BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Donald and Betty Scott
1630 Old Rushville Road NE
Rushville, OH 43150

Respondent

Director's Final Findings
and Orders

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

PREAMBLE

It is agreed by the Parties hereto as follows:

Date: 11/14/17

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Don and Betty Scott ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director has made the following findings:

1. A verified complaint was submitted to Ohio EPA dated November 18, 2013 by Ms. Michelle Rogers of 1925 County Line Road, Rushville Ohio 43150 alleging violations of sections 401 and 404 of the Federal Water Pollution Control Act and Ohio Revised Code (ORC) 6111 and the rules promulgated thereunder pertaining to the property owned by Respondents at 1630 Old Rushville Road NE, Rushville, Ohio 43150.
2. On October 31, 2013 and on January 10, 2014, Ohio EPA Division of Surface Water (DSW) performed an investigation of the alleged stream and wetland filling activities on unnamed tributaries to Rush Creek, as described in the verified complaint. The tributaries flow into the Rush Creek Conservancy District Lake #5. A follow up site visit was performed on January 10, 2014 to quantify the impacted surface waters.

3. The receiving stream in the area defined in the verified complaint is an unnamed tributary of Rush Creek (Rush Creek RM 17.89). The Rush Creek Conservancy District Lake #5 is a manmade lake which was constructed for flood control, and is maintained by the Rush Creek Conservancy District.

4. During the October 31, 2013 and January 10, 2014 investigations, it was determined that portions of three separate streams had been impacted by the placement of fill materials. A summary of the stream impacts is provided in the table below:

<table>
<thead>
<tr>
<th>Stream Name</th>
<th>Approximate Stream location</th>
<th>Approximate length impacted (linear feet)</th>
<th>Impact type</th>
</tr>
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<tbody>
<tr>
<td>Stream 1</td>
<td>39.74302,-82.408678</td>
<td>81</td>
<td>Soil/fill materials</td>
</tr>
<tr>
<td>Stream 2</td>
<td>39.742317,-82.408679</td>
<td>29</td>
<td>Culvert</td>
</tr>
<tr>
<td>Stream 3</td>
<td>39.742196,-82.409505</td>
<td>24</td>
<td>Culvert</td>
</tr>
</tbody>
</table>

5. In addition to the stream impacts, approximately 0.20 acres of wetland was impacted by the placement of fill material in order to construct an unimproved dirt road across the wetland and stream.

6. The wetland was determined to be category 3 wetland based on the Ohio Rapid Assessment Method v. 5.0 (Mack 2001).

7. A Notice of Violation (NOV) from Ohio EPA was sent to Respondents on February 12, 2014. The NOV detailed Ohio EPA’s findings during the October 31, 2013 and January 10, 2014 investigations.

8. Respondents have indicated to Ohio EPA that they intend to restore the wetland and impacted streams. Respondents have submitted a proposed Restoration Plan in an effort to address the issues cited in the verified complaint. Attachment I is the Respondents’ proposed restoration plan. Attachment I is hereby incorporated into these Findings and Orders as if fully stated herein.
9. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.

10. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

11. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall implement the attached Restoration Plan (Attachment 1) and complete all necessary requirements within ten (10) months from the effective date of these Orders.

2. Prior to conducting any work on Stream 1, Respondent shall obtain an access agreement from the owners of Stream 1 to access, construct, and restore the area for Stream 1 impacts as defined in the Restoration Plan.

3. The restored wetland shall be protected in perpetuity through either a conservation easement or an environmental covenant. Upon recording the instrument with the County Recorder’s Office, Respondent shall submit to Ohio EPA a certified copy of the instrument evidencing its recording.

4. In addition to the 0.24 acre of Category 3 wetland restored at the Site, Respondent shall identify and restore, preserve and/or enhance an additional 1.0 acres of wetland at the Site or at an offsite location, as compensatory mitigation for the wetland loss. The restoration, preservation, and/or enhancement shall also be protected in perpetuity through either a conservation easement or an environmental covenant. Upon recording the instrument with the County Recorder’s Office, Respondent shall submit to Ohio EPA a certified copy of the instrument evidencing its recording.
VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is as defined in Ohio Administrative Code Rule 3745-33-03.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

VIII. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

IX. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses and causes of action, except as specifically waived in Section X of these Orders.

X. WAIVER

In order to resolve disputed claims, without admission of law, fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.
Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.
XII. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Craig W. Butler
Director

2/9/17
Date

IT IS SO AGREED:

Donald Scott

Signature
Donald Scott

Printed or Typed Name

Title
Attachment 1
Wetland and Stream Restoration Plan
for the Donald Scott Property

April 21, 2015

Prepared for:

Mr. Donald Scott
1498 Old Rushville Road
Rushville, Ohio 43150

Prepared by:

Mark A. Dilley, MS, PWS

MAD Scientist
ASSOCIATES LLC

Specialists in
Ecological & Wetland Consulting

253 N. State Street, Suite 101
Westerville, OH 43081
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Wetland and Stream Restoration Plan for the Donald Scott Property

1 INTRODUCTION AND RESTORATION OBJECTIVES

The Ohio EPA issued a Notice of Violation on February 12, 2014, to Mr. Donald Scott for wetland and stream filling activities that he initiated for his property and an adjacent property in Fairfield County (henceforth referred to as the Site). The Notice of Violation was issued following Ohio EPA site visits on October 31, 2013 and January 10, 2014, following receipt of a Verified Complaint (VC13060W03) by a neighboring property owner. Ohio EPA representatives determined that Mr. Scott had discharged fill material into a Category 3 wetland and three (3) streams without obtaining a Section 404 permit from the U.S. Army Corps of Engineers or a Section 401 water quality certification from the Ohio EPA. To provide access for important routine maintenance of the impoundment, Mr. Scott and his hired contractor initiated construction on a road surrounding the Rush Creek Conservation District Structure Reservoir at 1498 Old Rushville Road in Rushville, Ohio. Fill materials consisting of soil, rock, and culverts were redistributed or added to the wetland and streams in the process of constructing the desired road. Approximately 53 linear feet in two (2) unnamed tributaries of Rush Creek and 0.20 acres of wetland were impacted by construction activities. Additionally, the smoothing out of ATV trails extending onto to a neighboring property created the appearance of a third stream impact interpreted by Ohio EPA to constitute an additional 81-foot stream impact on Stream 1. Mr. Scott contends that the alleged fill did not result from his contractor’s activity, but he is prepared to restore this reach along with the remainder of the wetland and stream impacts indicated in the Verified Complaint.

In an effort to reconcile this violation, Mr. Scott contracted MAD Scientist & Associates (MAD) to develop a stream and wetland restoration plan that includes methods for reestablishing aquatic resources and development of a monitoring plan to ensure that successful restoration is achieved. Environmental Scientists at MAD, under the direction of Professional Wetland Scientist Mark A. Dilley, drafted this Restoration Plan Proposal for the Donald Scott Rush Creek Reservoir Property. This Plan Proposal involves removing the fill materials and re-grading the land to the condition that existed prior to construction activities. Specific objectives are included in Section 3 of this document (Stream and Wetland Restoration Work Plan).
The Site, including the Scott property (39.742202°N, 82.408039°W) and the adjacent property (39.743029°N, 82.408678°W) owned by Michelle Rogers, are located in Rush Creek Township, Rushville, Fairfield County, Ohio in the Hocking Watershed (Figure 1). The Rush Creek Conservation District Structure Reservoir and associated Dam and Spillway Areas are located between the above-mentioned properties. The impacted waterways are located northeast of the Reservoir.

Vegetation includes emergent, shrub, and forest communities. Dominant tree species include American elm (*Ulmus americana*), red maple (*Acer rubrum*), ash (*Fraxinus* spp.), and sycamore (*Platanus occidentalis*). The Site is comprised of an upstream area dominated by multiflora rose (*Rosa multiflora*), reed canarygrass (*Phalaris arundinacea*), and mayapple (*Podophyllum peltatum*). Invasive plants cover between twenty-five (25) and seventy-five (75) percent of the Site (Appendix A, Photograph 1). Vegetation disturbance is caused by mowing and beaver activity, and the hydrology of the upstream areas is influenced by beaver dams (Appendix A, Photograph 2). Soils are comprised of Lindside silt loam (LK; occasionally flooded) and Homewood-Gilpin complex (HoE2; 20-35 percent slopes, eroded; Figure 2).

A jurisdictional wetland exists adjacent to the reservoir to the northeast and covers ten (10) to twenty-five (25) acres. The wetland area is classified as PEM1C, Palustrine Emergent, by the National Wetland Inventory (U.S. Fish & Wildlife Service). Road construction passed through the wetland and stream channels, filling 0.20 acres of wetlands and 53 linear feet of stream (Appendix A, Photographs 3 and 4). Twenty-nine (29) linear feet of Stream 2 and twenty-four (24) linear feet of Stream 3 were impacted by road construction. Eighty-one (81) linear feet of Stream 1 were also identified as having been filled. Although Mr. Scott does not believe the origin of this stream impact relates to his contractor’s activity (which, in this area, consisted of smoothing out rutted ATV trails), he is accepting responsibility for the restoration of the additional stream impact in order to resolve all violations identified in the Verified Complaint.

Additionally, multiple culverts were installed beneath the road fill in the wetland area (Appendix A, Photograph 5). One of the culverts was improperly sized and was blocked at the time of a MAD site visit on April 30, 2014 (Appendix A, Photograph 6). At this time, the Site exhibited
significant flooding that is a natural characteristic of wetland function (Appendix A, Photograph 7). Areas of the constructed dirt road were being washed out by the high water levels (Appendix A, Photograph 8). Approximately one (1) foot of water covered the constructed road in the wetland area (Appendix A, Photograph 9). Road construction proceeded west through the wetland, then north along an existing trail. The northward path of construction passed through a stream channel on the adjacent property (Stream 1; Figure 3, Appendix A, Photograph 10).

3 STREAM AND WETLAND RESTORATION WORK PLAN

The following work plan was designed according to recommendations of the Ohio EPA. Fill material, including culverts, will be removed from streams and the wetland using a backhoe to reveal the former stream or wetland substrate. If the former substrate cannot be relocated during fill removal, the land will be re-graded to the best approximation of pre-construction land contour. It is expected that removal of fill will reveal existing stream substrates. If Stream 3 substrate is not revealed, clean cobble or gravel may be added following fill removal. A wetland seed mix will be spread in the wetland area following restoration land movement to establish or promote native species appropriate to this Site and region of Ohio. A specification sheet for the recommended mix is provided in Appendix B.

Stream construction will be timed to allow for the driest conditions and reduced probability of flood flows. The anticipated construction period will occur sometime between August and early October. Efforts will be made to complete the earthwork and plant installation in as short a time period as possible, to minimize disruption of adjacent wildlife habitats and speed the re-establishment of native vegetation.

The general construction sequence will proceed as follows, following the restoration concept provided in Figure 3.

1. Excavate fill material in both the stream channels and wetland area in order to match the original grade and topography. In the main wetland crossing area, this will require the removal of 1-3 feet of soil across the approximately 15-foot-wide crossing. Dispose of soils in an upland (non-wetland) location, spreading it out to create a natural appearance and loosening it to prepare it for seeding. If possible, the fill material will be returned to its source area to reconstruct the original landform.
2. Spread an annual rye or oats on all disturbed soil (except within stream channels) to establish vegetation and limit siltation during the remainder of the season.

3. Spread the native wetland seed mix throughout the restored wetland area (fall planting) and rake lightly.

4. Deposit washed river stone (cobble) and gravel as necessary to create substrate in Stream 3 that is similar to the unimpacted portions upstream of the fill area.

5. Install willow stakes along banks of Stream 3 for bio-stabilization. Wetland seed will be applied to the narrow floodplain benches to enhance the diversity of plant material on the edges of the stream. The same mix as is being used in the main wetland area will be used for this application.

4 MONITORING AND PERFORMANCE REQUIREMENTS

Over the next two years, Donald Scott, or his consultant or designee, will monitor the progress of restoration of the streams and wetland on his property to ensure the proper re-establishment of hydrology and vegetation. The performance criteria are as follows:

1. For the wetland restoration area, the hydrology will have recovered to its original condition in terms of the depths and frequency of inundation and an emergent wetland plant community dominated by native species will have covered 75% of the restoration area. Coverage by invasive species should not exceed 25%.

2. For the stream restoration segments, the hydrology will have recovered to its original condition in terms of the depth, frequency, and velocity of flows, and appropriate natural substrates (gravel, cobble) will be found within the restored segment.

If performance is unsatisfactory (e.g., does not meet the performance objectives or other standards established by Ohio EPA) or other problems are noted, Donald Scott will implement adaptive management measures at the site to resolve these issues. Implementation of on-site corrective measures is the preferred course of action. No off-site mitigation are currently proposed.
Following completion of construction, a letter documenting completion of the restoration plantings will be submitted to Ohio EPA within 60 days.

5 INSTRUMENT OF PROTECTION

The restoration site at Rush Creek Reservoir will be protected in perpetuity under a Deed and Agreement of Conservation Easement established by the OEP A and Donald Scott. The easement document is provided in Appendix E. It is anticipated that this legal document will be finalized in March 2015. The area to be protected will be a minimum of one (1) acre. Exact coordinates and boundaries can be found in Appendix (C) as delineated by Tobin-McFarland Surveying, Inc. This covenant will be finalized, signed, notarized, and recorded with the County Auditor within ninety (90) days of the acceptance of this Mitigation Plan.

6 LONG-TERM MANAGEMENT PLAN

Donald Scott has ownership and long-term management control over the Site and an interest in ensuring the successful restoration of wetlands and streams located there. If additional work is necessary, it will be performed by Donald Scott or contractors hired by him. Once the seeded areas are well-established, no long-term management activities are anticipated. The Site will be maintained in its restored condition. However, if problems are identified, Mr. Scott will act quickly to develop and implement an adaptive management strategy.

7 FINANCIAL ASSURANCES

Donald Scott assumes the primary financial responsibility for the implementation of adaptive management of the restoration Site during, and immediately following, the construction period.
Stream 1 impact: To be restored through removal of fill from 81 linear feet of channel

Stream 2 impact: To be restored through removal of culvert and fill from 29 linear feet of channel

Stream 3 impact: To be restored through removal of fill from 24 linear feet of channel and, if necessary, placement of suitable natural stone substrate to replicate upstream stream bed conditions. Small area of wetland fill to be removed adjacent to stream.

Existing channelized stream

Generalized original wetland boundary, based on soils, aerial photograph review, and on-site observations

Primary wetland impact area: To be restored to original topography and seeded with a cover crop and native wetland seed mix

General road alignment and area of impact identified by Ohio EPA

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Figure 3. Stream and Wetland Impact Map & Restoration Plan Concept

Source: USDA-NRCS & Google Earth Pro, 2014

Rushville, OH

Created By: MAD
Created: 08-03-2014
APPENDIX A

Photographs
Photograph 1. Invasive species multiflora rose (*Rosa multiflora*; background) and reed canarygrass (*Phalaris arundinacea*; foreground) dominate the wetland near the impact site.

Photograph 2. Impoundment partially attributed to beaver dam upstream of impact site.
Photograph 3. Constructed road encircling the reservoir.

Photograph 4. Road construction around the reservoir and through wetland.
Photograph 5. Cleared roadway and culvert crossing a stream.

Photograph 6. Improperly sized culvert became blocked and caused flooding.
Photograph 7. Flooding in the wetland area. Water depth was sixteen (16) inches.

Photograph 8. Inundated portion of the constructed road, showing flooding into adjacent non-wetland areas on the southeast side of the reservoir.
Photograph 9. The wetland flooded the constructed roadway. Water depth was eight (8) inches.

Photograph 10. Constructed road (smoothed over rutted ATV trail) heading onto the adjacent property. This road crosses Stream 1.
APPENDIX B

Recommended Wetland Seed Mix
Sedge Meadow

Designed for level sites with saturated soil conditions, although it will tolerate drier soils late in the year. It creates a diverse habitat, offering a variety of cover and food options for wildlife. Many species attract butterflies, and some attract hummingbirds. This seed mix includes at least 13 of 17 native permanent grass, sedge, and rush species and 27 of 30 native forb and shrub species. Apply at 39.8 lbs/pounds per acre.

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<th>COMMON NAME</th>
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APPENDIX C

Surveyed Boundaries
Description of 1.000 Acre Mitigation Area

Situated in the State of Ohio, Fairfield County, Township of Rushcreek, Township 16, Range 17, Section 3.

Beginning at a 5/8 inch rebar set, said rebar is located South 24°25’33” West a distance of 183.32 feet from a 5/8 inch rebar previously set at a corner of the 21.110 acre tract described in Official Record 1643, Page 1085;

thence South 82°05’06” East a distance of 168.00 feet to a 5/8 inch rebar set;

thence South 07°54’54” West a distance of 259.29 feet to a 5/8 inch rebar set;

thence North 82°05’06” West a distance of 168.00 feet to a point in a lake;

thence North 07°54’54” East, passing a 5/8 inch rebar set at 20.00 feet, a total distance of 259.29 feet to the point of beginning, containing 1,000 acres.

Bearings are based on the survey filed in Survey Book 85, Page 18626. Rebars set are 5/8 inch by 30 inches and have a yellow plastic identification cap stamped “Tobin-McFarland”. For additional information see plat of survey made in conjunction with and considered an integral part of this description.

This description is based on a survey made in December of 2014 by Tobin-McFarland Surveying, Inc., and was prepared by Thomas M. Tobin, Registered Professional Surveyor No. 7674.

G:2014:DonScott
APPENDIX D

Description of 1.000 Acre Mitigation Area
APPENDIX E

Deed and Agreement of Conservation Easement
DEED AND AGREEMENT OF
CONSERVATION EASEMENT

This Deed and Agreement of Conservation Easement is made this 13th day of March, 2015, by and between the Ohio Environmental Protection Agency, (the “Grantee”), having an address at Lazarus Government Center 50 W. Town St., Suite 700 Columbus, OH 43215 and Donald Scott (the “Grantor”), having an address at 1498 Old Rushville Rd, Rushville OH 43150.

WHEREAS, the Grantor is the owner in fee of approximately a 1.0 acre tract of certain real property located at 1498 Old Rushville Rd, Rushville OH 43150, situated in Fairfield County, Ohio which is more particularly identified and described on Exhibit A attached hereto; and

WHEREAS, the Grantor has proposed to construct a certain project on the real property identified on Figure 1, which project may have environmental impacts to certain surface water bodies located on the real property and will require the Grantor to obtain a 401 water quality certification from the Ohio Environmental Protection Agency; and

WHEREAS, in order to protect the quality of the surface waters located on the real property, the Ohio EPA has required that Grantor, as a condition of being issued a 401 water quality certification, to grant a conservation easement in and to a portion of the Grantor’s real property, which is more specifically identified on appendix D attached hereto (the “Property”); and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect the conservation values of the Property for the benefit of this generation and generations to come.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Grant of Easement:** Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Property of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Property, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Property by Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of himself, his heirs, successors and assigns with the Grantee its successors and assigns to do and refrain from doing, severally and collectively, upon the Property, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, is and will be for the benefit of Grantee.
2. **Term of Easement**: The easement granted hereunder shall be perpetual and shall have no expiration date.

3. **Conservation Values**: The Property possesses substantial value in conserving and protecting the physical, biological and chemical integrity of the Rush Creek Reservoir and is important in the protection of the existing or designated use of the waters of the state pursuant to §303 of the Clean Water Act, 33 U.S.C. §1313 and §6111.041 of the Ohio Water Pollution Control Act. The specific conservation values of the Property have been documented in a natural resource inventory signed by the Grantor and the Grantee. This “Baseline Documentation Report,” attached and incorporated by reference herein, may consist of any and all maps, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Property at the time of the grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The parties acknowledge that this Baseline Documentation Report is an accurate representation of the Property at the time of this grant.

4. **Prohibited Actions**: Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:

   a. **Division**: Any division or subdivision of the Property is prohibited;

   b. **Commercial Activities**: Commercial development or industrial activity is prohibited;

   c. **Construction**: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots is prohibited;

   d. **Cutting Vegetation**: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides is prohibited;

   e. **Land Surface Alteration**: The removal of soil, sand, gravel, rock, minerals or other materials from the Property, or doing any act that would alter the topography of the Property shall be prohibited;

   f. **Dumping**: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Property;
g. **Water Courses:** Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered;

h. **Recreational Trails and Vehicles:** Recreational uses that disturb or compact the soils or destroy or inhibit growth of vegetation are prohibited;

i. **Utilities:** Construction of utilities on the Property shall be prohibited. Underground or above-ground utilities may only be constructed if no other alternative are available and Ohio EPA has approved the exception;

j. **Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Property shall be prohibited.

5. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Property:

   a. **Right to Enter:** The Grantee has the right to enter the Property at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor. The Grantee may not, however, unreasonably interfere with the Grantor’s use and quiet enjoyment of the Property. The Grantee has no right to permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.

   b. **Right to Preserve:** The Grantee has the right to prevent any activity on or use of the Property that is inconsistent with the terms or purposes of this Conservation Easement.

   c. **Right to Require Restoration:** The Grantee shall have the right to require the restoration of the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.

   d. **Signs:** The Grantee shall have the right to place signs on the Property which identify the land as being protected by this Conservation Easement. The number and content of any such signs are subject to the Grantor’s prior approval.
e. **Assignment**: This Conservation Easement is transferable but the Grantee may assign it rights and obligations under this Conservation Easement only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer, and only to an organization that is approved by the Ohio EPA and US Army Corps of Engineers. Any transfer shall remain subject to the terms and conditions of this Conservation Easement and the subsequent easement holder shall be bound by the terms and conditions hereof, subject to amendment or termination as set forth herein.

Grantee agrees to give written notice to Grantor, Ohio EPA, and the US Army Corps of Engineers of the transfer of any interest at least 30 days prior to the date of such transfer. Grantee’s notice shall include the name, address, and telephone number of the transferee and a copy of this Conservation Easement.

6. **Permitted Uses:** Grantor reserves to himself, and to his personal representatives, heirs, successors and assigns, all rights accruing from his ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

a. **Right to Convey**: The Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Property. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof. Grantor agrees to give written notice to Grantee, Ohio EPA, and the US Army Corps of Engineers of the conveyance of an interest in any portion of the Easement Area at least 30 days prior to the date of such conveyance. Grantee’s notice shall include the name, address, and telephone number of the transferee and a copy of this Conservation Easement.

b. **Right to Maintain**: The Grantor retains the right to maintain, renovate and replace any existing structure(s), if any, on the Property as noted in the Baseline Documentation Report, in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure, and requires the Grantee’s prior written approval.
c. **Right to Access:** The Grantor shall retain the right of unimpeded access to the Property.

7. **Grantee’s Remedies:** In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies and shall be subject to the following limitations:

a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of the Grantee’s right to enforce the terms of this Conservation Easement.

b. **Acts Beyond Grantor’s Control:** The Grantee may not bring an action against the Grantor for modifications occurring to the Property which result from causes beyond the Grantor’s control. Examples include, without limitation: unintentional fires, storms, natural earth movement, trespassers or the Grantor’s well-intentioned actions in response to an emergency which result in changes to the Property. The Grantor has no responsibility under this Conservation Easement for such unintended modifications. The Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Conservation Easement.

c. **Notice and Demand:** If the Grantee determines that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Grantee shall provide written notice to the Grantor unless the violation constitutes immediate and irreparable harm. The written notice shall identify the violation and request corrective action to cure the violation or restore the Property.

d. **Failure to Act:** If, for a twenty-eight (28) day period after the date of written notice provided pursuant to subparagraph c., above, the Grantor continues violating this Conservation Easement, or if the Grantor does not abate the violation begin to implement corrective measures within the foregoing twenty-eight (28) day period requested by the Grantee, or fail to continue diligently to cure such violation until finally cured, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder. The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Property. If a court determines that the Grantor has failed to comply with this Conservation Easement, then
the Grantor also agrees to reimburse all reasonable costs and attorney’s fees incurred by the Grantee in compelling such compliance.

e. **Unreasonable Litigation**: If the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, then the Grantee also agrees to reimburse all reasonable costs and attorneys’ fees incurred by the Grantor in defending the action.

f. **Grantor’s Absence**: If the Grantee determines that this Conservation Easement is, or is expected to be, violated, the Grantee will make a good faith effort to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Easement, then the Grantee may pursue its lawful remedies without prior notice and without awaiting the Grantor’s opportunity to cure.

g. **Actual or Threatened Non-Compliance**: Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantor acknowledges that Grantee’s remedies at law for any violation of the terms hereof are inadequate and Grantee is entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or inadequacy of otherwise available legal remedies.

h. **Cumulative Remedies**: The preceding remedies of the Grantee are cumulative. Any, or all, of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement.

8. **Ownership Costs and Liabilities**: In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. The Grantee and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any other property located on the Property or otherwise. The Grantor agrees to defend the Grantee against such claims and to indemnify the Grantee against all costs and liabilities relating to such claims during the tenure of the Grantor’s ownership of the Property. The Grantor is
responsible for posting the Property’s boundaries and for discouraging any form of trespass that may occur.

9. **Cessation of Existence:** If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the mutual consent of Grantor and Ohio EPA.

10. **Termination:** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement’s purposes, or by exercise of eminent domain.

   a. **Unexpected Change in Conditions:** If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Grantee will then be entitled to compensation in accordance with applicable laws and in proportion to the Grantee’s interest in the Property at the effective date of this Conservation Easement.

   b. **Eminent Domain:** If the Property is taken, in whole or in part, by power of eminent domain, then the Grantee will be entitled to compensation in accordance with applicable laws and in proportion to the Grantee’s interest in the Property at the effective date of this Conservation Easement.

11. **Recordation:** Grantee shall record this instrument in a timely fashion in the official records of Fairfield County, Ohio and may re-record it at any time as may be required to preserve its rights in this Easement.

12. **Assignment:** This Conservation Easement is transferable but the Grantee may assign it rights and obligations under this Conservation Easement only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer; and only to an organization that is approved by the Ohio EPA and US Army Corps of Engineers. Any transfer shall remain subject to the terms and conditions of this Conservation Easement and the subsequent easement holder shall be bound by the terms and conditions hereof, subject to amendment or termination as set forth herein.

Grantee agrees to give written notice to Grantor, Ohio EPA, and the US Army Corps of Engineers of the transfer of any interest at least 30 days prior to the date of such transfer. Grantee’s notice shall include the name, address, and telephone number of the transferee and a copy of this Conservation Easement. As a condition of such transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
13. **Liberal Construction**: This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Property. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

14. **Notices**: For purposes of this Conservation Easement, notices may be provided to either party, by personal delivery or by mailing a written notice to that party at the address shown at the outset of this agreement, or at the last known address of a party, by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U.S. Postal Service.

15. **Severability**: If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.

16. **Subsequent Transfers**: This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Property and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Property shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantee shall incorporate the terms of this Conservation Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantee further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer.

17. **Termination of Rights and Obligations**: A party's future rights and obligations under this Conservation Easement shall terminate upon the transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

18. **Applicable Law**: This agreement shall be governed by, and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.

19. **Entire Agreement**: This Conservation Easement, together with all Exhibits, sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.
IN WITNESS WHEREOF, the Grantor and Grantee have set their hands on the day and year first above written.

WITNESSES: (print/type names under signature)


GRANTOR:


GRANTEE:


STATE OF OHIO )
COUNTY OF FAIRFIELD )

Acknowledged before me by ___________________________ this ___ day of ___________, 2015.

______________________________
Notary Public

STATE OF OHIO )
COUNTY OF FAIRFIELD )

Acknowledged before me by ___________________________ this ___ day of ___________, 2015.

______________________________
Notary Public

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