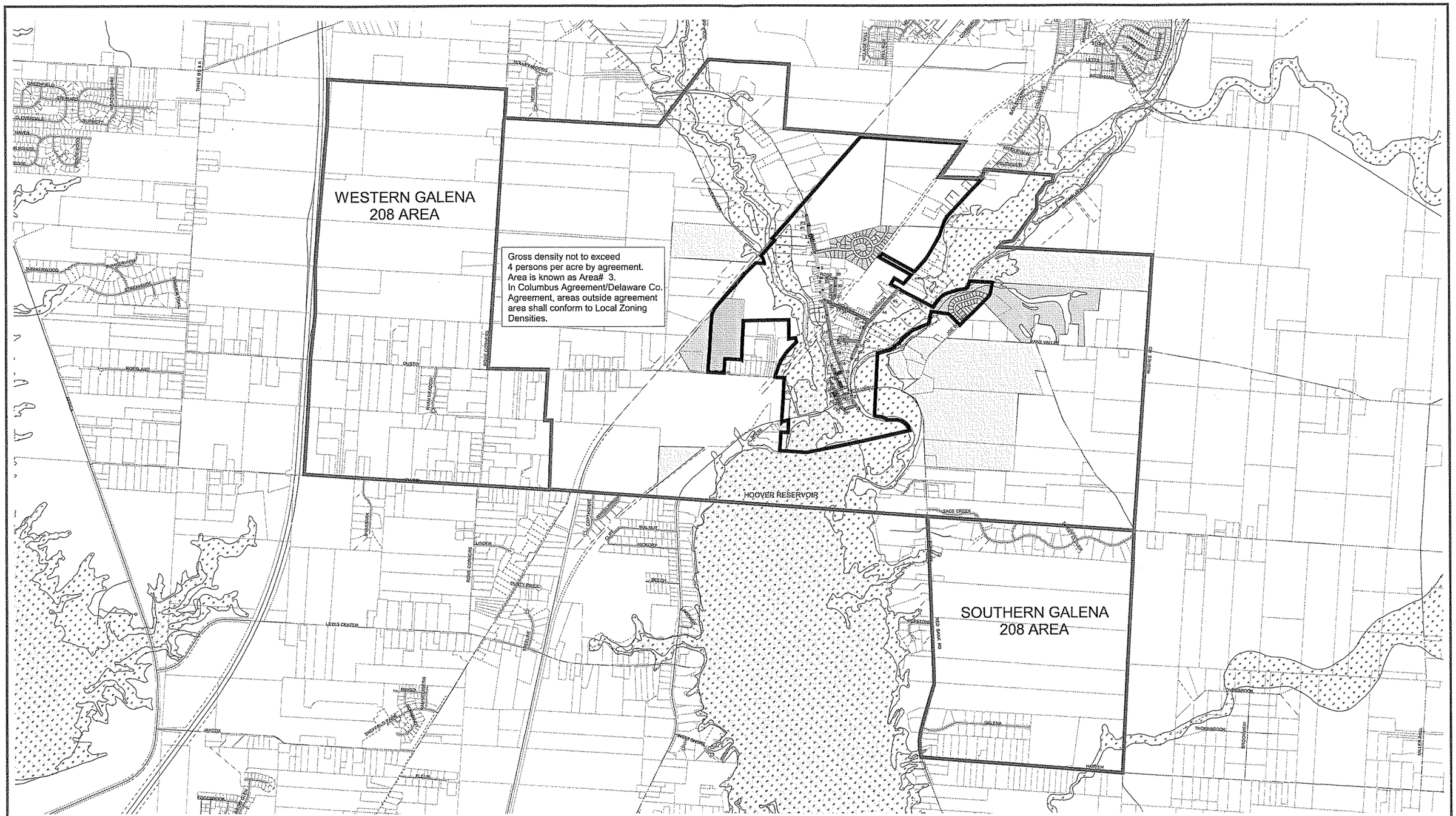
Mr. Kurt Ziessler of Hockaden & Associates was present to represent the applicants for Cheshire Woods Estates.

Mr. Snajd asked if there was resolution with the road issues with Mrs. Henry. Mr. Ziessler stated that there has been discussion and they are working on a resolution with Mrs. Henry.

Mr. Shoaf made a motion for Preliminary approval of Cheshire Woods Estates, seconded by Mr. Spanner. VOTE: Majority For, 0 Opposed, 1 Abstained (Mr. Hopper). Motion carried.

#01-05.1 Cheshire Woods, Section 1 – Berkshire Twp. – 94 lots / 80.269 acres





JOB #: 3550-030 FILE: PLATE3 I:\3550\030\PROJ.APR	VILLAGE OF GALENA PLANNING AREA PLATE THREE	VILLAGE OF GALENA SANITARY SEWER MASTER PLAN	POGGEMEYER DESIGN GROUP

PROPOSED SANITARY
PROPOSED FORCEMAIN
PROPOSED PUMP STATION
EXISTING SANITARY

REFERENCE:
ACAD DWG
P. BROCK
03/20/06

JOB #3550-030

FILE: SEWERS.DWG

OHIO

PROPOSED SEWERS

PLATE FIVE

VILLAGE OF GALENA
SANITARY SEWER
MASTER PLAN

POGGEMEYER
DESIGN GROUP

From: "Sanders, Randy" <Randy.Sanders@dnr.state.oh.us>
To: "Dan Dudley" <Dan.Dudley@epa.state.oh.us>
Date: 4/28/2006 3:00:57 PM
Subject: 06-0037; OEPA State WQM and 208 Plan.

ODNR COMMENTS TO Dan Dudley, Ohio EPA Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049.
Location: The State of Ohio
Project: The OEPA has prepared a draft update to the State Water Quality Management Plan, including elements of area wide waste treatment management plans (a.k.a. 208 Plans)

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project. These comments were generated by an inter-disciplinary review within the Department. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local, state or federal agency nor relieve the applicant of the obligation to comply with any local, state or federal laws or regulations.

Rare and Endangered Species: The ODNR Natural Heritage Database contains no comments on this document.
Fish and Wildlife: The ODNR, Division of Wildlife has no comments regarding this update.
Soil and Water Conservation: The Division of Soil and Water Conservation has reviewed the aforementioned program and plan and would like to offer the following comments.

Main text

Page 14 - Correct "Old Womans Creek" to Old Woman Creek. There are other misspellings etc., e.g. "silvaculture" on page 18, "Hellranch" on page 3 of Appendix 9-3. .

Page 21 - The following WAPs are now fully endorsed and should be added to the table: Huff Run and Grand Lake St. Marys/Wabash. ODNR-DSWC staff is providing details to complete the table to Lauren McEleney in Ohio EPA, Division of Surface Water.

Page 22 - The following WAPs are now conditionally endorsed and should be added to the table: West Creek, Euclid Creek, Upper Scioto, Honey Creek, Stillwater, and Lower Maumee. The Lower Olentangy should be deleted from this list because it is fully endorsed. ODNR-DSWC staff is providing details to complete the table to Lauren McEleney in Ohio EPA, Division of Surface Water.

Table 7-1, "Regulatory programs in Ohio that control the disposal of potential pollutants on land and in subsurface excavations," on pages 30

and 31 - It seems that the Department of Health rules on Home Sewage Treatment Systems should be included in this table.

Appendix 9-3 "208 Plan Prescriptions for Water Quality Protection within the Big Darby Creek Watershed"

Both text and tables leave it unclear whether the items listed as "Criteria" are requirements or recommendations. The text on page 2 refers to "requirements." But the right-hand column of the table refers to "Requirements or Recommendations." Detail in the table and the narrative doesn't clarify it well either. Both the table and the narrative need to be clearer about which are requirements and which are just recommendations, since these comprehensive criteria are replacing the current sewer extension moratorium. Without knowing to what extent the criteria are mandatory, it isn't possible to determine what the intended outcomes and possible effects of the action might be.

ODNR appreciates the opportunity to provide these comments. Please contact Randy Sanders at 614.265.6344 if you have questions about these comments or need additional information.

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