

IN THE COURT OF COMMON PLEAS FOR
TRUMBULL COUNTY, OHIO

STATE OF OHIO, *ex rel.*, MARC DANN,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

BOARD OF COMMISSIONERS FOR
TRUMBULL COUNTY, OHIO,

Defendant, Third-Party
Plaintiff and Counter-
Claimant,

v.

BOARD OF HEALTH FOR
TRUMBULL COUNTY, OHIO,

Third-Party Defendant.

CASE NO. 2002 CV 825

Judge W. Wyatt McKay

CONSENT ORDER

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TRUMBULL COUNTY
COMMISSIONERS

WHEREAS, this matter came on for hearing upon Plaintiff State of Ohio's (hereinafter, the "State") Complaint against Defendant, Third-Party Plaintiff, Board of Commissioners of Trumbull County, Ohio (hereinafter, the "Commissioners") in the above-captioned matter and the Commissioners' Counterclaim against the State in that same litigation; and

WHEREAS, the State and the Commissioners, having informed the Court that they have resolved the claims each has asserted against the other in this matter, and now wish to memorialize that resolution in the form of a Consent Order to be issued by the Court.

NOW THEREFORE, without taking any evidence, and without an admission of any issue of fact or law, and based solely upon the consent of the State and the Commissioners, it is Ordered, Adjudged and Decreed as follows:

I. JURISDICTION AND VENUE.

1. This Court has subject matter jurisdiction over the State's Complaint and the

Commissioners' Counterclaim in this matter, and personal jurisdiction over the parties hereto. Venue is proper in this Court with respect to both the State's Complaint and the Commissioners' Counterclaim.

II. RESOLUTION OF CLAIMS AND PERSONS BOUND.

2. Notwithstanding the civil claims previously resolved through the Consent Order of this Court entered December 2, 2003, this Consent Order resolves the civil claims asserted by the Commissioners in their Counterclaim as of the date of the entry of this Consent Order. Neither the State nor the Commissioners shall be entitled to any further relief against each other with respect to any claim resolved by this Consent Order. This Consent Order does not alter any obligations of any party concerning the December 2, 2003, Consent Order. Compliance with this Consent Order also resolves any allegations of "unsanitary conditions," as that term is used in Ohio Revised Code (R.C.) 6117.34, "public health nuisance" as that term is used in Ohio Administrative Code (O.A.C.) § 3745-1-04(F), and the need for the County to provide public sewers pursuant to R.C. 6111.03 and 6117.34, with respect to the areas/subdivisions identified below and shown in Exhibit A.

3. This Consent Order is directed to and binding upon the State, the Commissioners, the officers and employees of each, their successors, and any other person subject to this Consent Order pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure. The Commissioners shall provide a copy of this Consent Order to each contractor and consultant it employs to perform the work itemized herein.

III. CONSTRUCTION SCHEDULE.

4. The Commissioners shall construct sanitary sewers to collect sewage from the areas identified below and more fully described in the area-wide wastewater treatment plan

adopted by Trumbull County pursuant to Section 208 of the federal Clean Water Act, and conduct it to the Waste Water Treatment Plants (hereinafter, "WWTPs") listed below in accordance with the specified schedule. The requirement to construct any of the sanitary sewer projects listed below shall not relieve the owner and/or operator of the WWTP receiving flow from the completed sanitary sewer from compliance with any condition or requirement of any Permit-to-Install or National Pollutant Discharge Eliminating System permit issued for that WWTP. No later than two years preceding each completion date specified below for a listed area, the Commissioners shall have submitted an application(s) for a Permit-to-Install to Ohio EPA for approval for the specific sewer project(s) for that area.

<u>AREA</u>	<u>WWTP</u>	<u>COMPLETION DATE</u>
Lakeshore Drive	Sterling Dr. WWTP	December 31, 2010
McCleary Jacoby – SR 305/East Central Bazetta Sewer	Mosquito Creek WWTP	December 31, 2010
Southwest Bazetta Interceptor	Mosquito Creek WWTP	December 31, 2020
Brookfield Center	Brookfield WWTP	December 31, 2015
Meadowbrook	Warren WWTP	December 31, 2015
Belmont Ave./Little Squaw Creek	Girard WWTP	December 31, 2020
Kurmont Heights	Hubbard WWTP	December 31, 2020
Maplewood I	Hubbard WWTP	December 31, 2020
Maplewood II	Hubbard WWTP	December 31, 2020
Scott Street	Newton Falls WWTP	December 31, 2015
Kinsman I (Exhibit B)	Kinsman WWTP	December 31, 2010
Kinsman II (Remainder of Exhibit A)	Kinsman WWTP	December 31, 2015

5. On or before March 1 of each year following the Court's entry of this Consent Order and continuing yearly thereafter until all the above-listed sewer projects are completed, the Commissioners shall provide a written status report to Ohio EPA setting forth the current status at that time of all sewer projects set forth above in Paragraph 4.

6. If any event occurs which causes or may cause the Commissioners to believe they have an inability to raise sufficient funds to pay for the cost of installing one or more of the sewer projects identified in Paragraph 4, the Commissioners shall notify the Ohio EPA in writing within thirty (30) days from when the Commissioners knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the basis upon which the Commissioners are claiming an inability to raise the funds, the anticipated additional time needed by the Commissioners to obtain the funds, and a proposed revised date for the completion of the affected sewer project(s). Within sixty (60) days of the above notification by the Commissioners, Ohio EPA shall respond to Commissioners in writing either by asking for more information, accepting the proposed change to the schedule or by rejecting the proposed schedule change. If the parties agree to the change in the schedule, the parties shall submit the proposed change as a modification of this Consent Order to the Court for its consideration. If the parties are unable to agree to a change in the schedule, no sooner than one hundred and twenty (120) days after initial notification by the Commissioners to Ohio EPA, either party may bring the dispute to the attention of the Court. Before the Court, the Commissioners shall bear the burden of proving by a preponderance of the evidence that the Commissioners have an inability to raise funds for the sewer project(s) that justifies the granting of a time extension by the Court to complete the sewer project(s) and the reasonableness of the time extension being sought by the Commissioners.

IV. RESERVATION OF RIGHTS.

7. The Commissioners reserve the right to seek relief from the provisions of this Consent Order pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, and to defend against any claim that they are in contempt of court, based upon, *inter alia*, their inability to raise sufficient funds to pay for the cost of installing one or more of the sewer projects identified in Paragraph 4.

8. The State reserves the right to oppose any relief from this Consent Order sought by the Commissioners pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to contest any defense raised in response to a contempt action brought by the State to contest any claim brought pursuant to Paragraph 6 of the Consent Order that the Commissioners are unable to raise sufficient funds to pay for the cost of installing one or more of the sewer projects identified, or need additional time to complete any identified sewer project, and to seek the imposition of contempt sanctions should the Commissioners fail to comply with any provision of this Consent Order.

V. MISCELLANEOUS.

9. Except as otherwise provided herein, nothing in this Consent Order shall relieve either the Commissioners or the State of any obligations each may have under applicable law, including, but not limited to, the need to obtain applicable permits.

10. Nothing in this Consent Order is intended to, nor shall be construed to, resolve any claim advanced by the Commissioners against the Trumbull County Board of Health in the Third-Party Complaint filed by the Commissioners in this litigation.

11. Each party shall bear its own costs in this action.

12. This Court shall retain jurisdiction over this matter in order to resolve any disputes that may arise between the State and the Commissioners under this Consent Order.

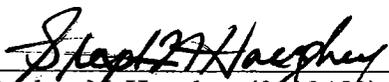
SO ORDERED.


W. Wyatt McKay, Judge

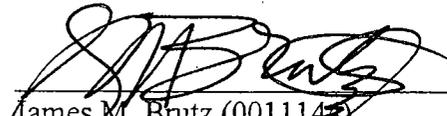
Approved:


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TRUMBULL COUNTY

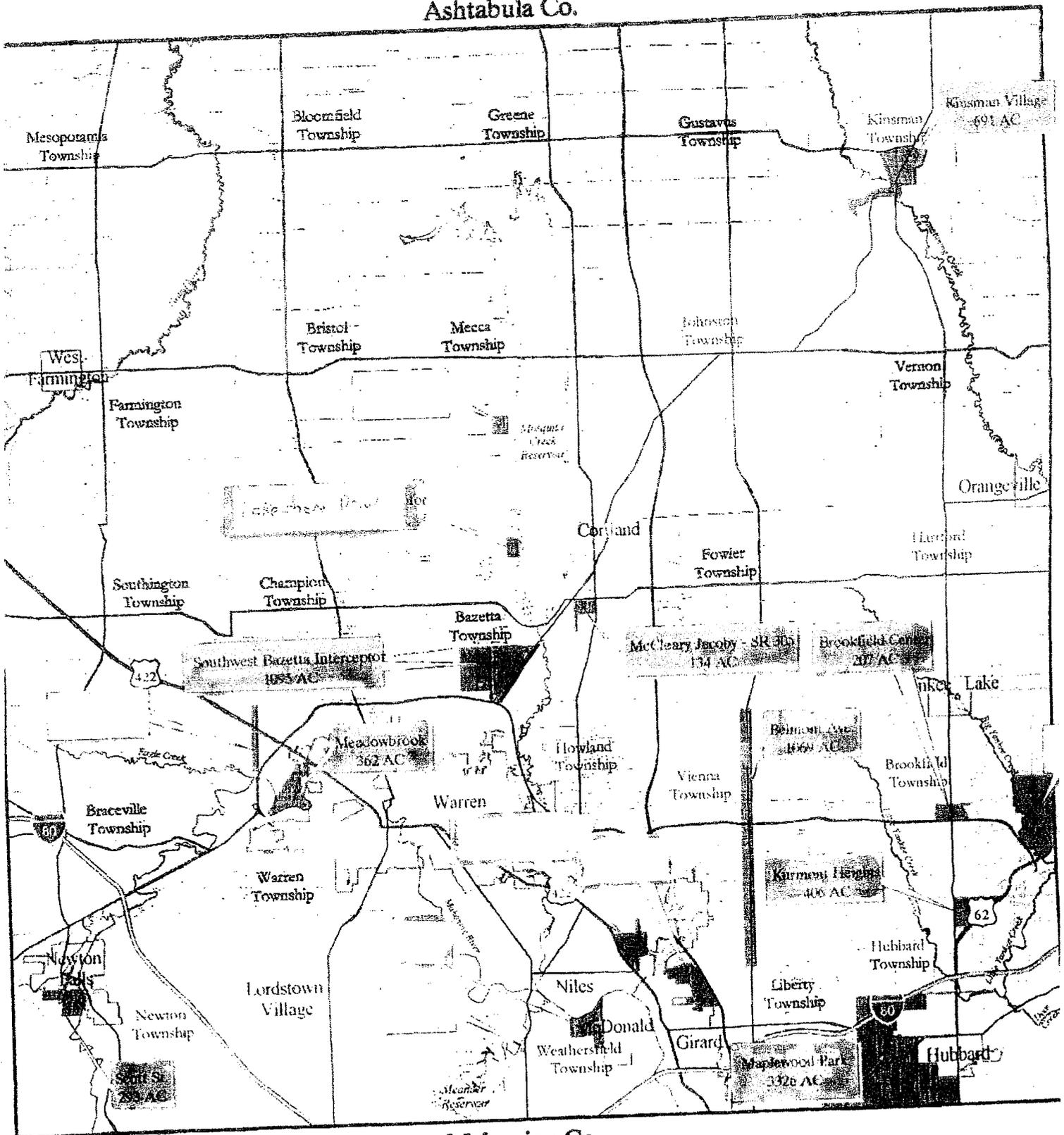
and Counter-Claimant Board of Commissioners of Trumbull County, Ohio

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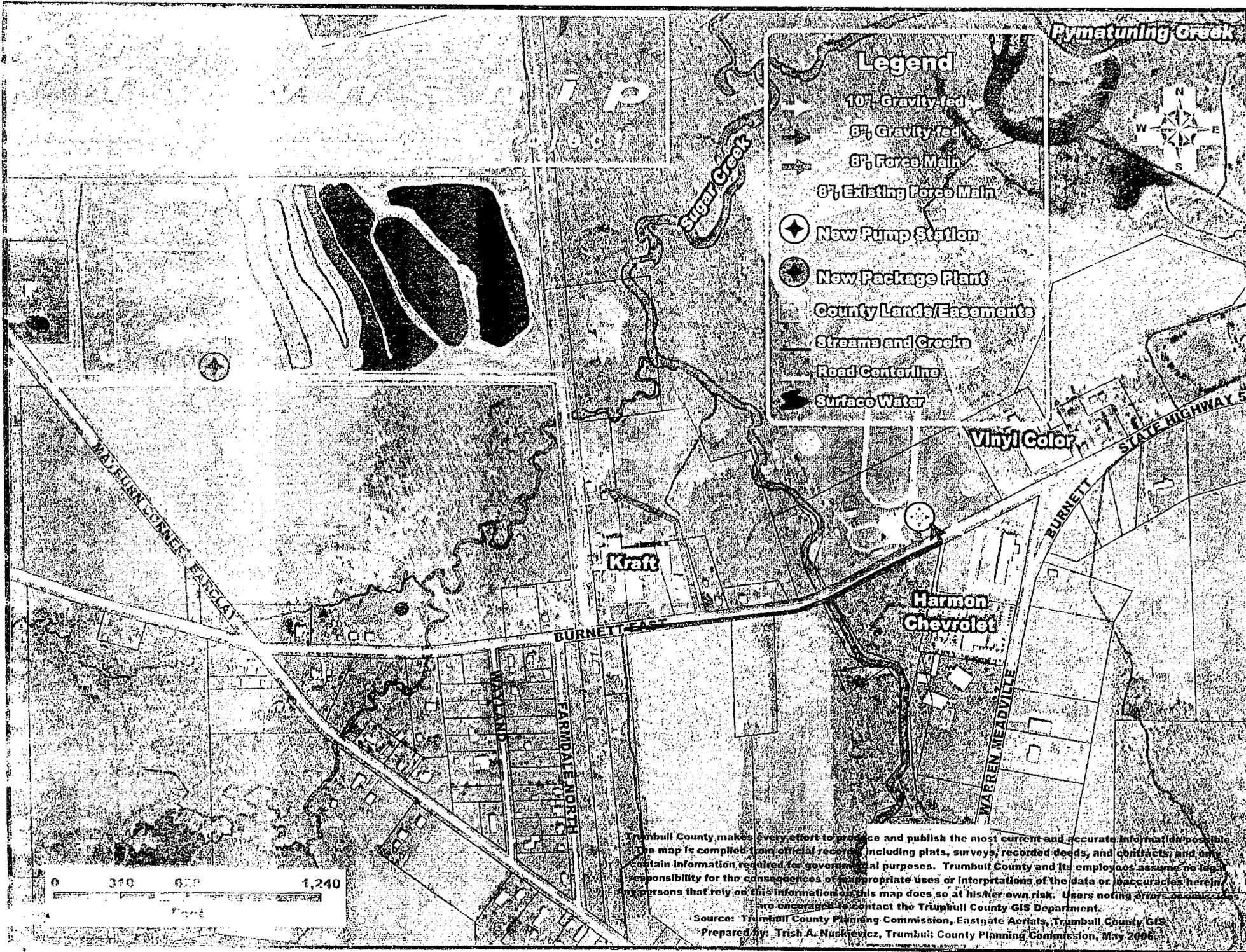
Unsewered Areas of Concern

Ashtabula Co.



Mahoning Co.

Exhibit "A"



Legend

- 10", Gravity Fed
- 8", Gravity Fed
- 8", Force Main
- 8", Existing Force Main

- New Pump Station
- New Package Plant

- County Lands/Easements
- Streams and Creeks
- Road Centerline
- Surface Water

Pymatung Creek



Sugar Creek

Vinyl Color

Kraft

Harmon Chevrolet

BURNETT STATE HIGHWAY 5

BURNETT EAST

WARREN MEADVILLE

FARMDALE NORTH

0 310 620 1,240

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Source: Trumbull County Planning Commission, Eastgate Aerials, Trumbull County GIS
 Prepared by: Trish A. Nuskevicz, Trumbull County Planning Commission, May 2006

Exhibit "B"