

OHIO E.P.A.

MAY 28 2009

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the matter of:

City of Cleveland :
Department of Port Control :
Cleveland Hopkins International Airport :
5300 Riverside Drive :
Cleveland, Ohio 44135 :

Director's Final Findings
and Orders

Respondent

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:

By: [Signature] Date: 5-28-09

I. JURISDICTION

These Director's Modified Final Findings and Orders ("Modified Orders") are issued to the City of Cleveland ("Respondent") 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 Modified Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. On April 13, 2001, the Director issued Final Findings and Orders ("2001 Orders") to Respondent, City of Cleveland, located in Cuyahoga County, Ohio. A copy of the 2001 Orders are attached hereto and incorporated by reference as if fully re-written herein.
2. Order No. 8 of the 2001 Orders states: "Within eighteen (18) months after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and approval, a final stream restoration plan ("SRP") and proposed schedule for the restoration of 12,400 linear feet of Doan Brook from the outlet of the University Circle culvert to the inlet of the culvert at Interstate 90 as described in Appendix D of these Orders. The schedule shall include a list of critical dates or events for the implementation of each mitigation project. Provision shall be made to notify Ohio EPA

at least ten (10) business days prior to each of the critical events identified in the schedule. Respondent shall fully implement the restoration project in accordance with the approved restoration plan and schedule, which are, upon approval, hereby incorporated as if fully rewritten herein."

3. The 404 permit described in Order No. 8 of the 2001 Orders was issued on May 18, 2001.
4. Respondent submitted designs to Ohio EPA and received extensions to implement the SRP. After receiving construction bids that were not acceptable Respondent and Ohio EPA agreed to meet to discuss potential changes to the Doan Brook project and other alternative water quality projects.
5. In 2006 and 2007, Respondent and Ohio EPA investigated other potential water quality improvement projects in the Northeast Ohio area to replace or supplement the Doan Brook Project.
6. On October 22, 2007, a meeting was held with the Respondent, Northeast Ohio Regional Sewer District, and Ohio EPA regarding restoration of Doan Brook. Respondent expressed concern that due to various logistical and financial issues, compliance with Order No. 8 in the 2001 Orders was economically unreasonable and requested an extension of the time frame and that the quantity of linear feet restored be reduced. Further, Respondent presented concepts for innovations in stream restoration that sought to balance the need for preservation of existing historic rock walls and the sensitivity of the park setting. One particular innovation involved the use of pilot efforts to provide stream enhancement between historic rock walls using stream restoration techniques.
7. As a product of these discussions, Respondent and Ohio EPA desire to modify Order No 8 of the 2001 Findings and Orders as memorialized in these Modified Findings and Orders.
8. With the exception of the revisions to Order No. 8 of the 2001 Orders, as provided for in these Modified Orders, all other provisions of the 2001 Orders shall remain in full force and effect.
9. The following Modified Orders do not constitute authorization or approval of the construction of any physical structure or facilities.
10. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
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 Modified Orders and to evidence relating to conditions calculated to result from

compliance with these Modified Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

Order No. 8 of the 2001 Orders is hereby modified as follows:

1. **Order No. 8:**

- a. Respondent shall remit three million dollars (\$3,000,000.00) to Ohio EPA, within sixty (60) days of the effective date of these Modified Orders to the Surface Water Improvement Fund (Fund 5Y30). This money is to be used by Ohio EPA to provide grant funding for water quality improvements projects in Cuyahoga County. Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check and a cover letter identifying the Respondent shall be submitted to Brenda Case, or her successor at:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

- b. Within one hundred eighty (180) days of the effective date of these Orders, Respondent shall submit a Doan Brook Conceptual Plan ("Conceptual Plan") to Ohio EPA for review and approval which provides for at least a \$2.5 million investment by Respondent for stream enhancement on Doan Brook. This Conceptual Plan shall outline the goals, locations, and a schedule for implementation of the Doan Brook Stream Enhancement Plan ("Enhancement Plan"). The Enhancement Plan shall contain the items listed in Attachment 1, incorporated herein. Ohio EPA may approve the Plan(s) with conditions and/or modify the Plan(s) and approve it as modified. Once approved by Ohio EPA the Plan(s) shall be implemented as approved by Ohio EPA. Respondent shall fully respond to any comments received from Ohio EPA on the documents submitted pursuant to this Plan(s) within forty-five days of receiving the comments (or such longer period as agreed upon by the parties), including modification of the Plan(s) as necessary. After approval, the Parties may modify the Plan(s) upon mutual agreement in writing. Respondent shall submit final as-built drawings following the completion of construction.
- c. In the event that the Enhancement Plan is not implemented in accordance with the schedule approved by Ohio EPA, and said schedule is not extended by agreement of the Parties, the City shall remit any funds remaining in the project budget to Ohio EPA within sixty (60) days of the project deadline.

VI. TERMINATION

Respondent's obligations under these Modified Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Modified Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Modified 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 defined in Ohio Administrative Code Rule 3745-33-03(E)(4) for a municipal, state, or other public facility.

VII. OTHER CLAIMS

Nothing in these Modified Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Modified Orders, for any liability arising from, or related to activities occurring on or at the site.

VIII. OTHER APPLICABLE LAWS

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

IX. MODIFICATIONS

These Modified 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.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Modified Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Attention: Enforcement Supervisor
2110 East Aurora Road
Twinsburg, Ohio 44087

and to:

Randy Bournique, Environmental Manager, 401 Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

or to such persons and addresses as may be hereafter specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations of these Modified Orders. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XII of these Modified Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent consents to the issuance of these Modified Orders and agrees to comply with these Modified Orders. Compliance with these Modified 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 Modified Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Modified 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 Modified Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

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

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Modified Orders certifies that he or she is fully authorized to enter into these Modified Orders and to legally bind such party to these Modified Orders. Respondent signs these Orders pursuant to the Director of Law's authority to settle legal claims under Cleveland Codified Ordinance § 125.03 and the Director of Port Control's authority under Ordinance No. 278-02.



IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

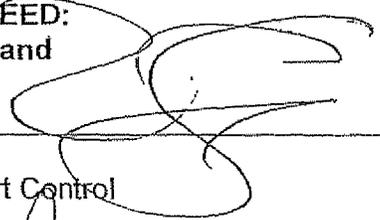


Chris Korleski
Director

5/21/09

Date

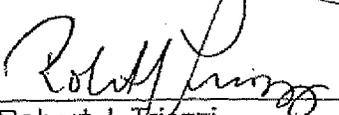
IT IS SO AGREED:
City of Cleveland



Ricky Smith
Director of Port Control

4/30/09

Date



Robert J. Triozzi
Director of Law

5/4/09

Date

Attachment 1

The stream enhancement plan shall at a minimum, contain the following:

- a. Description of the location of the project site and impact site on a United States Geological Survey ("USGS") quadrangle;
- b. Detailed plans and specifications for the proposed enhancements shall be provided including, but not limited to, typical channel cross-sections, channel longitudinal sections, a grading plan, and construction specifications for engineered structures used to provide grade control, habitat features, and bank stabilization. The locations for enhancement or modification of the existing stream channel, placement of habitat features, and streambank or floodplain stabilization or modification shall be clearly delineated on site maps of adequate scale to use as reference as the work proceeds;
- c. Description of the in-stream habitat enhancement proposed;
- d. A planting plan, including all native Ohio woody species;
- e. A demonstration that there will be no elimination or substantial impairment of existing in-stream water uses as part of the project;
- f. A five (5) year monitoring plan that will focus on the re-establishment of habitat and other water quality functions for the walled-stream section of Doan Brook. If Respondent fails to achieve the performance criteria, monitoring shall be extended until such time as the criteria is achieved; Goals or performance criteria for the enhancement project shall be divided into the following four categories. For each category, Respondent should provide linear foot estimates, site maps, and narrative descriptions sufficient to properly delineate each area within the stream enhancement project.
 1. Ecological enhancement areas: These are areas within the stream enhancement project where physical enhancement of the ecological habitat in the stream will be realized (greater than or equal to 5 QHEI points) because of the installation of engineered structures or designed naturalization of the stream channel. The Respondent should provide site information delineating the location and types of structures to be installed as well as narrative or empirical performance criteria that can be used to evaluate assessment data generated during the project. A performance criterion that must be set for these stream segments is a target QHEI score that must be met at the end of the five year monitoring period. Target QHEI scores can vary from stream segment to stream segment within the enhancement project based upon site-specific limitations and design considerations.

2. Aesthetic improvement areas: These include stream segments where actions will be taken that are not necessary for the stability of the enhanced stream project and where minimal ecological habitat improvement will be realized (e.g. less than 5 QHEI point improvement). Respondent should provide site information delineating the aesthetic improvement areas as well as narrative or empirical performance criteria that can be used to evaluate assessment data generated during the project.
 3. Engineered stream stability or bank stabilization structures: These are areas within the stream enhancement project where engineered structures will be installed to ensure vertical or lateral stream channel stability, but where minimal ecological habitat improvement will be realized (less than 5 QHEI point improvement). Respondent should provide site information delineating the location and types of structures to be installed as well as narrative or empirical performance criteria that can be used to evaluate assessment data generated during the project. Monitoring should be proposed that will document that the work proposed for these areas was properly constructed and that the work does not deteriorate during the five year monitoring period.
 4. No action areas: These include all areas within the enhancement project where no physical construction will take place affecting either the stream channel or the streambank. Monitoring of these areas should occur prior to project implementation and during the required project monitoring period to ensure that upstream and downstream construction activities do not cause significant degradation of these areas following project implementation. Respondent should provide site information delineating the no action areas as well as narrative or empirical performance criteria that can be used to evaluate assessment data generated during the project monitoring period to verify that these areas are not adversely impacted by the project.
- g. A construction schedule for the enhancement of Doan Brook including a schedule to advertise for construction bids, receive bids, and award contracts as soon as possible;
 - h. A copy of the draft legal document (e.g. environmental covenant) that will protect the Doan Brook corridor and buffer;
 - i. A copy of the Storm Water Pollution Prevention Plan for review and pre-approval;
 - j. A statement of the qualifications of the person(s) selected to implement the plan and conduct monitoring;

- k. A copy of any Section 404 permit application; and
- l. A summary report that includes a copy of the financial amounts to be used to fund the required enhancement project.

OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

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Department of Port Control	:	<u>and Orders</u>
Cleveland Hopkins International Airport	:	
5300 Riverside Drive	:	
Cleveland, Ohio 44135	:	

Respondent.

PREAMBLE

These Director's Final Findings and Orders ("Orders") are hereby issued to the City of Cleveland pursuant to the authority invested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") 6111.03(H) and 3745.01.

PARTIES BOUND

These Orders shall apply to and be binding upon the City of Cleveland ("Respondent"). Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS

1. Respondent has proposed an expansion project at the Cleveland Hopkins International Airport ("Airport") which will require filling approximately 87.75 acres of wetlands adjacent to Abram Creek and approximately 7,900 feet of streams. Specifically with respect to the streams, the project as proposed calls for the enclosure in a culvert of approximately 5,400 feet of Abram Creek and the filling of 2,500 feet of two unnamed tributaries to Abram Creek.
2. The wetlands, Abram Creek and the Abram Creek tributaries are "waters of the state" as defined in ORC 6111.01(H). The fill material to be placed into the wetlands and streams constitutes "other wastes" as defined in ORC 6111.01(D).
3. On July 5, 2000, Respondent submitted to Ohio EPA an application requesting the Director to certify water quality impacts associated with the Airport expansion project under Section 401 of the Clean Water Act, and ORC Chapter 6111 and Chapter 3745-32 of the Ohio Administrative Code. On October 30, 2000, Respondent provided to Ohio EPA additional information supporting the application.

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

Janice Hecker Date 4/13/01

4. Pursuant to ORC 3745.01(A) and 40 CFR 121.16(a), the Director will waive Ohio's authority to act on Respondent's request for certification of the Airport expansion project based, in part, upon Respondent's commitment to comply with these Orders.
5. 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 expected 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 purposes of ORC Chapter 6111.

ORDERS

1. Within one hundred twenty (120) days after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and approval, a final wetlands restoration plan and proposed schedule for the restoration of one hundred eighty-five (185) acres of wetlands at the Columbia Station wetland mitigation site located in Lorain County adjacent to the West Branch Rocky River by constructing low berms and removing drain tiles. The schedule shall include a list of critical dates or events for the implementation of the restoration plan and provision shall be made to notify Ohio EPA at least ten (10) business days prior to each of the critical events identified in the schedule. Respondent shall fully implement the restoration project in accordance with the approved restoration plan and schedule, which are, upon approval, hereby incorporated as if fully rewritten herein.
2. Within one hundred twenty (120) days after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and approval, a final wetlands restoration plan and proposed schedule for the restoration of eighty (80) acres of wetlands at the LaGrange Township wetland mitigation site located in Lorain County adjacent to the East Branch Black River by constructing low berms and removing drain tiles. The schedule shall include a list of critical dates or events for the implementation of the restoration plan and provision shall be made to notify Ohio EPA at least ten (10) business days prior to each of the critical events identified in the schedule. Respondent shall fully implement the restoration project in accordance with the approved restoration plan and schedule, which are, upon approval, hereby incorporated as if fully rewritten herein.
3. The final wetlands restoration plans required in Orders Nos. 1 and 2 shall include the following:

- a. Plan view of anticipated areal extent of wetland vegetation by class and plant species community, i.e. Oak-Hickory forest;
 - b. Plan view of proposed annual vegetation planting including species and planting density;
 - c. Plan view of final grades including water control structures. Slopes of berms within delineated wetlands shall be no less than 10:1;
 - d. Plan view of anticipated seasonal water depths including growing season and non-growing season;
 - e. Areal extent of mined soils;
 - f. Distribution of percent organic matter in existing soils; and
 - g. Description of how vernal pools will be established and maintained.
4. Within one hundred twenty (120) days after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and approval, a wetland monitoring plan for the Columbia Station wetland mitigation site and a wetland monitoring plan for the LaGrange Township wetland mitigation site.
- a. Each monitoring plan shall include, at a minimum, the following information:
 - i. Soils data: Soil probes and/or test pits at representative locations throughout the mitigation wetlands;
 - ii. Hydrology testing: Water level readings at selected locations within the mitigation site;
 - iii. Other information that Ohio EPA and Respondent agree is necessary to assess the functions and values of the Columbia Station and LaGrange Township Wetland mitigation sites;
 - iv. Ohio Rapid Assessment Method (ORAM) scores using version 5.0. In the event that an updated version of ORAM is implemented during the post construction monitoring period, the ORAM scores obtained using version 5.0 shall be reconciled with the updated version; and
 - v. Clearly defined goals for each mitigation project which will be used to determine if the mitigation project performs as designed.
 - b. Respondent shall arrange for an on-site meeting with Ohio EPA at the mitigation wetlands on the third anniversary date of the completion of

construction of a mitigation site. The purpose of the meeting will be to determine if the mitigation site is performing as designed. Ohio EPA may provide recommendations to Respondent to improve the mitigated wetlands. Respondent shall undertake any modifications mutually agreed upon by Ohio EPA and Respondent as necessary to comply with the goals identified in the site monitoring plan required by this Order.

- c. On the fifth anniversary date of the completion of construction of a mitigation site, Respondent shall conduct a delineation of the mitigation wetlands using the United States Army Corps of Engineers 1987 Wetland Delineation Manual (or a successor document).
5. Respondent shall perform the following activities to assist in the preservation and enhancement of water quality in portions of Abram Creek upstream and downstream of the Airport expansion project area.
- a. Within ninety (90) days after issuance of a 404 permit for the Airport expansion project, Respondent shall grant to a grantee approved by Ohio EPA a conservation easement from the top of the ravine to the top of the ravine on the segment of Abram Creek extending from the outlet of the proposed culvert to the northern boundary of Respondent's property. Respondent shall provide to Ohio EPA a copy of said easement within fourteen (14) days after it is recorded. Respondent shall immediately undertake negotiations with the National Aeronautics and Space Administration to establish a similar conservation easement along the segment of Abram Creek extending from the northern boundary of Respondent's property to the border of the Cleveland Metroparks' Rocky River Reservation. Respondent shall use all reasonable means to procure such easement from the responsible federal authorities. Respondent shall report to Ohio EPA on the progress of implementing this second easement within ninety (90) days after issuance of a 404 permit for the Airport expansion project.
 - b. Within thirty (30) days after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and comment, a detailed plan and profile for the design of the outlet transition structure at the northern end of the proposed culvert which shall include a baffled spillway to act as an energy dissipation structure and to minimize stream impacts at the culvert outlet, and riprap and bioengineering stabilization features at the transition to the natural stream channel to minimize and mitigate for potential impacts to the stream channel. Respondent shall undertake any plan modifications mutually agreed upon by Ohio EPA and Respondent.

- c. Beginning thirty (30) days after issuance of a 404 permit for the Airport expansion project, Respondent shall cause to be funded, up to a maximum of two million dollars (which may include contributions from other sources), the acquisition by Cleveland Metroparks of properties, south of Bagley Road, containing wetlands, streams, and adjacent buffer in the headwaters area of Abram Creek. The targeted properties are outlined in pink on the map at Appendix A of these Orders. Respondent shall provide funds to Cleveland Metroparks on an as-needed basis as the acquisitions are prioritized by Cleveland Metroparks, which has agreed to be responsible for overall administration of the project. From the date of issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA an annual report describing the progress made in the preceding year towards the ultimate goal of property acquisition. Within sixty (60) days of causing the two million dollars to be expended or of the acquisition of all targeted properties, whichever occurs first, Respondent shall submit to Ohio EPA a final report describing the properties acquired and the preservation plan to be administered by the Cleveland Metroparks in perpetuity. The final report shall contain a copy of the deed for each parcel acquired.
6. Within thirty (30) days after issuance of a 404 permit for the Airport expansion project, Respondent shall fund the acquisition by the Lorain County MetroParks of the 3,000 linear feet segment of Elk Creek identified in Appendix B of these Orders. Within fourteen (14) days of acquisition of the property by the Lorain County MetroParks, Respondent shall provide to Ohio EPA a copy of the deed.
7. Within thirty (30) days after issuance of a 404 permit for the Airport expansion project, Respondent shall reimburse the Geauga Park District for the acquisition of the 4,700 linear feet segment of Spring Brook identified in Appendix C of these Orders. Within fourteen (14) days of providing reimbursement to the Geauga Park District, Respondent shall provide to Ohio EPA a copy of the check.
8. Within eighteen (18) months after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and approval, a final stream restoration plan and proposed schedule for the restoration of 12,400 linear feet of Doan Brook from the outlet of the University Circle culvert to the inlet of the culvert at Interstate 90 as described in Appendix D of these Orders. The schedule shall include a list of critical dates or events for the implementation of each mitigation project. Provision shall be made to notify Ohio EPA at least ten (10) business days prior to each of the critical events identified in the schedule. Respondent shall fully implement the restoration project in accordance with the approved restoration plan and schedule, which are, upon approval, hereby incorporated as if fully rewritten herein.

In the course of developing the final restoration plan for Doan Brook within the eighteen-month period, Respondent shall coordinate with Ohio EPA progress

reviews of the evolving plan at 30%, 60% and 95% design. By September 15, 2001, Respondent shall submit to Ohio EPA the plan at 30% design.

9. Within thirty (30) days after issuance of a 404 permit for the Airport expansion project, Respondent shall reimburse the Chagrin River Land Conservancy for the acquisition and restoration of the 3,264 linear feet of Woodiebrook identified in Appendix E of these Orders. Within fourteen (14) days of providing reimbursement to the Chagrin River Land Conservancy, Respondent shall provide to Ohio EPA a copy of the check.
10. Within thirty (30) days after the effective date of these Orders and semiannually thereafter, Respondent shall submit to Ohio EPA a status report, including the estimated date of completion, regarding the ongoing Woodiebrook restoration project as approved by the United States Army Corps of Engineers through nationwide permit 27 coverage issued on October 23, 2000, and later modified on March 12, 2001. If the restoration work will deviate significantly from the plan submitted to the Corps with the application for nationwide permit coverage, then Ohio EPA may request consultation with Respondent.
11. Within one hundred twenty (120) days after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA, for review and approval, a final stream restoration plan and proposed schedule for the West Fork, East Branch of the Black River project as described in Appendix F of these Orders. The schedule shall include a list of critical dates or events for the implementation of each mitigation project. Provision shall be made to notify Ohio EPA at least ten (10) business days prior to each of the critical events identified in the schedule. Respondent shall fully implement the project in accordance with the approved restoration plan and schedule, which are, upon approval, hereby incorporated as if fully rewritten herein.
12. For each restoration project identified in Order Nos. 8, 9, and 11, Respondent shall submit to Ohio EPA, for review and approval, a monitoring plan that includes the following items:
 - a. Clearly defined goals that will be used to determine if the restoration effort has been successfully implemented;
 - b. A description of monitoring activities and methodologies which will be undertaken to verify successful implementation of the restoration project;
 - c. A monitoring period of five (5) years after the completion of mitigation construction or implementation activities, with provisions to extend the monitoring period if, through monitoring, the restoration project proves itself

not a self-sustaining ecosystem that could be expected to continue to naturalize independent of future manipulation.

13. Should Ohio EPA and Respondent agree that the results of monitoring activities conducted during the five-year monitoring period in compliance with these Orders indicate that the goals identified for any particular project identified in the final stream restoration plan or wetland mitigation plan have not been met or are unlikely to be met, Respondent shall meet with the Ohio EPA to discuss additional activities, including but not limited to extension of the monitoring period, as necessary to meet the restoration or mitigation goals. Additional activities may include, but are not limited to, extension of the monitoring period to ascertain whether restoration or mitigation goals will be ultimately achieved, or implementation of alternative or supplemental restoration or mitigation activities capable of achieving the goals set out in the approved plan.
14. Within thirty (30) days of completion of the five-year monitoring period for projects identified in Orders 1, 2, 8, 9, and 11, Respondent shall submit to Ohio EPA a certification that the project activities were completed according to the approved plan.
15. Respondent shall obtain a sediment and erosion control plan, approved by Ohio EPA, for the construction of the culvert in Abram Creek.
16. Within thirty (30) days after issuance of a 404 permit for the Airport expansion project, Respondent shall submit to Ohio EPA a report that identifies the source and the nature of the fill to be placed in wetlands or Abram Creek or its tributaries. Respondent shall demonstrate to Ohio EPA that the quality of the fill material is acceptable before any fill is placed in waters of the State. Fill placed in waters of the State shall consist of suitable material free from toxic contaminants in other than trace quantities.
17. Respondent shall submit all documents required by these Orders to Ohio EPA at the following address:

Ohio Environmental Protection Agency
Division of Surface Water
Lazarus Government Center
122 S. Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom Harcarik, or his successor.

18. Respondent may submit to the Director of Ohio EPA a written request for the extension of a deadline contained in these Orders. Any request shall be received by the Director no less than fifteen (15) days prior to the deadline, shall contain an explanation of why Respondent cannot satisfy the requirement by the deadline, and shall propose a new deadline.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be taken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and its operations.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111. of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. These Orders specifically do not authorize the construction of any new disposal system or sewerage or treatment works for sewage disposal at the Facility or any other location. Respondent must obtain all permits, approvals and authorizations as required by law. Ohio EPA reserves all rights, privileges and causes of action except as specifically provided herein.

TERMINATION

The Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders, and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

This certification shall be submitted by the Respondent to the Ohio EPA's Central Office (attention: 401 Unit Supervisor) and shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a

corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and are familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

WAIVER

Respondent agrees to comply with these Orders. Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the time frames provided for compliance herein are reasonable.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

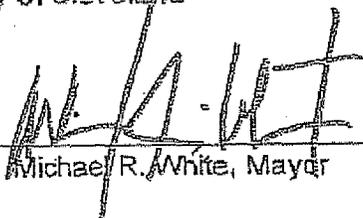
Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent agrees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

SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

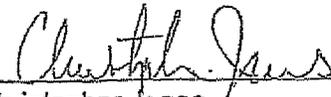
City of Cleveland

By: 
Michael R. White, Mayor

Date: 4-12-01

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency


Christopher Jones
Director

Date: 4-13-01

Index of Appendices

Appendix A - Map for Order No. 5.c.

Appendix B - Map of Elk Creek segment for Order No. 6.

Appendix C - Map of Spring Brook segment for Order No. 7.

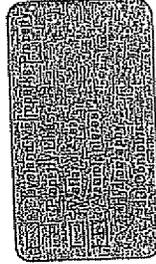
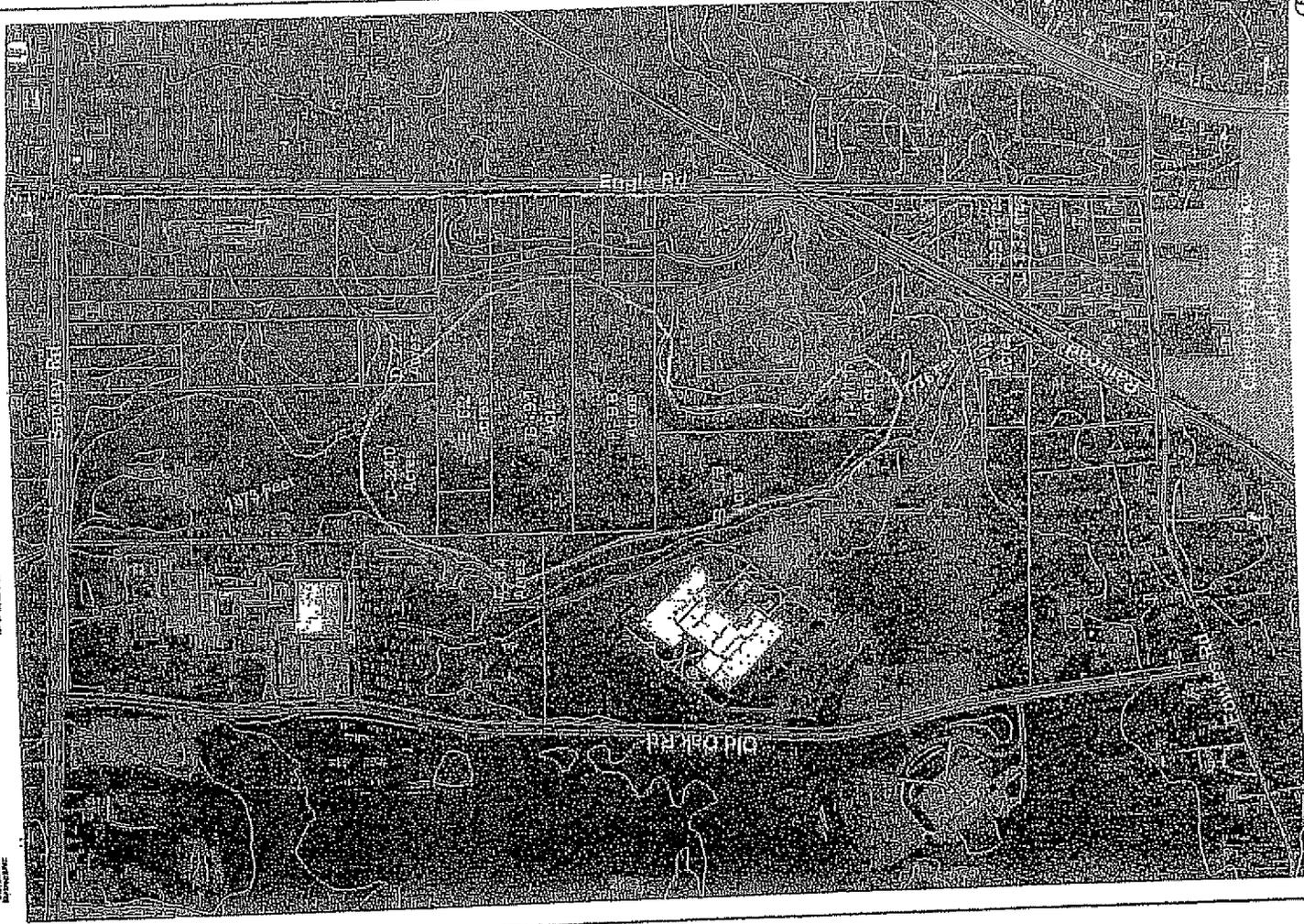
Appendix D - Map of Doan Brook segment for Order No. 8.

Appendix E - Map of Woodiebrook segment for Order No. 9.

Appendix F - Map of West Fork, East Branch of the Black River project for Order No. 11.



Wetland/Stream Protection
Southwest General Hospital Area



Director's Final Findings
& Orders
Appendix A

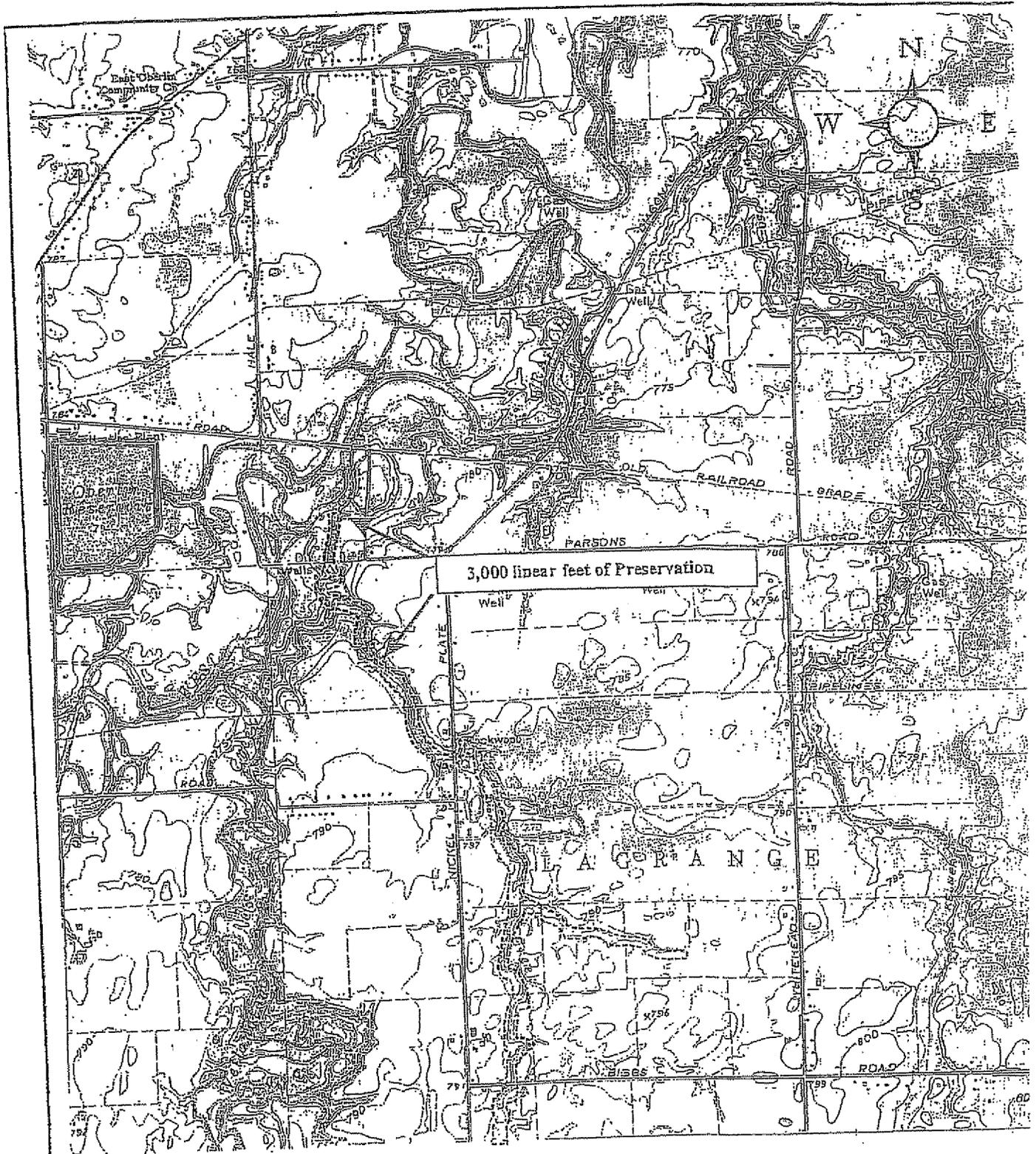


400 0 400 Feet

Source Tom Stanley
Chief of Natural Resources
Cleveland Metropolitan
12/16/85-3/24/0

Appendix B

Description of Elk Creek segment for Order No. 6.



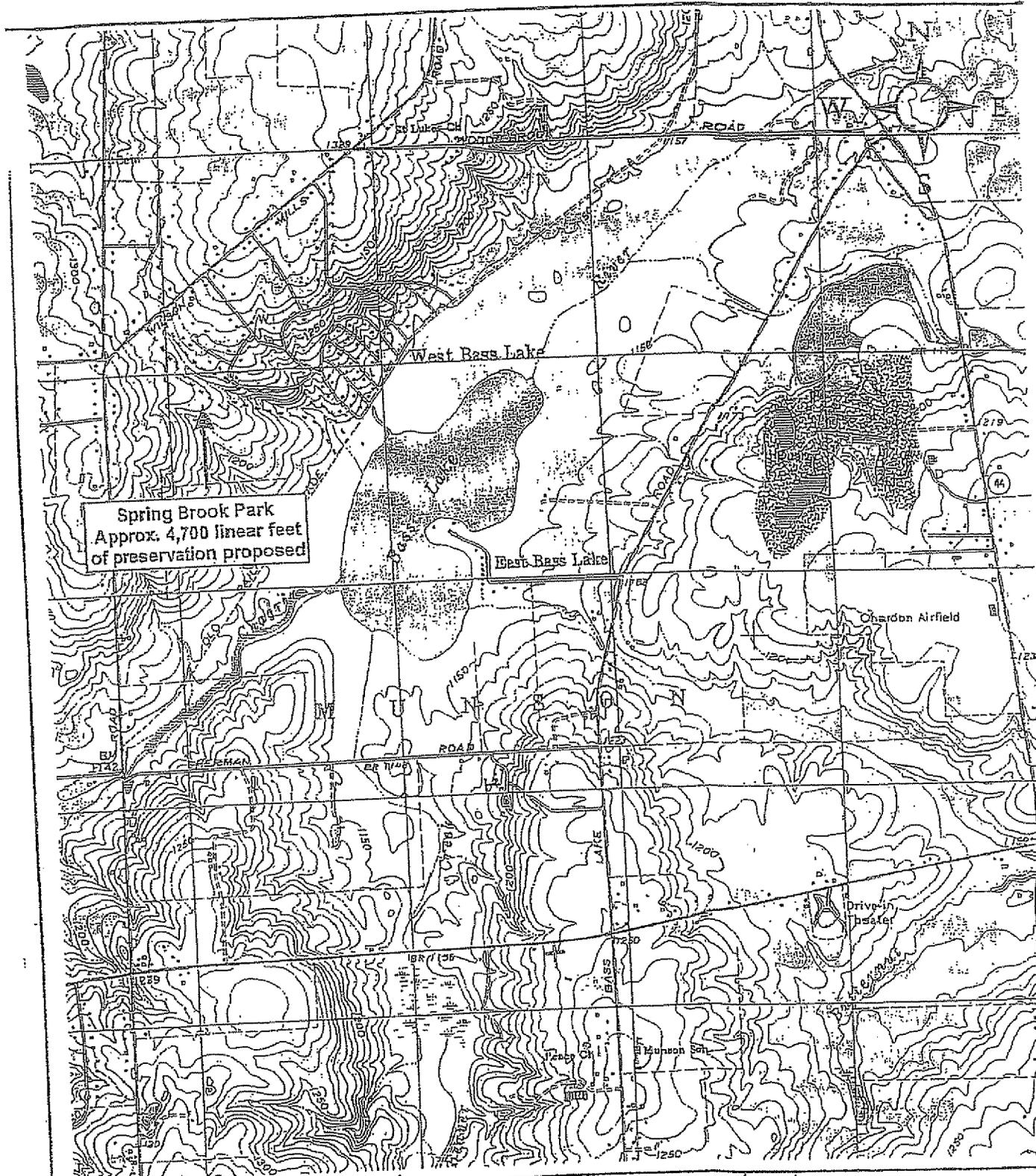
Cleveland Hopkins International Airport
 Proposed Stream Mitigation Site
 Elk Creek

USGS 7.5' Topographic Map
 Oberlin, Ohio Quadrangle
 LaGrange Township, Lorain County
 Photorevised 1979
 Scale: 1:24,000

Director's Final
 Findings & Orders
 Appendix B

Appendix C

Description of Spring Brook segment for Order No. 7.



Cleveland Hopkins International Airport
 Proposed Stream Preservation Site
 Spring Brook Park

USGS 7.5' Topographic Map
 Chardon, Ohio Quadrangle
 Munson Township, Geauga County
 1994
 Scale: 1:24,000

Director's Final Findings
 and Orders
 Appendix C

Appendix D

Description of Doan Brook segment for Order No. 8.

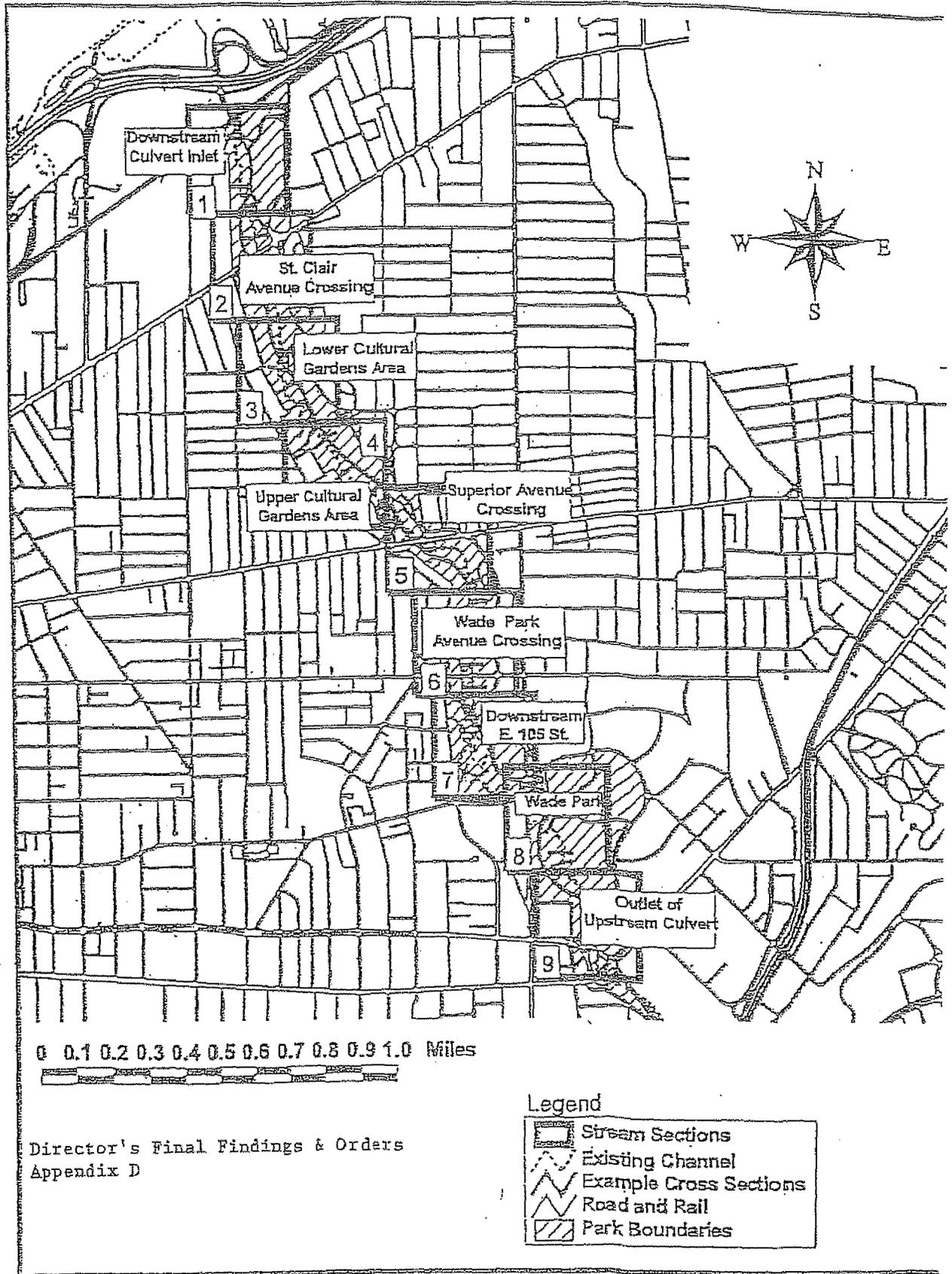


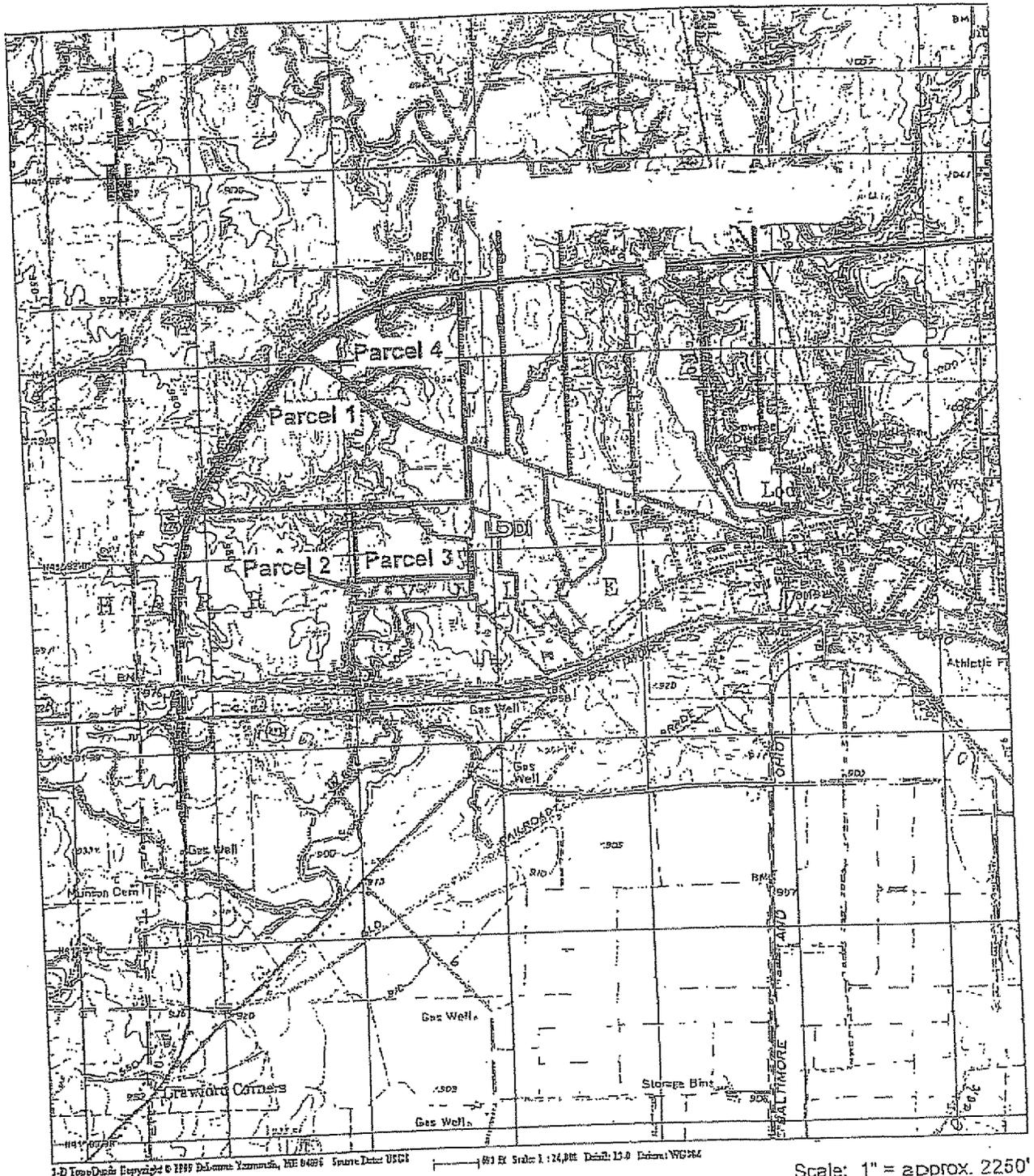
Figure 3: Index Map For Stream Segments

Appendix E

Description of Woodiebrook segment for Order No. 9.

Appendix F

Description of West Fork, East Branch of the Black River project for Order No. 11.



Source: DeLorme 3-D Topo Quads

Scale: 1" = approx. 2250'

Director's Final Findings & Orders
Appendix F

Figure 2. Project area parcel numbers, locations, and approximate boundaries