

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

UNITED STATES OF AMERICA and  
STATE OF OHIO,

Plaintiffs,

v.

YUHASZ BROS., LLC,

Defendant.

Civil Action No. 1:19cv1370

JUDGE SOLOMON OLIVER, JR.

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE**

PLEASE TAKE NOTICE that Plaintiffs, the United States of America and the State of Ohio, submits for *lodging only*, a proposed Consent Decree that will resolve all issues in this case. The proposed Consent Decree should not be entered by the Court unless Plaintiffs subsequently move the Court to do so. In conjunction with this Notice, the United States hereby states the following:

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b), and Ohio Rev. Code §§ 6111.04 and 6111.07, to obtain injunctive relief and civil penalties against Yuhasz Bros., LLC., for the discharge of pollutants into waters of the United States and of the State of Ohio without a permit or authorization by the United States Department of the Army Corps of Engineers ("Corps"), in violation of CWA section 301(a), 33 U.S.C. § 1311(a), and without approval of the State of Ohio under Ohio Rev. Code §§ 6111.04 and 6111.07.

2. Plaintiffs and Defendant have resolved all claims in this case and have set forth their agreement in the proposed Consent Decree. That proposed Consent Decree is submitted on this date for lodging only.

3. This case, among other things, seeks to enjoin the Defendant from discharging pollutants into waters of the United States. In such cases, federal regulations require that non-parties to the litigation be afforded an opportunity to comment on the proposed judgment. *See* 28 C.F.R. § 50.7(a). The relevant regulations provide that the proposed Consent Decree be lodged with the Court at least 30 days before the judgment is entered by the Court. *Id.* § 50.7(b).

4. In accordance with this process, the Department of Justice will publish notice of the proposed Consent Decree in the Federal Register and solicit comments on said decree, to be submitted within thirty days of said publication.

5. Pursuant to 28 C.F.R. § 50.7(b), the Department of Justice, as appropriate, may withdraw or withhold consent to the proposed Consent Decree if comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

Accordingly, the Plaintiffs respectfully request that this Court lodge the proposed Consent Decree, but not sign it or otherwise enter it as an Order. The United States will, promptly after evaluating any public comments received during the public comment period, make an appropriate motion for the Court to enter the Consent Decree, unless it is determined based on any comments received that consent should be withheld.

Respectfully submitted this 7th day of June, 2022.

/s/ Amber Wootton Hertlein (by permission)

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of said document to the attorneys of record/parties who have registered as CM/ECF participants.

Date: June 7, 2022

/s/ Perry M. Rosen  
PERRY M. ROSEN



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

UNITED STATES OF AMERICA and  
STATE OF OHIO,

Plaintiffs,

v.

YUHASZ BROS., LLC,

Defendant.

Civil Action No. 1:19-cv-01370

**CONSENT DECREE**

WHEREAS, Plaintiffs, the United States of America (“United States”), on behalf of the U.S. Environmental Protection Agency (“EPA”), and the State of Ohio (“State” or “Ohio”), by the authority of Ohio Attorney General Dave Yost, and at the request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), filed the Complaint in this action against Yuhasz Bros., LLC (“Yuhasz” or “Defendant”), alleging that Defendant violated Sections 301, 309, and 404 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311, 1319, and 1344, and Ohio Rev. Code §§ 6111.04 and 6111.07, by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into “waters of the United States” and “waters of the State of Ohio,” without a permit or other authorization from the United States Department of the Army Corps of Engineers (“Corps”), in violation of CWA section 301(a), 33 U.S.C. § 1311(a), and without authorization by Ohio EPA in violation of Ohio Rev. Code §§ 6111.04 and 6111.07;

WHEREAS the Complaint alleges that these discharges occurred at the property owned at the time by Defendant, located directly south of South Winsor Road and east of State Route 534 (Phelps Creek Road) in Ashtabula County and Trumbull County, Ohio (“Site”) and which is depicted in Exhibit 1 hereto;

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a) or waters of the State without a permit in violation of Ohio Rev. Code §§ 6111.04 and 6111.07; (2) to require Defendant, at its own expense and at the direction of the EPA and Ohio EPA, to restore and/or mitigate the damages caused by Defendant’s unlawful activities; and (3) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d) and Ohio Rev. Code § 6111.09;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States’ and the State’s civil claims under the CWA and State law against the Defendant set forth in the Complaint;

WHEREAS the Cleveland Museum of Natural History (“Cleveland Museum”), through a separate access agreement agrees to allow Defendant to perform restoration and/or mitigation required under this Consent Decree on land identified herein that presently is owned or that may in the future be owned by the Cleveland Museum;

WHEREAS, the United States, the State, and Defendant agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States’ and the State’s claims against Defendant in the Complaint; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States’ and the States’ claims against Defendant in the Complaint, and that this

Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal and state law.

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the Parties by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over the claims in the Complaint, and personal jurisdiction over Defendant, pursuant to CWA sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

2. Venue is proper in the Northern District of Ohio, Eastern Division, pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), 28 U.S.C. § 1391(b) and (c), and Local Rule 3.8, because Defendant resides in and conducts business in this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

3. For purposes of this Consent Decree, including any action to enforce this Decree, the Parties agree, and the Court finds, that the Complaint states claims upon which relief can be granted pursuant to CWA sections 301, 309 and 404, 33 U.S.C. §§ 1311, 1319 and 1344, and Ohio Rev. Code §§ 6111.04 and 6111.07, and the Court has subject matter jurisdiction over the claims in the Complaint.

**II. APPLICABILITY**

4. The obligations of this Consent Decree shall apply to and be binding upon Defendant, its officers, directors, agents, employees, servants, successors and assigns, and any person, firm, association or corporation who is, or will be, acting in concert or participation with the Defendant, whether or not such person(s) has notice of this Consent Decree. In any action to

enforce this Consent Decree against Defendant, Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with Defendant, to take any actions necessary to comply with the provisions hereof.

5. Any transfer of ownership or other interest in Yuhasz Bros., LLC, or in any portion of the Site identified in Exhibit 1 hereto owned or controlled by Yuhasz Bros., LLC or otherwise associated with this Consent Decree, shall not alter or relieve Defendant of its obligations to comply with all of the terms of this Consent Decree. At least thirty (30) days prior to the transfer of ownership or other interest in Yuhasz Bros., LLC or the Site or any portion thereof subject to this Consent Decree, the Party making such transfer shall provide written notice and a true copy of this Consent Decree to the proposed transferees or successors in interest and shall simultaneously notify EPA, the United States Department of Justice, and the State of Ohio at the addresses specified in Section XV below that such notice has been given. As a condition to any such transfer, the Party making the transfer shall reserve all rights, including the right of access to the Site, necessary to comply with the terms of this Consent Decree. Each deed, title, sale agreement or other instrument conveying an interest in any portion of the Site or in Yuhasz Bros., LLC shall contain a notice stating that such real property or interest in Yuhasz Bros., LLC is subject to this Consent Decree, and shall reference the Offices of the Ashtabula and Trumbull County Recorder Book and Page Numbers at which the Consent Decree is recorded, as well as the reference to any restrictions applicable to the property under an Environmental Covenants required by this Consent Decree.

### **III. DEFINITIONS**

6. The following terms are defined for purpose of this Consent Decree as follows:

- A. “Cleveland Museum” shall mean the Cleveland Museum of Natural History, with offices located at 1 Wade Oval Drive, University Circle, Cleveland, Ohio 44106.
- B. “Consent Decree” shall mean this document, Exhibits 1, 2, 3, 4, and 5 to this document, and any exhibits or attachments to Exhibits 1, 2, 3, 4, and 5.
- C. “Defendant” and/or “Yuhasz” shall mean Yuhasz Bros., LLC, with a present business address of 8549 State Route 46 South, Orwell, Ohio 44076.
- D. “Effective Date” shall mean the date on which a fully executed version of this Consent Decree that is signed by the Court is entered on the Court docket in this case.
- E. “Environmental Covenant” shall mean the legal instrument set forth in Exhibits 4A & 4B and/or any other easement applied to the Site or any portion thereof, the purpose of which is to preserve the subject land.
- F. “Escrow Account” shall mean the General Holding Account of the Ohio Attorney General that is held in escrow.
- G. “Escrow Agent” shall mean the Ohio Attorney General, in its capacity as an escrow agent.
- H. “Escrow Agreement” shall mean the instrument attached at Exhibit 3.
- I. “Escrow Deposit” shall mean the full purchase price, up to \$200,000, that Defendant is depositing into the Escrow Account pursuant to the terms of the Escrow Agreement.
- J. “Exhibits” and “Exhibit 1,” “Exhibit 2,” “Exhibit 3,” “Exhibits 4A & B,” and “Exhibit 5,” shall mean the Exhibits attached to this Consent Decree, which are integral and fully enforceable and binding parts of this Consent Decree, and are specifically included in the term “Consent Decree” when used herein. These Exhibits are labeled as follows:

Exhibit 1: Site Map

Exhibit 2: Work Plan

Exhibit 3: Escrow Agreement

Exhibits 4A, 4B: Environmental Covenants

Exhibit 5: Access Agreement

K. “Party” shall mean the United States of America, the State of Ohio, or Yuhasz Bros., LLC, and the term “Parties” shall mean collectively the United States of America, the State of Ohio, and Yuhasz Bros., LLC.

L. “Payment Guarantee” shall mean the guarantee provided by Defendant to the United States and the State of Ohio in the form of the Escrow Agreement attached at Exhibit 3, which is established to ensure that all Work to be performed is performed in accordance with this Consent Decree and the Work Plan attached at Exhibit 2.

M. “Restoration Area” shall mean the area within the Site in which Yuhasz is required to perform restoration and/or mitigation under the terms of this Consent Decree, and which is denoted on Figure 1 of Exhibit 2 as Restoration Areas 1, 2, 3, and 4.

N. “Site” shall mean the real property located directly south of South Windsor Road and east of State Route 534 (Phelps Creek Road) in Ashtabula County and Trumbull County, Ohio (“Site”), as further depicted in Exhibit 1.

O. “Work” shall mean all restoration, mitigation, monitoring and/or actions at the Site required to be performed or carried out under this Consent Decree, as more specifically described in Exhibit 2 (the Work Plan).

P. “Work Plan” shall mean Exhibit 2, titled “Windsor Woods Restoration Plan,” and all attachments thereto, which, along with this Consent Decree, sets forth the restoration, mitigation, monitoring, and other Work to be performed under this Consent Decree.

#### **IV. SCOPE OF CONSENT DECREE**

7. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against Defendant under sections 301, 309, and 404 of CWA, 33 U.S.C. § 1311, 1319, 1344, and Ohio Rev. Code Chapter 6111 and the rules adopted thereunder (collectively “Ohio’s Water Pollution Control Law”), concerning the Site. Defendant agrees that the termination or modification of this Consent Decree shall only occur under the terms herein or with the written agreement of the United States and the State.

8. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives set forth in CWA section 101, 33 U.S.C. § 1251, and Ohio’s Water Pollution Control Law. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA and Ohio’s Water Pollution Control Law.

9. Except as in accordance with this Consent Decree, Defendant and Defendant’s agents, successors and assigns, are enjoined from discharging any pollutant into waters of the United States at the Site and waters of the State of Ohio at the Site, unless such discharge complies with the provisions of the CWA and its implementing regulations and with Ohio’s Water Pollution Control Law.

10. Pursuant to Nationwide Permit 32, found at 82 Fed. Reg. 1,860 (Jan. 6, 2017), this Consent Decree authorizes the following: (a) any discharge of dredged or fill material that was placed as of June 13, 2019 may remain in place to the extent required by the Work Plan subject to the conditions provided in the Nationwide Permit 32; and (b) the discharge of dredged or fill material in the Restoration Area insofar as such discharge is necessary to complete the Work Plan, subject to the conditions of the Nationwide Permit 32.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or under Ohio's Water Pollution Control Law or under any other law. Nothing in this Consent Decree shall limit the ability of the United States or any agency or instrumentality thereof or the State of Ohio or any agency or instrumentality thereof, to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit or any State permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c) or the State's ability under Ohio's Water Pollution Control Law, for any alleged violations not addressed by this Consent Decree. Any discharge of dredged and/or fill necessary for work required by this Consent Decree shall be consistent with the requirements set forth in Exhibit 2.

12. This Consent Decree in no way affects or relieves Defendant of its responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

13. This Consent Decree in no way affects the rights of the United States or the State of Ohio as against any person as defined in the Clean Water Act or Ohio's Water Pollution Control Law other than Yuhasz Bros., LLC. The United States and the State of Ohio specifically reserve all rights and claims against any person other than Defendant.



14. The United States and the State of Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

15. Except as provided in Paragraphs 1, 2, and 3 of this Consent Decree, nothing in this Consent Decree shall constitute an admission of fact or law by any Party.

#### **V. CIVIL PENALTIES**

16. The United States and the State are permitted to seek civil penalties based on Defendant's action, pursuant to 33 U.S.C. § 1319(d) and Ohio Rev. Code 6111.09, respectively ("Civil Penalties"). Based on the representations made by Defendant that it does not at this time have an ability to pay a civil penalty and documents Defendant provided in support thereof, which the United States and the State have reviewed, considered and relied upon, the United States and the State agree that Defendant shall not be required to pay a civil penalty, so long as all requirements of this Consent Decree are fully satisfied.

17. Notwithstanding paragraph 16, in the event Defendant comes into breach of any provision of this Consent Decree, or it is determined that Defendant misrepresented its financial position in materials Defendant submitted to the United States and the State, the United States and/or the State of Ohio are/is authorized to seek and obtain Civil Penalties under the aforementioned statutory provisions for the illegal actions described in the Complaint.

18. Notwithstanding paragraphs 16 and 17, Defendant is subject to stipulated penalties for failure to comply with the provisions of this Consent Decree. Stipulated penalties provided for under Section XIV of this Consent Decree, and Civil Penalties referenced in paragraphs 16 and 17 of this Consent Decree, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i),

and Defendant shall not deduct any of the aforementioned penalties or other penalties paid under this Decree in calculating its federal income tax.

**VI. RESTORATION, MITIGATION AND PRESERVATION**

19. Defendant shall immediately cease and refrain from any discharges of dredged or fill material into waters of the United States or waters of the State at the Site, unless they are specifically authorized by a valid permit issued under Section 404 of the Clean Water Act and Ohio's Water Pollution Control Law or otherwise expressly authorized by this Consent Decree.

20. Defendant shall perform all wetlands, stream and other restoration, mitigation, and other measures set forth in the Work Plan under the terms and conditions stated in Exhibit 2, including performing such Work in accordance with all deadlines, criteria, and other requirements set forth in Exhibit 2.

21. All restoration, mitigation and other Work shall be supervised, overseen and reviewed by a qualified wetlands or similar environmental consultant deemed acceptable by the United States and the State. For purposes of this paragraph, Defendant's present environmental consultant, EnviroScience, is deemed acceptable by the United States and the State. Notwithstanding such oversight by a consultant retained by Defendant, the ultimate determination of whether the Work has been completed in accordance with the requirements set forth in the Work Plan shall be determined by the United States and the State, subject to any approval by the Court that may be required under this Consent Decree.

22. The Parties acknowledge and agree that the objective of the restoration, mitigation and other Work required under Exhibit 2 is to restore and replace the lost ecological functions and services of the alleged filled and disturbed wetlands and streams described in the Complaint. Upon completion of the terms and conditions of Exhibit 2, neither Defendant nor any person

working under Defendant's employ or direction, shall mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain, or otherwise disturb in any manner whatsoever any Restoration Area identified in Exhibit 2, except as approved in advance by EPA and the State or as otherwise required in the Work Plan.

**VII. LOCATION OF THE RESTORATION, MITIGATION  
AND PRESERVATION WORK**

23. All restoration, mitigation and preservation shall be performed in accordance with the Work Plan on land designated respectively as Restoration Areas 1, 2, 3, and 4 denoted on Figure 1 of Exhibit 2 and more fully described in Exhibit 2. A portion of Restoration Area 4 is presently owned by Cleveland Museum.

24. It is the present intent of Defendant to sell land covered by this Consent Decree, including all or parts of Restoration Areas 1, 2, and 3 and the portion of Restoration Area 4 it presently owns, to the Cleveland Museum or some other party. Regardless of such intent, the sale or other transfer of this land or any portion thereof to the Cleveland Museum or to any other Party shall not extinguish, restrict or otherwise affect Defendant's obligations under this Consent Decree, including but not limited to its obligation to perform all Work required under this Consent Decree. Defendant's obligations under this Consent Decree are not dependent or contingent on the sale of any of its land and Defendant is required to carry out all actions required under this Consent Decree regardless of whether it continues to own the land on which the work is to be performed or whether it sells or transfers some or all of that land.

25. Through a separate Access Agreement, which is attached hereto at Ex. 5, the Cleveland Museum agrees to allow Defendant access to all of Restoration Areas 1, 2, 3, and 4 that it owns now or in the future, as well as to land over which access to Restoration Areas 1, 2,

3, and 4 can be obtained, for the purpose of fulfilling any and all of Defendant's requirements and obligations under this Consent Decree, including but not limited to all Work called for in Exhibit 2, and to do so under the Schedule set forth in Exhibit 2. The Cleveland Museum further agrees in Exhibit 5 to allow the United States and the State and their designees access to all of Restoration Areas 1, 2, 3, and 4, as well as to land over which access to Restoration Areas 1, 2, 3, and 4 can be obtained, for all purposes (e.g., monitoring, oversight) described in Paragraph 41.

26. Within twenty (20) days of Defendant providing the United States and the State with evidence that it has executed a contract for the sale of its interest in the Site to the Cleveland Museum, or within twenty (20) days of the Effective Date of this Consent Decree, whichever is later, the United States shall take action to remove the *lis pendens* on the Site and shall not place any restrictions on the ability of Yuhasz to transfer its ownership interest in any portion of the Site, so long as Yuhasz remains in compliance with all provisions and requirements of this Consent Decree.

27. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of the requirements set forth in Paragraph 20 and Exhibit 2 is restitution, remediation, and/or actions to come into compliance with the requirements of the Clean Water Act and regulations promulgated thereunder.

#### **VIII. FINANCIAL ASSURANCES FOR THE RESTORATION AND MITIGATION WORK**

28. Defendant is providing the Payment Guarantee in the form of the Escrow Agreement attached at Exhibit 3, which is to be funded by the sale of land at the Site to the Cleveland Museum or to any other person or entity, should such sale(s) occur. Defendant

expressly agrees that in the event it sells or transfers any portion of the Site to the Cleveland Museum or to any other person or entity, two hundred thousand dollars (\$200,000) of the sale proceeds (or all sale proceeds if the sale amount(s) equal less than \$200,000) shall be deposited directly into the Escrow Account as the Payment Guarantee. The purpose of the Escrow Deposit is to provide financial assurance by Defendant that the actions required to be performed by Defendant under this Consent Decree are fully performed and are completed in a timely manner, including the completion of all Work as set forth in the Work Plan (Exhibit 2), in the event Defendant fails to itself perform all of the Work in a timely manner and in accordance with the requirements of the Work Plan.

29. In the event Defendant fails to perform the Work or any facet thereof in accordance with Exhibit 2 and the schedules and performance criteria set forth therein, the Escrow Agent, in cooperation with the United States and/or the State of Ohio, is empowered and required to cause to be carried out all such Work in accordance with the Work Plan, after the United States and/or the State of Ohio exercises the Payment Guarantee established in the Escrow Agreement. The Escrow Agent, in cooperation with the United States and/or the State of Ohio shall cause said Work to be performed as detailed in the Escrow Agreement and said Work shall be subject to the approval of EPA and the State as provided for at paragraph 21 herein.

30. Upon the failure of the Defendant to perform the Work in accordance with this Consent Decree and the Work Plan, the United States or the State shall give written notice to the Defendant prior to exercising its right to invoke the Payment Guarantee established in the Escrow Agreement for failure to perform Defendant's obligations under this Consent Decree. The notice shall specify: (a) the breach of the Consent Decree; (b) the action required to cure the breach; (c) a date, not less than 60 days from the date the notice is given to the Defendant, by

which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice shall result in the Payment Guarantee being exercised. Failure of the United States or the State to give notice as set forth in this paragraph within any specific time period following a breach or default shall not nullify or otherwise affect the United States' or the State's right to exercise their rights to exercise the Payment Guarantee. Notwithstanding the United States' or the State's exercise of their respective rights to the Payment Guarantee, Defendant shall remain liable for full performance of the Work and for satisfying all other obligations under this Consent Decree.

31. If Defendant believes that the estimated cost to complete the remaining Work has diminished by at least 25% below the amount set forth in Paragraph 28 above, Defendant may petition the United States and the State for a reduction in the amount of the funds held in the Escrow Deposit, provided that the amount of the reduced Escrow Account is equal to or exceeds the estimated cost of the remaining Work to be performed. Defendant shall submit a written proposal for such reduction to the United States and the State, which shall specify, at a minimum, the estimated cost of the remaining Work to be performed and the basis upon which such cost was calculated. If, after receiving such a proposal from Defendant, both the United States and the State determine that (1) the estimated cost of the remaining Work is less than the Payment Guarantee and (2) the amount of the proposed reduction is appropriate, the United States and the State shall communicate in writing to the Escrow Agent that the Escrow Deposit may be reduced by the amount consistent with Defendant's request. The Escrow Agent shall send the United States and the State written confirmation of the transaction releasing any portion of the Escrow Deposit.

32. Defendant shall not release, cancel or discontinue the Payment Guarantee established in this Consent Decree or otherwise cancel or extinguish the Escrow Agreement except as provided in this Section. Within 60 days after the date Defendant submits its Final Monitoring Report in accordance with Exhibit 2 of this Consent Decree, if the United States and the State agree that the Work has been completed in accordance with Exhibit 2, the United States and the State will provide the Defendant and the Escrow Agent written notice of Defendant's completion of the Work ("Notice of Completion"). Upon receipt of the Notice of Completion, Defendant and the Escrow Agent may thereafter release, cancel, or discontinue the Payment Guarantee. In the event of a dispute regarding its right to release, cancel or discontinue the Payment Guarantee or the Escrow Agreement, Defendant may release, cancel, or discontinue the Payment Guarantee or the Escrow Agreement required hereunder only in accordance with a decision rendered under Section XII (Dispute Resolution) of this Consent Decree.

**IX. RESTRICTIONS ON THE USE OF THE LAND COMPRISING THE RESTORATION AREA**

33. Defendant shall, within fifteen (15) days after the Effective Date, record a certified copy of this Consent Decree with the Ashtabula County Recorder and the Trumbull County Recorder in the chain of title for each parcel of real property within and covering each Restoration Area, which are set forth in Table 2.1 of Exhibit 2.

34. Except as provided in paragraph 35 below, no later than 180 days after the Effective Date, Defendant shall record the Environmental Covenants attached at Exhibits 4A & 4B with the Ashtabula County Recorder and the Trumbull County Recorders in the chain of title for each parcel of real property within and covering each Restoration Area, which are set forth in Table 2.1 of Exhibit 2. Thereafter, each deed, title, or other instrument conveying an interest in

the Site or any portion of the Site shall contain a notice stating that the property is subject to this Consent Decree and Environmental Covenants and shall reference the Book and Page Number at which the Consent Decree and Environmental Covenants is recorded in the County Recorder's Office of Ashtabula County and Trumbull County.

35. In the event the Defendant sells part or all of the Site to the Cleveland Museum or some other party within 180 days of the Effective Date, and the transfer documents for such sale(s) include an environmental covenant that the United States and the State agree in writing is comparable to the Environmental Covenants set out at Exhibits 4A & 4B hereto and that environmental covenant is recorded with the Ashtabula County Recorder and the Trumbull County Recorders in the chain of title for each parcel of real property within and covering each Restoration Area, Defendant shall be released from its obligation, as set forth in Paragraph 34, to record the Environmental Covenants.

36. To the extent any obligation set forth in this Consent Decree requires Defendant to obtain a federal, state, local or other governmental permit or approval, Defendant shall take all actions necessary to obtain such permits and approvals in a manner that will comply with any applicable deadline set forth in this Consent Decree. Defendant may seek relief under the provisions of Section XIII of this Consent Decree (Force Majeure) for a delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, provided that Defendant has submitted timely and complete applications, and has taken all other actions necessary to obtain all such permits or approvals, and provided the requirements of Section XIII are met.



**X. NOTICES AND OTHER SUBMISSIONS**

37. Defendant shall, pursuant to the terms of the Work Plan and the schedules set forth therein, provide EPA, the United States Department of Justice, and the State, with all required written reports at the addresses specified in Section XV.

38. In all notices, documents or reports submitted to the United States or the State pursuant to this Consent Decree, Defendant shall, by signature of a senior management official of Yuhasz Bros., LLC, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all Exhibits were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**XI. RETENTION OF RECORDS AND RIGHT OF ENTRY**

39. Until ten years after the Effective Date or until six months after this Consent Decree is terminated, whichever is later, Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks conducted under this Consent Decree, regardless of any corporate retention policy to the contrary. Defendant shall, for the same time period, also instruct Defendant's contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks performed pursuant to this Consent Decree.

40. At the conclusion of the document retention period, Defendant shall notify the United States and the State at least 90 days prior to the destruction of any records or documents

required to be retained under this Consent Decree, and, upon request by the United States or the State, Defendant shall deliver any such records or documents to the requesting governmental Party. Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If the Defendant asserts such a privilege, it shall provide the United States and the State with a privilege log setting forth at least the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. No documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds of privilege.

41. Until termination of this Consent Decree, the United States, the State of Ohio, and their authorized representatives and contractors, shall have authority at all reasonable times to enter the Defendant's premises or any property identified in this Consent Decree, including but not limited to Restoration Areas 1-4 and surrounding land and waterways, to:

- A. Monitor the activities required by this Consent Decree;
- B. Verify any data or information submitted to the United States or the State or otherwise relevant to this Consent Decree;
- C. Obtain water, soil or other samples;
- D. Inspect and evaluate Defendant's restoration and/or mitigation activities, the activities of Defendant's consultants or contractors, or any other activities required by this Consent Decree;

- E. Obtain or generate documentary evidence, including photographs or other data, that may be relevant to any aspect of this Consent Decree; and
- F. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and/or federal or State law.

These rights shall apply regardless of whether the Site or portions thereof are owned by Defendant or another owner of the Site.

42. The provisions of Paragraph 41 are in addition to, and in no way limit or otherwise affect, the statutory authorities of the United States or the State of Ohio to conduct inspections, to require monitoring, and to obtain information from the Defendant as authorized by law.

## **XII. DISPUTE RESOLUTION**

43. Any dispute that arises with respect to the meaning or requirements of this Consent Decree, including but not limited to exercising the Payment Guarantee described in Section VIII and the Escrow Agreement, shall be, in the first instance, the subject of informal negotiations between the United States, the State, and Defendant to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days, commencing with written notice by one Party to the other affected Party or Parties that a dispute exists, unless otherwise agreed to in writing by those Parties. If a dispute between the Parties cannot be resolved by informal negotiations, then the position advanced by the United States and the State of Ohio, if consistent, shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. Unless the Parties otherwise agree or the Court otherwise orders, the United States

and the State shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' or the State's position is not in accordance with the objectives of this Consent Decree and federal and state law, and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree, the CWA, and Ohio's Water Pollution Control Law.

44. If the United States or the State believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, either may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendant shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' and the State's position is not in accordance with the objectives of this Consent Decree, and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree, the CWA, and Ohio's Water Pollution Control Law.

45. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in Section XIV below regarding payment of stipulated penalties.

### **XIII. FORCE MAJEURE**

46. Defendant shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendant, including its employees, agents,

consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits, unless, as described in Paragraph 36, Defendant has submitted timely and complete applications and has taken all other actions necessary to timely obtain all such permits and approvals.

47. If Defendant believes that a Force Majeure event has affected Defendant's ability to perform any action required under this Consent Decree, Defendant shall notify the United States and the State in writing within seven (7) calendar days after the event at the addresses listed in Section XV. Such notice shall include a description of the following:

- A. The action that has been affected;
- B. The specific cause(s) of the delay;
- C. The length or estimated duration of the delay; and
- D. Any measures taken or planned by Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States and the State any additional information that it deems appropriate to support a conclusion that a Force Majeure event has affected the ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States and the State shall constitute a waiver of any claim of Force Majeure as to the event in question.

48. If the United States and the State determine that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with EPA and the State to determine when to begin or resume the operations that had been affected by any Force Majeure event.

49. If the Parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any Party may seek a resolution of the dispute under the procedures in Section XII of this Consent Decree.

50. Defendant shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendant and any entity controlled by Defendant, including their contractors and consultants; (2) that Defendant or any entity controlled by Defendant could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

#### **XIV. STIPULATED PENALTIES**

51. After the Effective Date, if Defendant fails to timely fulfill any requirement or obligation of the Consent Decree, including but not limited to any of the requirements, tasks or obligations set forth in the Work Plan under the deadlines set forth therein and/or any requirements, tasks or obligations set forth in the Escrow Agreement, such failure shall be deemed a material breach of this Consent Decree and Defendant shall pay a stipulated penalty to the United States and the State for each violation of each requirement of this Consent Decree as follows:

- A. For Day 1 up to and including Day 30 of non-compliance \$1,000.00 per day
- B. For Day 31 up to and including 60 of non-compliance \$2,000.00 per day
- C. For Day 61 and beyond of non-compliance \$3,000.00 per day

Such payments shall be due and be made by Defendant, without the necessity for demand by the United States or the State, on or before the last day of the month following the month in which the stipulated penalty accrued. Notwithstanding the foregoing, the Parties may mutually agree in writing to revise any deadline set forth in the Work Plan and in such instance may further mutually agree in writing to revise the date on which stipulated penalties shall begin to accrue. Any such written revision shall not forfeit or alter any party's rights or obligations under this Consent Decree. The method of payment shall be in accordance with the terms of Paragraph 56 herein.

52. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the Parties pursuant to the Dispute Resolution provisions in Section XII and/or the Force Majeure provisions in Section XIII, shall be resolved upon motion to this Court as provided in Section XII.

53. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or

condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section XIV.

54. To the extent Defendant demonstrates to the Court that a delay or other non-compliance with this Consent Decree was due to a Force Majeure event (as defined in Section XII) or otherwise prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

55. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged and accrue in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the date the payment is due until the date the payment is made. The interest shall also be compounded annually.

56. Defendant shall make any payment of a penalty by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the U.S.A.O. file number to be supplied by the United States, EPA Region 5, and the DOJ case number 90-5-1-1-21439. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Ohio. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendant shall provide written notice, at the addresses specified in Section XV of this Decree. It shall be the responsibility of the United States, after receipt of penalty payments, to divide such payments between the United States and the State of Ohio.



**XV. ADDRESSES**

57. All notices and communications required under this Consent Decree shall be made to the Parties through each of the following persons and addresses:

A. TO EPA:

- (1) CHRISTOPHER GRUBB  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 5  
email: [grubb.christopher@epa.gov](mailto:grubb.christopher@epa.gov)
- (2) MONICA DIX  
Wetlands Enforcement Section  
United States Environmental Protection Agency  
Region 5  
email: [dix.monica@epa.gov](mailto:dix.monica@epa.gov) and [R5WECA@epa.gov](mailto:R5WECA@epa.gov)

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE (send by e-mail):

PERRY ROSEN  
United States Department of Justice  
Environment & Natural Resources Div.  
Environmental Defense Section  
P.O. Box 7611, Washington, D.C. 20044  
DJ # 90-5-1-1-21439  
E-mail: [EDS.ENRD@usdoj.gov](mailto:EDS.ENRD@usdoj.gov)

C. TO THE OHIO ATTORNEY GENERAL'S OFFICE:

AMBER WOOTTON HERTLEIN  
Office of Ohio Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215

D. TO OHIO EPA:

Ohio Environmental Protection Agency  
Lazarus Government Center

Division of Surface Water  
Attn: Manager, Storm Water Enforcement Section  
50 West Town Street, Suite 700  
[P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

[For mailings, use the post office box number and zip code in brackets.]

E. TO DEFENDANT:

YUHASZ BROS., LLC  
8549 State Route 46 South  
Orwell, OH 44076

F. TO DEFENDANT'S COUNSEL:

CORY FUNK  
LEMIRE & ASSOCIATES  
Attorneys at Law  
531 East Beech Street  
Jefferson, OH 44047

**XVI. COSTS OF SUIT**

58. Each Party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant shall be liable for any costs or attorneys' fees incurred by the United States and the State in any action against Defendant for noncompliance with or enforcement of this Consent Decree.

**XVII. PUBLIC COMMENT**

59. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of

28 C.F.R. § 50.7 and final approval by the State is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which provide for public notice and comment. The United States and the State reserve the right to withhold or withdraw consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States or the State to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States or State has notified the Defendant in writing that it no longer supports entry of the Consent Decree.

**XVIII. CONTINUING JURISDICTION OF THE COURT**

60. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or implementation of this Consent Decree. During the pendency of the Consent Decree, any Party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

**XIX. MODIFICATION**

61. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment of the Court as to all claims set forth in the Complaint. Any substantive modification of this Consent Decree shall be in writing, and shall not take effect unless: (a) signed by the United States, the State of Ohio, and Defendant; and (b) approved by the Court. Revisions to the Work Plan agreed to after entry of this Consent Decree may be made without further approval of the Court so long as all parties agree to such revisions in writing.

Any such revisions shall be fully enforceable under the terms of this Consent Decree and shall otherwise be subject to all requirements and terms of this Consent Decree.

## **XX. TERMINATION**

62. Except for the obligations in this Consent Decree that survive termination of the Decree, including but not limited to requirements set forth in Sections IX and XI, this Consent Decree may be terminated by either of the following:

A. Defendant, the United States, and the State may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. The United States and/or the State may at any time make a motion to the Court for termination of this Decree or any portion of it; or

C. Defendant may make a unilateral motion to the Court to terminate this Decree only after each and all of the following has occurred:

1. Defendant has obtained and maintained compliance at the Site with all provisions and requirements of this Consent Decree for twelve (12) consecutive months;

2. Defendant has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States or the State;

3. Defendant has certified compliance pursuant to subparagraphs C.1. and C.2., above, to the Court and all Parties; and

4. Within forty-five (45) days after receiving such certification from the Defendant, both the United States and the State has not contested in writing that

such compliance has been achieved. If the United States or the State disputes Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court consistent with the Dispute Resolution Process set forth in Section XII.

#### **XXI. SIGNATURES**

63. Each undersigned representative of Defendant, the United States, and the State, by so signing, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party or entity he or she represents in this document.

64. This Consent Decree may be signed in counterparts and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXII. INTEGRATION**

65. This Consent Decree, along with all Exhibits attached hereto, constitutes the final, complete, and exclusive agreement and understanding among and between the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein, other than deliverables that are subsequently submitted and approved pursuant to this Decree. The

Parties acknowledge that there are no representations or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**COURT DECREE**

The Court, having reviewed and considered this Consent Decree, and having determined that it is fair and reasonable, consistent with the Clean Water Act and State law, in the public interest, and fully settles the dispute alleged in the Complaint, hereby approves and enters this Consent Decree.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Ohio v. Yuhasz Bros., LLC*.

**ON BEHALF OF THE UNITED STATES:**

Date: \_\_\_\_\_

\_\_\_\_\_  
PERRY M. ROSEN  
United States Department of Justice  
Environment & Natural Resources Div.  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044  
Tel: (202) 353-7792  
Fax: (202) 514-8865  
perry.rosen@usdoj.gov

MICHELLE M. BAEPLER  
Acting United States Attorney

STEVEN J. PAFFILAS  
Assistant United States Attorney  
Northern District of Ohio  
United States Courthouse  
801 West Superior Ave.  
Suite 400  
Cleveland, OH 44113  
216-622-3698

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Ohio v. Yuhasz Bros., LLC*.

**ON BEHALF OF U.S. ENVIRONMENTAL PROTECTION AGENCY:**

JOSEPH  
THEIS

Digitally signed by  
JOSEPH THEIS  
Date: 2022.05.02  
18:29:02 -04'00'

Date: \_\_\_\_\_

JOSEPH G. THEIS  
Acting Director, Water Enforcement Division  
United States Environmental Protection Agency



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Ohio v. Yuhasz Bros., LLC*.

**ON BEHALF OF U.S. ENVIRONMENTAL PROTECTION AGENCY:**


ROBERT  
KAPLAN

 Digitally signed by ROBERT KAPLAN  
Date: 2022.04.28 17:29:03 -05'00'

Date: \_\_\_\_\_

\_\_\_\_\_  
ROBERT A. KAPLAN  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

CHRISTOPH  
ER GRUBB

 Digitally signed by  
CHRISTOPHER GRUBB  
Date: 2022.04.28  
09:28:43 -05'00'

4/28/22

Date: \_\_\_\_\_

\_\_\_\_\_  
CHRISTOPHER GRUBB  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Ohio v. Yuhasz Bros., LLC*.

**ON BEHALF OF THE STATE OF OHIO**

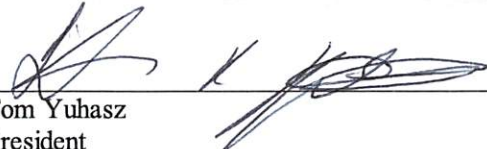


AMBER WOOTTON HERTLEIN  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215

Date: May 3, 2022

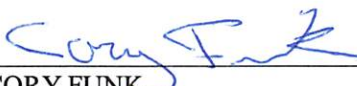
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of Ohio v. Yuhasz Bros., LLC*.

**ON BEHALF OF DEFENDANT YUHASZ BROS., LLC:**

  
\_\_\_\_\_  
Tom Yuhasz  
President  
Yuhasz Bros., LLC  
8549 State Route 46 South  
Orwell, Ohio 44076

Date: 4-19-22

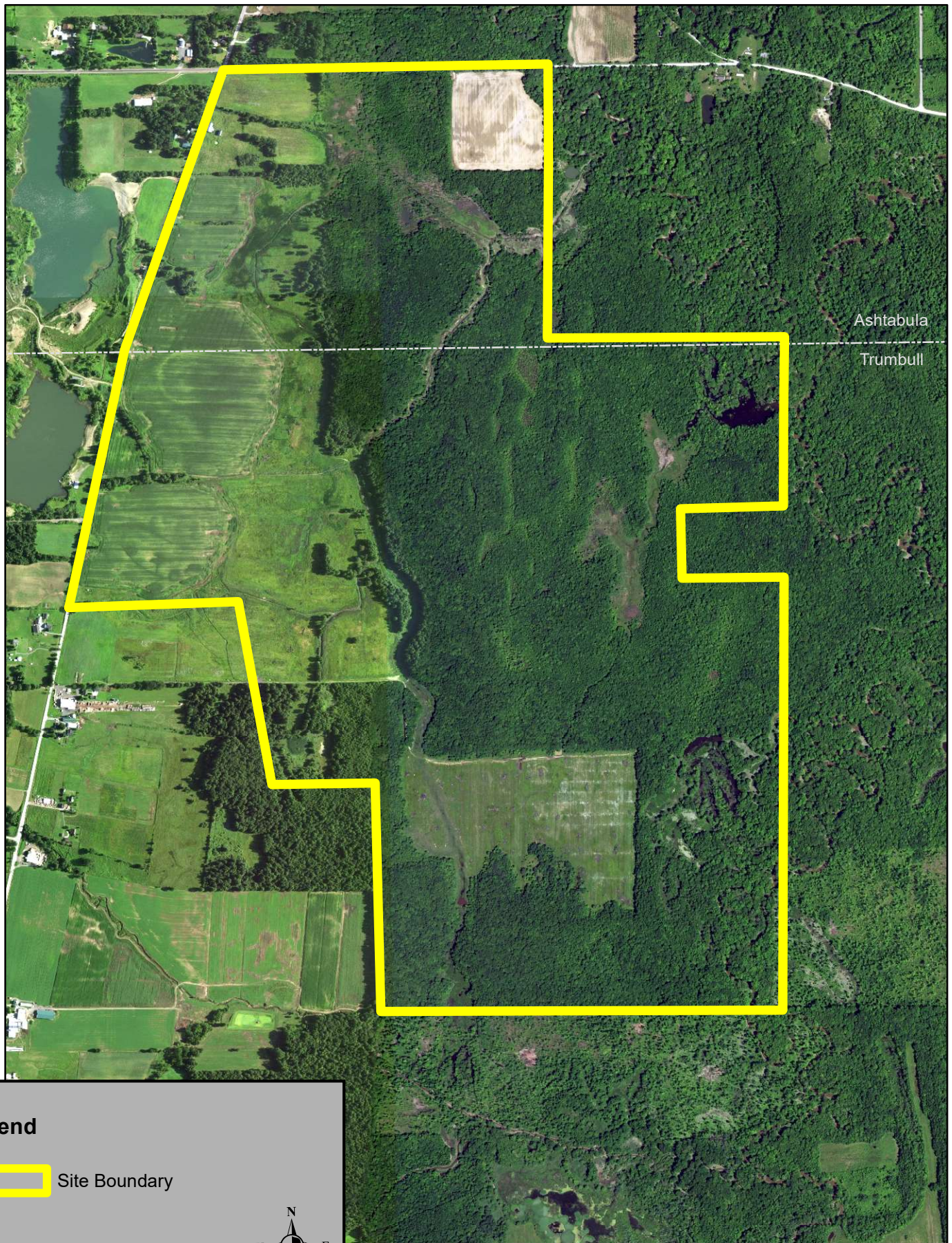
**AGREED TO AS TO FORM BY COUNSEL FOR DEFENDANT YUHASZ BROS., LLC.**

  
\_\_\_\_\_  
CORY FUNK  
LEMIRE & ASSOCIATES  
Attorneys at Law  
531 East Beech Street  
Jefferson, Ohio 44047

Date: 04/19/22



# Exhibit 1 Site Map



## Legend

 Site Boundary



0 800 1,600 3,200  
Feet



# **WINDSOR WOODS RESTORATION PLAN**

## **Ashtabula and Trumbull Counties, Ohio**

Prepared for:

Yuhasz Bros, LLC  
8549 State Route 46 South  
Orwell OH 44076

**Project No.:** 9509  
**Date:** 11/2/2021

Prepared by:



5070 Stow Rd.  
Stow, OH 44224  
800-940-4025  
[www.EnviroScienceInc.com](http://www.EnviroScienceInc.com)

Windsor Woods Restoration Plan  
Version 2.1  
Document Date: 11/18/2021  
Project No.: 9509

Prepared for:  
Mr. Tom Yuhasz  
Yuhasz Bros., LLC

### **Authorization for Release**

*The analyses, opinions, and conclusions in this document are based entirely on EnviroScience's unbiased, professional judgment. EnviroScience's compensation is not in any way contingent on any action or event resulting from this study.*

*The undersigned attest, to the best of their knowledge, that this document and the information contained herein is accurate and conforms to EnviroScience's internal Quality Assurance standards.*



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Michael A. Liptak, Ph.D.  
Certified Senior Ecologist (ESA)

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## EXECUTIVE SUMMARY

---

This mitigation plan is prepared on behalf of Yuhasz Bros LLC (Yuhasz) to resolve issues between Yuhasz and state and federal regulatory agencies. The mitigation plan includes the removal of fill from wetland areas and the re-establishment/rehabilitation of wetlands and streams as compensatory mitigation for unauthorized impacts to 80 acres of wetlands and 5,000 linear feet of stream at the Site. The plan includes a total of 162 acres of wetland mitigation and approximately 5,000 linear feet of stream mitigation and builds upon the initial requirements of a plan developed with NRCS. The final mitigation plan shall meet both federal and state wetlands and stream regulatory requirements.

At present, the streams are recovering from the ditching activities and have reached equilibrium with their current elevations. The seed bank in the wetland areas has remained a good source of natural recovery, and the herbaceous vegetation has recovered well.

In the summer of 2021, a beaver dam downstream of the project limits created extensive backwater, making the original restoration plans infeasible due to flooded conditions on Stream 6 and Don Creek. As an alternative, additional work to Stream 5 and a tributary to Don Creek are proposed. These revisions still provide the necessary stream length for 5,000 LF goal. The overall approach will remain the same: a raise grade approach and channel re-alignment to abandon the existing ditch alignments. The existing culvert on Stream 5 will be replaced with a ford at approximately 1 ft above the invert of the existing culvert. This will provide a much greater capacity and reduce the existing backwatering of upstream properties while reconnecting the stream to the floodplain. A smaller natural channel geometry and cross section will be constructed such that overbank flows are more frequent. The excavated material will be placed back into the existing ditch alignments to plug the channels for realignment into a new channel or to raise the grade of the ditch to reconnect it to its adjacent floodplain and wetlands. This will benefit the streams as well as the wetlands by establishing a more frequent connection between the stream and its floodplain. A meandering pattern will be established for the restored stream channels based on historic aerial photos and onsite observations. Establishing this meandering pattern will require excavation and grading within some of the existing wetland areas surrounding the streams. Mature trees will be spared to the maximum extent possible. Live stakes will be installed along the banks to provide shade, and disturbed areas will be seeded with an appropriate seed mix approved by the CMNH.

Wetland restoration will consist of five major activities: 1) removing fill piles within the wetlands by pushing them back into the streams from which the fill was removed, 2) breaking drainage tiles to increase the duration and depth of flooding of the wetlands 3) plugging and raising grade on existing ditches to increase the depth and duration of saturation and inundation in the wetlands, 4) seeding and planting woody species within the wetlands, and 5) invasive species control in and around the wetlands.

## 1.0 INTRODUCTION

---

This mitigation plan is prepared on behalf of Yuhasz Bros LLC (Yuhasz) to resolve issues between Yuhasz and state and federal regulatory agencies. The mitigation plan includes the removal of fill from wetland areas and the re-establishment/rehabilitation of wetlands and streams as compensatory mitigation for unauthorized impacts to 80 acres of wetlands and 5,000 linear feet of stream at the Site. The plan includes a total of 162 acres of wetland mitigation and approximately 5,000 linear feet of stream mitigation and builds upon the initial requirements of a plan developed with NRCS. The final mitigation plan shall meet both federal and state wetlands and stream regulatory requirements.

## 2.0 EXISTING CONDITIONS

---

The existing conditions onsite are best characterized as recovering. Yuhasz cleared the land of shrubs and trees, and ditched two streams, sidecasting the soil into adjacent areas, mostly wetlands. Small stretches of tile were exposed at the request of NRCS to determine the drainage network in the fields. A beaver dam was removed at the east end of the property but has now been rebuilt. Trees and shrubs were placed into debris piles. A small area in the north field was filled with organic fertilizer. Other than these activities, no earthmoving activities took place onsite and the topography is unchanged from its previous wetland condition. The site was plowed and seeded with soybeans.

### 2.1 OWNERSHIP AND EASEMENTS

The majority of the Site is owned by Yuhasz Bros LLC, with some parcels owned by the Cleveland Museum of Natural History (CMNH). Table 2.1 contains a list of property owners. The Cleveland Museum of Natural History owns the mineral rights on 454 acres, while East 534 LLC owns the remaining.

**Table 2.1 Property Ownership**

| County    | Parcel No.       | Owner                               | Legal ac |
|-----------|------------------|-------------------------------------|----------|
| Trumbull  | 60-901281        | Yuhasz Bros LLC                     | 121.9077 |
| Trumbull  | 60-054900        | Cleveland Museum of Natural History | 617.282  |
| Ashtabula | 61-004-00-006-00 | Yuhasz Bros LLC                     | 91.2396  |
| Ashtabula | 61-004-00-004-00 | Yuhasz Bros LLC                     | 55.111   |

### 2.2 BASELINE CONDITIONS

At present, the streams are recovering from the ditching activities and have reached equilibrium with their current elevations. There is evidence of building a floodplain bench at the lower elevations. In the summer of 2021, a beaver dam downstream of the project limits created extensive backwater on Don Creek and Stream 6.

Don Creek has a drainage areas less than 1 square mile based on USGS Streamstats, which is too small for the QHEI to be an effective tool to evaluate stream habitat quality. The QHEI was

developed for streams with drainage areas greater than 3 square miles. The HHEI would be a more appropriate scoring method for this stream; however, its utility is limited by the fact that streams through wetlands typically score lower on the HHEI because of their substrate, which is usually dominated by smaller substrates like muck, silt, and clay.

Stream 6 has a drainage area of 1.74 square miles based on USGS Streamstats, which would indicate the use of a QHEI. Similar to the HHEI, the QHEI was developed for higher gradient streams with mineral substrates and tends to underscore wetland streams with silty substrates and no source of larger materials in the watershed. Because of this, a QHEI score of 60 is unrealistic for a stream channel of this type. A score of 50 would be a realistic goal for a stream of this type with this slope and geomorphic setting.

The seed bank in the wetland areas has remained a good source of natural recovery, and the herbaceous vegetation has recovered well. Higher areas in the wetlands are dominated by a diversity of sedges such as *Carex vulpinoidea*, *C. lupulina*, *C. crinita*, *C. stipata*, and *C. comosa*, rushes such as *Juncus effusus* and *J. tenuis*, and forbs such as *Eupatorium perfoliatum* and *Verbena hastata*. Lower areas which are semi-permanently to permanently inundated are dominated by *Scirpus hattorianus*, *Schoenoplectus tabernaemontani*, *Alisma* sp., and *Typha* spp.

### **2.3 PREVIOUS RESTORATION ACTIVITIES**

As part of a separate agreement with NRCS, native trees and shrubs were planted in later winter/early spring 2019 along the borders of several ditches as well as Stream 6 (Figure 2). A seed mix was installed in summer 2019.

### **2.4 WATER DEPTHS**

Baseline locations will be established in deeper and shallower portions of the mitigation wetlands and will be monitored in early June and late August annually. During the June and July 2020 site visits, most of the wetland areas were dry, but deeper areas dominated by cattails were inundated.

### **2.5 STREAM PROFILES AND CROSS SECTIONS**

Stream profile and cross-section data will be collected for Don Creek and Stream 6 in fall 2020 following approval of the preliminary plan.

## **3.0 MITIGATION PLAN**

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Due to the low gradient of the streams and the similarity in the wetland communities, a similar approach will be used in most areas.

### **3.1 STREAM RESTORATION**

In the summer of 2021, a beaver dam downstream of the project limits created extensive backwater, which prevents construction of the original plan. As an alternative, additional work to Stream 5 and a tributary to Don Creek are proposed. These revisions still provide the necessary stream length for 5,000 LF goal. The overall approach remains the same: a raise grade approach and channel re-alignment to abandon the existing ditch alignments. A smaller natural channel geometry and cross section will be constructed such that overbank flows are more frequent. The excavated material will be re-used to place back into the existing ditch alignment to either plug it for realignment of a new channel or to raise the grade of the ditch to reconnect the stream to the adjacent wetlands and floodplains. This will benefit the streams as well as the wetlands by establishing a more frequent connection between the stream and its floodplain. A meandering

pattern will be established for the restored stream channels based on historic aerial photos and onsite observations. Establishing this meandering pattern will require excavation and grading within some of the existing wetland areas surrounding the streams. Mature trees will be spared to the maximum extent possible. Live stakes will be installed along the banks to provide shade, and disturbed areas will be seeded with an appropriate seed mix approved the CMNH.

### 3.1.1 Don Creek

In Restoration Area 1, the lower reach of Don Creek that was originally designed is inundated and channel restoration has been shifted upstream and along the northwestern tributary. A new alignment of 742 LF is proposed for this area. Excavated material will be placed back into the existing ditch as plugs. A completely new stream alignment will be created, and the bottom of the stream will be raised so it is highly connected to the existing topography. Any mature trees adjacent to the stream will be spared. Installation of woody vegetation along the new channel and along the margins of Don Creek to provide shade will occur following channel construction.

### 3.1.2 Stream 6

Work on Stream 6 is not possible due to the backwater created by the beaver dam. The restoration will terminate at the start of Stream 6, which is considered the confluence of Stream 5 and the tributary from the west at the junction of the former agricultural fields and the woods.

### 3.1.3 Stream 5

Additional reaches to Stream 5 will entail the majority of the stream mitigation. Beginning in the south, the current culvert crossing will be removed and replaced with a ford crossing. This will greatly increase capacity and allow the invert to be raised from its current elevation to facilitate the raise grade approach. A new channel will be created for 1,883 LF, after which it will reconnect with the existing stream alignment. The current ditch alignment will be plugged in several locations and the limits and depths of the plugs will be variable based on the fill and compaction of the excavated material. As a result, the base flow will be conveyed down the new channel and not through the existing ditch. Portions of the current Stream 5 ditch will remain as deeper wetland pools to provide habitat diversity.

A similar approach will be used on Stream 5a which drains into Stream 5 from the west. A raise grade approach and new channel re-alignment for 1,373 LF will be performed. Excavated material will be spoiled into the existing ditch alignment.

Both Stream 5a and Stream 5 will flow back into the original ditch alignment for a short distance (551 LF of the 1,883 LF total mentioned above). This area is identified in light blue on the mitigation plan map (Figure 1). This stream reach will be in-filled to create a narrower channel geometry as well as a higher elevation to work with the raise grade approach. Once past the confluence with the additional drainage from the south from Restoration Area 4, Stream 5 will be re-located to the western agricultural field for a distance of 1,190 LF. Due to the raise grade approach, it will be necessary to transition the elevation back down to Stream 6 at the entrance of the wooded area. Therefore, the last ~250 ft of the Stream 5 will be restored at a steeper overall gradient to accomplish this transition.

## 3.2 WETLAND RESTORATION

Wetland restoration will consist of five major activities: 1) removing fill piles within the wetlands by pushing them back into the streams from which the fill was removed, 2) breaking drainage tiles to increase the duration and depth of flooding of the wetlands 3) plugging and raising grade on existing ditches to increase the depth and duration of saturation and inundation in the wetlands,

4) seeding and planting woody species within the wetlands, and 5) invasive species control in and around the wetlands. Since no grading occurred in the farm field other than placement of sidecast materials along the ditches, no excavation in those areas for habitat reestablishment is proposed. The only regulated activities that Yuhasz conducted in the fields was mechanical tree and shrub clearing and placement of woody debris piles and sidecast earth from the streams. Based on previous conversations with agencies and the Cleveland Museum of Natural History, the woody debris piles will remain onsite.

Based on the June and July 2020 site visit, the shallow depressions shown on historic aerial photos still remain onsite and should provide sufficient depth gradients to allow different vegetation communities to establish. As stated above, the wetland vegetation is recovering well from the seed bank and no supplemental seeding of herbaceous plants is proposed. Supplemental seeding is opposed by CMNH, especially in the south field.

To mitigate for the loss of woody vegetation, supplemental seeding of tree and shrub species is proposed in the wetlands, as well as installation of live stakes along the stream banks. If this initial effort does not lead to the establishment of sufficient woody stems by Year 5, alternative planting methods will be proposed. It is unclear that trees and shrubs will successfully recolonize the wetlands if the wetland hydrology is changed by breaking tile and raising grade on the streams. Because of this, woody plant seeding and planting will be limited to higher elevation areas within the wetlands.

### 3.2.1 Restoration Area 1

Restoration Area 1 is in the process of self-restoring. Activities proposed for this area include the following:

- 1) controlling *Phragmites australis*, *Phalaris arundinacea*, and *Typha* spp.,
- 2) creating a sinuous channel along the alignment of the ditch flowing southwest through the area
- 3) plugging the downstream end of two ditches, and
- 4) planting the riparian area around Don Creek with trees and shrubs, each at a density of 200 stems/ac. Bare root trees will be planted, and shrubs will be live stakes or rooted cuttings.

The proposed species list is contained in Table 3.1 below. Substitutions may be required due to availability and CMNH preference.

### 3.2.2 Restoration Area 2

Restoration Area 2 is also in the process of self-restoring. Activities proposed for this area include:

- 1) controlling *Phalaris arundinacea* and *Typha* spp. that are currently present in the field at low densities,
- 2) controlling *Frangula alnus* around the edges of the field,
- 3) trenching the area around the edge of the field to break any tile that may be present, although there is no indication of tile at this point,
- 4) creating microtopography by rough plowing or rutting the field with equipment,
- 5) seeding the area with shrub seeds or live staking suitable species, and



6) planting bare root trees at 200 stems/ac.

### 3.2.3 Restoration Area 3

Herbaceous vegetation in Restoration Area 3 is also recovering from the seed bank. Activities proposed for this area include:

- 1) controlling *Typha* spp. in the northern end of Restoration Area 3,
- 2) controlling *Phragmites australis* and *Phalaris arundinacea* in the field,
- 3) restoring wetland hydrology by blocking a north-draining ditch through the center of the area,
- 4) restoring a more natural wetland hydrology by raising grade on downcutting ditches that flow east into the restoration area,
- 5) breaking tile,
- 6) raising grade on Stream 5 into a new channel through the wetlands,
- 7) plugging the existing channel of Stream 5 and its tributary ditch to provide deeper habitat as well as flood overflow capacity,
- 8) seeding the area with a shrub seed mix, and
- 9) planting bare root trees at a density of 200 stems/ac over 10 ac of the restoration area. These 10 ac will be adjacent to Streams 5 and 5a to decrease the edge/area ratio of the planting.

### 3.2.4 Restoration Area 4

Herbaceous vegetation in Restoration Area 4 is also recovering from the seed bank. Activities proposed for this area include:

- 1) controlling *Frangula alnus* around the edges of the field, and
- 2) breaking tile to restore a more natural hydrology to the site

No excavation is proposed in Restoration Area 4, as it has multiple depressions across the site and additional excavation is unnecessary.

### 3.2.5 Restoration of Herbaceous Vegetation

No seeding of herbaceous vegetation is proposed, as the seed bank in all areas of Windsor Woods appears to be providing a robust recovery for herbaceous plants and the Cleveland Museum of Natural History is opposed to seeding in these areas.

### 3.2.6 Restoration of Woody Plants

The current recovery of woody plants will be accelerated by seeding and planting species appropriate to the ecoregion.

- A mix of at least 8 tree species from the following list will be planted at a total density of 200 trees/ac. At least 40% of the trees will be oaks.
- At least 10 ac of Restoration Area 3 will be established to trees; the remaining acres will be seeded with a mix of shrubs from the following list.

- Shrubs will be seeded in blocks or rows. In shrub areas, herbicide may be used to reduce competition, and shrub seeds will be broadcast seeded
- Buttonbush is to be seeded in ponded depressions.

**Table 3.1 Proposed Species for Seeding and Planting**

| Trees                            |                   |         |    |                  |               |
|----------------------------------|-------------------|---------|----|------------------|---------------|
| Scientific Name                  | Common Name       | C value | %  | Indicator Status | Form*         |
| <i>Acer rubrum</i>               | Red maple         | 2       | 5  | FAC              | BR            |
| <i>Carya laciniosa</i>           | Shellbark Hickory | 7       | 5  | FACW             | BR            |
| <i>Nyssa sylvatica</i>           | Black Gum         | 7       | 5  | FAC              | BR            |
| <i>Platanus occidentalis</i>     | American Sycamore | 7       | 10 | FACW             | BR            |
| <i>Quercus bicolor</i>           | Swamp White Oak   | 7       | 25 | FACW             | BR            |
| <i>Quercus palustris</i>         | Pin Oak           | 5       | 25 | FACW             | BR            |
| <i>Salix discolor</i>            | Pussy willow      | 2       | 5  | FACW             | BR            |
| <i>Salix nigra</i>               | Black willow      | 2       | 10 | OBL              | BR            |
| <i>Ulmus americana</i>           | American Elm      | 2       | 10 | FACW             | BR            |
| Shrubs                           |                   |         |    |                  |               |
| Scientific Name                  | Common Name       | C value | %  | Indicator Status | Form*         |
| <i>Alnus rugosa</i>              | Speckled alder    | 6       | 10 | FACW             | S, LS, RC, BR |
| <i>Cephalanthus occidentalis</i> | Buttonbush        | 6       | 10 | OBL              | S, LS, RC, BR |
| <i>Cornus amomum</i>             | Silky Dogwood     | 2       | 10 | FACW             | S, LS, RC, BR |
| <i>Cornus sericea</i>            | Red-osier Dogwood | 3       | 10 | FACW             | S, LS, RC, BR |
| <i>Ilex verticillata</i>         | Winterberry       | 6       | 10 | FACW             | S, LS, RC, BR |
| <i>Rosa palustris</i>            | Swamp rose        | 5       | 10 | OBL              | S, LS, RC, BR |
| <i>Salix lucida</i>              | Shining willow    | 4       | 10 | FACW             | S, LS, RC, BR |
| <i>Sambucus canadensis</i>       | Elderberry        | 3       | 10 | FACW             | S, LS, RC, BR |
| <i>Spiraea alba</i>              | White meadowsweet | 3       | 5  | FACW             | S, LS, RC, BR |
| <i>Spiraea tomentosa</i>         | Steeplebush       | 4       | 5  | FACW             | S, LS, RC, BR |
| <i>Viburnum lentago</i>          | Nannyberry        | 5       | 10 | FAC              | S, LS, RC, BR |

\*BR= Bare Root, S=Seed, LS=Live Stake, RC=Rooted Cutting

- Areas planned for inundation of greater than 6 inches in the growing season will not be planted to trees.
- The seedlings and seeds will be installed in early spring prior to April 15.
- Volunteer tree and shrub seedlings are also expected to occur on the site and will contribute to the plant community.
- Herbicide applications are allowed in a 3-foot radius around trees for the first two years.

### **3.3 CONSTRUCTION SCHEDULE AND WORK FLOW**

Construction performed after the summer may pose water management issues for this area. The new channel can be excavated in the dry, while active channel restoration will require water management. Water flow will be maintained in downstream areas during construction. Streams 5 and 5a will be constructed in the dry. Water management will be necessary with management of groundwater infiltration into the excavation area. The plugs and existing channel fill will occur after the new stream is built and connected at a logical breakpoint for water management.

Equipment necessary for this project will include machinery typical for excavation projects with the addition of small-tracked crawler carriers due to the soft nature of the site. Site access will generally follow the stream corridors in previously cleared areas.

### **3.4 PROTECTION OF EXISTING RESOURCES**

Undisturbed natural areas will be protected during the restoration construction process. Prior to the commencement of work, the construction work area will be defined on the ground. Site restoration areas will be delineated by installation of flagging, sedimentation and erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that no work shall occur beyond these boundaries.

#### **3.4.1 Signage**

Signs shall be placed within visual distance along the mitigation area that indicate the area is a protected wetland and stream mitigation project and that mowing, dumping, or any other activity that would result in a degradation of the wetland and stream without prior authorization from EPA and Ohio EPA is prohibited.

### **3.5 SCHEDULE**

A proposed schedule for restoration and monitoring activities is shown in the table below.

In general, equipment will consist of excavators, possibly assisted by bulldozers and dump trucks. Most of the work is anticipated to be completed using an excavator to replace fill in the stream channels, shape the banks, and cut new channel when necessary. Site access will generally follow the stream corridors in previously cleared areas. Work will proceed generally from downstream to upstream direction in this instance for soil management and to work themselves out of areas.



**Table 3.2 Proposed Construction Schedule**

| Date               | Activity   |
|--------------------|--|
| Fall 2021          | Tile cutting in Restoration Areas 2 and 4 as weather permits<br>Stream construction begins and riparian corridor planting as appropriate<br>Invasive species control sitewide<br>Sign installation<br>Seeding and Planting |
| Winter 2021-2022   | Stream construction and tile cutting as conditions permit<br>Microtopography in North Field  |
| Spring/Summer 2022 | Stream construction and riparian corridor planting<br>Tile cutting in Restoration Area 3<br>As-built survey<br>Additional invasive species control as necessary  |
| December 31, 2022  | As-built report  |

#### **4.0 AS BUILT CONDITION**

Following the completion of construction, an as-built survey will be completed on the restored wetlands and streams. To allow time for potential construction schedule delays, an as-built report will be submitted to the agencies by December 31, 2022.

**5.0 WETLAND MONITORING AND PERFORMANCE CRITERIA**

The proposed monitoring schedule is summarized in Table 3.3 below.

**Table 3.3 Proposed Monitoring Schedule**

| Monitoring activity        | Monitoring Year |   |   |   |   |   |   |   |   |   |    |
|----------------------------|-----------------|---|---|---|---|---|---|---|---|---|----|
|                            | 0               | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Delineation                |                 | X |   | X |   | X |   | X |   |   | X  |
| Hydrologic monitoring      |                 | X | X | X | X | X | X | X | X | X | X  |
| Vegetation Monitoring      |                 | X |   | X |   | X |   | X |   | X |    |
| VIBI                       |                 |   |   | X |   | X |   | X |   |   | X  |
| Stream Monitoring          |                 | X | X | X | X | X | X | X | X | X | X  |
| Mapping, % relative covers |                 | X |   | X |   | X |   | X |   | X |    |
| As-built report            | X               |   |   |   |   |   |   |   |   |   |    |
| Annual report              |                 | X | X | X | X | X | X | X | X | X | X  |

The wetland mitigation performance criteria will be as follows:

1. 160 acres of wetlands have been reestablished/rehabilitated and meet the federal definition of wetlands.
2. Mitigation wetlands will have 80% areal cover of hydrophytic vegetation and less than 10% open water.
3. Wetlands and riparian areas will have < 5% relative cover of invasive species overall. No more than 5% cumulative areal cover of the mitigation area may be vegetated by invasive species at the end of the monitoring period.
4. No more than 0.5 contiguous acres within the site will be dominated by any invasive species listed.
5. Forested and non-forested areas will meet VIBI scores equivalent to or higher than the threshold for Wetland Habitat (mid-level of Category 2, score of 40).
6. A minimum of 8 native tree species will be planted within the forested areas, and each of these 8 species represents at least 5% of the overall tree count.
7. A minimum of 25% of all live trees planted will consist of at least 4 species having coefficient of conservatism values from 5 to 10. Coefficient of conservatism values can be found at: [http://epa.ohio.gov/portals/35/wetlands/Ohio\\_FQAI.pdf](http://epa.ohio.gov/portals/35/wetlands/Ohio_FQAI.pdf).
8. A minimum of 400 native, live and healthy (disease and pest free) woody plants per acre (of which at least 200 are tree species) must be present at the end of the monitoring period.

9. A minimum of 8 native shrub/sub-canopy species are planted or seeded within the forested areas, and each of these 8 species represents at least 5% of the overall shrub/sub- canopy tree count or seed mix.
10. A minimum of 25% of all live shrubs/sub-canopy trees planted consist of at least 4 species having coefficient of conservatism values from 5 to 10 ([http://epa.ohio.gov/portals/35/wetlands/Ohio\\_FQAI.pdf](http://epa.ohio.gov/portals/35/wetlands/Ohio_FQAI.pdf)).
11. A minimum VIBI-FQ score of 40 for mitigated wetlands is required.

## **6.0 STREAM MONITORING AND PERFORMANCE CRITERIA**

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The following stream performance criteria are proposed:

1. Streams will have a defined bed and bank and maintain the appropriate flow regime.
2. Stream mitigation channels and banks will be stable and show no signs of excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation.
3. A minimum QHEI score of 50 must be obtained for the Stream 6.

## **7.0 MONITORING AND REPORTING**

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Monitoring will be conducted twice between June and October and an annual report will be submitted by December 31 of each year. The monitoring reports will include a summary of site conditions, a discussion on how the site is progressing towards meeting the performance criteria, maps of as built conditions, a map of current conditions with dominant plant community type, photographs to illustrate site conditions, results of all functional, condition or other assessments conducted during the monitoring period, and any actions that are planned in the next year in order to ensure the site is on track meet the performance criteria.

## **8.0 LONG TERM MANAGEMENT AND MAINTENANCE**

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Following completion of monitoring activities, the site will be managed in perpetuity by CMNH.

## **9.0 INSPECTION**

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Yuhasz will allow federal and state agencies access to the site for inspections. At least 24 hours' notice will be required in order to coordinate with CMNH.

## **10.0 LITERATURE CITED**

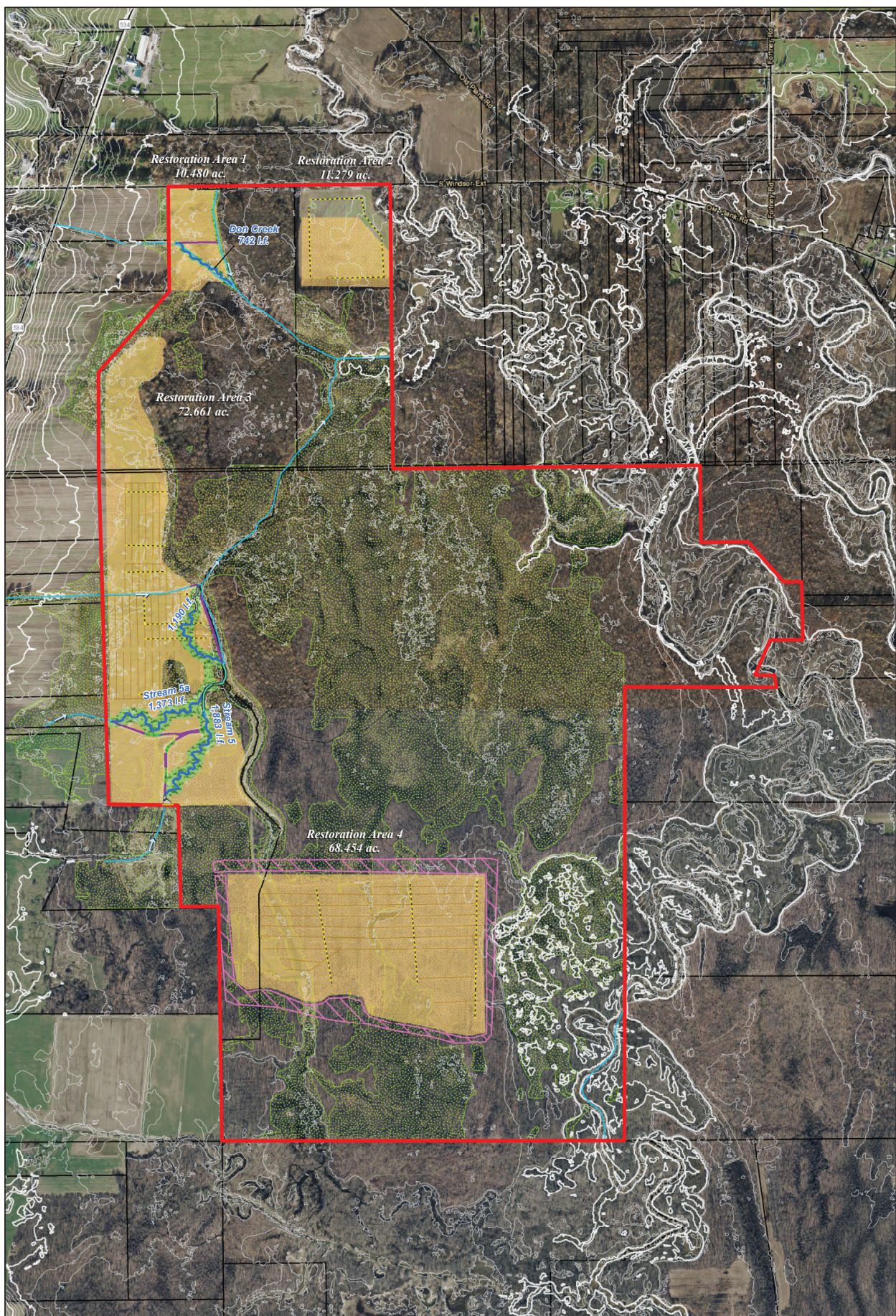
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USGS Streamstats (<https://streamstats.usgs.gov/ss/>)

# Appendix A

## Figures

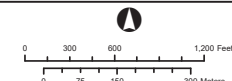




**Figure 1. Yuhasz Bros. Property Restoration Conceptual Design. Ashtabula & Trumbull Counties, Ohio.**



- Proposed Stream
- Existing Stream Grading
- NHD Stream
- Break Tile Line
- Approximate Tile Line
- Herbicide Treatment Area
- Rock Grading
- Proposed Wetland
- Emergent Restoration Area (154.8 ac.)
- Forest Restoration Area (10.0 ac.)
- Proposed Ford
- Proposed Plug
- 2009 EPA Wetlands
- Parcel Boundary
- Yuhasz Bros Property



Date: 11/2/2021 Path: P:\10\_P\Projects\Yuhasz\_Bros\430R\Restoration\_Concept\GIS\NRCS\_Map1\_TILE.mxd



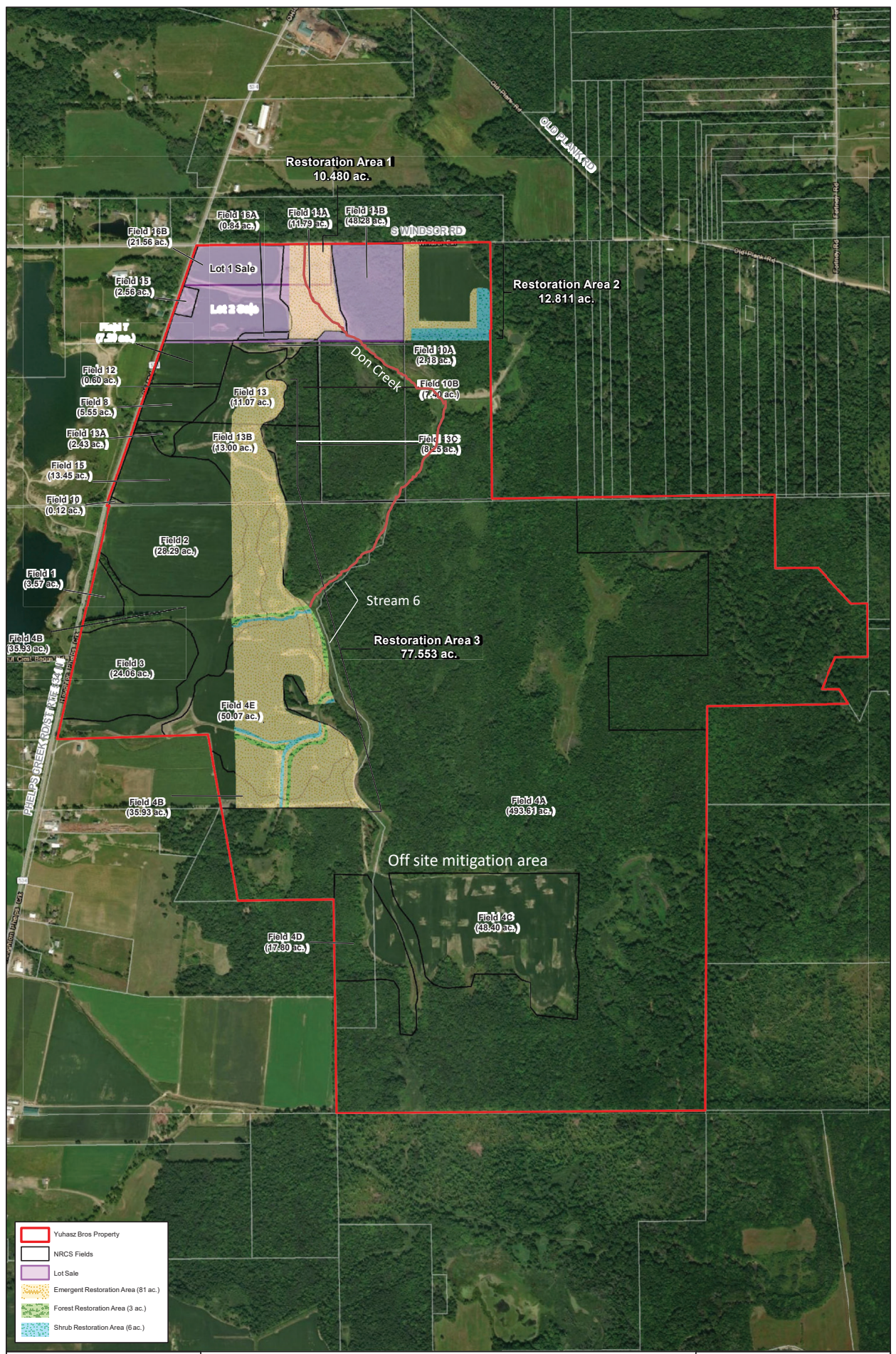


Figure 2.  
Yuhasz Bros. Property.  
NRCS Restoration Map  
with USEPA markup

0 375 750 1,500 Feet



0 75 150 300 Meters



# Appendix B

## Photos





Photo 1. Don Creek in Restoration Area 1, facing north (upstream). June 2020.



Photo 2. Don Creek in Restoration Area 1, facing south (downstream). June 2020.



Photo 3. Woody plants colonizing Restoration Area 1. June 2020.

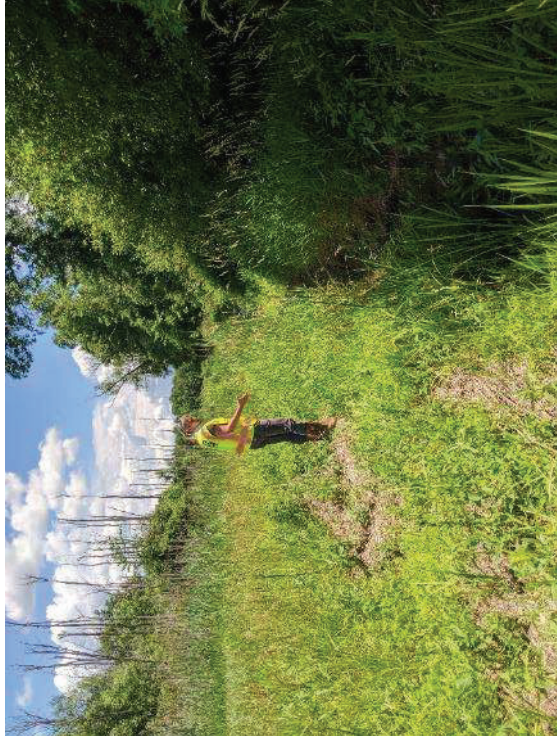


Photo 4. Don Creek south of Restoration Area 1, facing southeast (downstream).

June 2020





Photo 5. Restoration Area 2, showing wetland plants colonizing farm field.



Photo 7. Stream 5, facing downstream. June 2020.

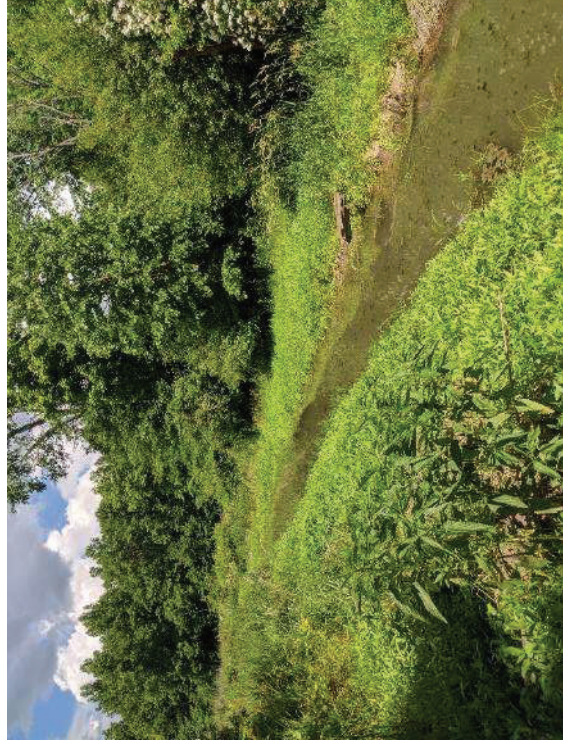


Photo 6. Stream 5, facing north (downstream).



Photo 8. Restoration Area 3, facing east. June 2020.





Photo 9. Downcut ditch in Restoration Area 3. Note hardpan.



Photo 10. Typical section of Stream 5, showing how far below wetland it has been cut. June 2020.





Photo 11. Offsite beaver dam in center of photo.  
August 30, 2021.



Photo 12. Flooded conditions caused by offsite beaver dam.  
August 30, 2021.

**U.S. AND STATE OF OHIO v. YUHASZ BROS, LLC ESCROW AGREEMENT**

THIS ESCROW AGREEMENT is made and entered into as of May 5, 2022 by Yuhasz Bros., LLC, an Ohio Limited Liability Company (“Yuhasz”) and the Ohio Attorney General, in its capacity as escrow agent hereunder (the “Escrow Agent”).

**WHEREAS**, on June 13, 2019, the United States of America (“United States”), on behalf of the U.S. Environmental Protection Agency, and the State of Ohio (“State”) filed a Complaint in the matter of *United States, et al. v. Yuhasz Bros., LLC*, Civil Action No. 1:19-cv-01370 (N.D. Ohio);

**WHEREAS**, concurrently with the execution of this Escrow Agreement, the United States, the State, and Yuhasz (collectively, the “Parties”) have entered into a Consent Decree (the “Consent Decree”) that provides, among other things, that Yuhasz shall deposit an amount to be used to guarantee the completion of remedial activities on real property located directly south of South Windsor Road and east of State Route 534 (Phelps Creek Road) in Ashtabula County and Trumbull County, Ohio (the “Site”); and

**WHEREAS**, in accordance with and subject to the provisions of the Consent Decree, Yuhasz is expected to execute a Purchase Agreement with a third party and is required to place the proceeds of that sale, up to \$200,000, into an escrow account;

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the Parties hereto agree as follows:

**SECTION 1. Appointment of Escrow Agent.**

The Parties hereby appoint the Ohio Attorney General to serve as Escrow Agent under this Escrow Agreement on the terms and conditions set forth herein. By execution hereof, the Escrow Agent hereby accepts such appointment and agrees to perform its duties and obligations set forth herein.

**SECTION 2. Definitions.**

The below definitions are in addition to those definitions set out in the Consent Decree.

(a) “Account” means the General Holding Account under the Ohio Attorney General that is held in escrow. It consists of the proceeds of the sale generated by the Purchase Agreement, in the amount of up to \$200,000 pursuant to the terms of the Consent Decree to be used for the purpose of completing restoration and remedial activities at the Site.

(b) “Escrow Deposit” means the full purchase price, up to \$200,000, provided in the Purchase Agreement that Yuhasz is depositing into the Account pursuant to the terms of the Consent Decree and this Escrow Agreement.

**SECTION 3. The Escrow Account and Release of Funds Therefrom.**

(a) Upon Closing, Yuhasz shall tender to the Escrow Agent for deposit in the Account the Escrow Deposit.

(b) The Escrow Deposit received by the Escrow Agent pursuant to the terms of this Escrow Agreement shall be held, invested, and disbursed in accordance with the terms and conditions of the Consent Decree and this Escrow Agreement.

(c) Notwithstanding any provisions in Section 3(d) below, interest accrued on the Escrow Deposit shall be retained by the Escrow Agent.

(d) The funds deposited into the Account pursuant to the Consent Decree and this Escrow Agreement shall be released from the Account under the following circumstances:

(i) **PERFORMANCE OF THE WORK.** If Yuhasz shall fail to perform the Work (as that term is defined in the Consent Decree) in accordance with the terms and conditions of the Consent Decree, the United States and/or the State shall first furnish written notice of such failure (“Notice of Default”) to Yuhasz in accordance with the notice procedures set forth in Section 8 hereof and Section VIII of the Consent Decree. If Yuhasz shall fail to cure the default described in the Notice of Default to the satisfaction of the United States and the State on or before the deadline established in Section VIII of the Consent Decree “Cure Deadline”), the State, in consultation with the United States, shall have the right (but not the obligation) to utilize and spend the Escrow Deposit to cause the Work to be performed in accordance with the terms and conditions of the Consent Decree. The State shall not perform the Work itself but instead shall use the Escrow Deposit to retain and pay qualified contractors to perform and complete the Work in accordance with the requirements and provisions of the Consent Decree.

(ii) **REDUCTION OF PAYMENT GUARANTEE AMOUNT.** If Yuhasz believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Section 2(b) above, Yuhasz may petition the United States and the State for a reduction in the amount of the Escrow Deposit, provided that the amount of the Escrow Deposit is equal to or exceeds the estimated cost of the remaining Work to be performed, as determined at that time by the United States and the State. Yuhasz shall submit a written proposal for such reduction to the United States and the State, which shall specify, at a minimum, the estimated cost of the remaining Work to be performed and the basis upon which such cost was calculated. If, after receiving such a proposal from Yuhasz, the United States and the State determine that (1) the estimated cost of the remaining Work is less than the amount of money remaining in the Escrow Deposit, and (2) the amount of the proposed reduction is appropriate, the State shall reduce the Escrow Deposit consistent with Yuhasz’s request. Upon notice from the United States or the State that the United States and the State have agreed to reduce the amount of



the Payment Guarantee, the Escrow Agent shall release to Yuhasz the amount of funds equal to the approved reduction of Escrow Deposit.

(iii) RELEASE OF FUNDS UPON COMPLETION OF THE WORK. Upon completion of the Work as outlined in the Consent Decree, and upon confirmation by the State and the United States that the Work is complete, any amount of money remaining in the Escrow Deposit shall be released to Yuhasz as set forth in Section VIII of the Consent Decree.

#### **SECTION 4. Termination of Escrow Agreement.**

Upon the utilization of the Account in accordance with the terms hereof and/or delivery of the remaining moneys in accordance with the Consent Decree, this Escrow Agreement shall terminate.

#### **SECTION 5. Notices.**

All communications required by this Escrow Agreement shall be in writing and shall be deemed to be duly given and received:

- (a) upon delivery, if delivered personally, or upon confirmed transmittal, if by facsimile;
- (b) on the next Business Day (as hereinafter defined) if sent by overnight courier; or
- (c) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address set forth below or at such other address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

If to /  
Escrow Agent: Ohio Attorney General

Mr. Jay Easterling (or his successor)  
Office of the Attorney General  
Finance Section  
30 E. Broad Street; 15<sup>th</sup> Floor  
Columbus, OH 43215

with a copy (which shall not constitute notice) given in like manner to:

Amber Wootton Hertlein (or her successor)  
Assistant Attorney General  
Environmental Enforcement Section

30 E. Broad Street; 25<sup>th</sup> Floor  
Columbus, OH 43215  
Amber.Hertlein@OhioAGO.gov

If to Yuhasz: Yuhasz Bros., LLC  
8549 State Route 46 South  
Orwell, OH 44076

with a copy (which shall not constitute notice or service) given in like manner to:

Cory Funk  
Lemire & Associates  
531 East Beech Street  
Jefferson, OH 44047

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

All notices required under this Escrow Agreement shall also be sent to:

CHRISTOPHER GRUBB  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 5  
grubb.christopher@epa.gov

**SECTION 6. Assignability.**

Neither this Escrow Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties (whether by operation of law or otherwise) without the prior written consent of the other Parties. Any assignment or other transfer not permitted under this Escrow Agreement shall be void *ab initio*.

**SECTION 7. Governing Law.**

This Escrow Agreement shall be construed in accordance with and governed by the laws of the State of Ohio.

**SECTION 8. Jurisdiction and Venue.**

Any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, this Escrow Agreement shall be brought in the Court of Common Pleas Franklin County, Ohio.

**SECTION 9. Intended Beneficiaries; Successors.**

Nothing in this Escrow Agreement is intended to, or shall, confer any third party beneficiary or other rights or remedies upon any Person other than the Parties hereto. Only the State, Yuhasz and the Escrow Agent shall be entitled to enforce the terms of this Escrow Agreement. The provisions of this Escrow Agreement shall be binding upon and inure to the benefit of the undersigned parties hereto and their respective successors.

**SECTION 10 Amendment; Waiver.**

This Escrow Agreement may not be supplemented, modified or amended except by a written agreement executed by each party hereto. No waiver of any of the provisions of this Escrow Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided. All waivers hereunder must be in writing to be effective.

**SECTION 11. Section Headings.**

The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Escrow Agreement.

**SECTION 12. Severability.**

If any provision of this Escrow Agreement shall under any circumstances be deemed invalid or inoperative, this Escrow Agreement shall be construed with the invalid or inoperative provisions deleted and the rights and obligations of the parties shall be construed and enforced accordingly. Upon any such determination that any provision of this Agreement is invalid or unenforceable, the Parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the Parties.

**SECTION 13. Counterparts.**

This Escrow Agreement may be executed in multiple counterparts, each of which shall be deemed an original hereof, and all of which shall constitute a single agreement effective as of the date hereof. Any delivery of an executed counterpart of this Escrow Agreement by facsimile, PDF or electronic mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF**, the Parties hereto have executed this Escrow Agreement as of the date set forth above.



**STATE OF OHIO:**

By:   
Name: Amber Wootton Herlein

Title: Assistant Attorney General

**YUHASZ BROS, LLC:**

**YUHASZ BROS., LLC**

By:    
Name: Tom Yuhasz  
Title: President

**ESCROW AGENT:**

**OHIO ATTORNEY GENERAL**

By: Jay Easterling  
Name:

Title: CFO 05/05/2022

**To be recorded with Deed  
Records - R.C. Section 317.08**

**ENVIRONMENTAL COVENANT**

This Environmental Covenant ("Covenant") is entered into pursuant to Ohio Revised Code ("R.C.") Sections 5301.80 to 5301.92 by Yuhasz Bros., LLC, a Limited Liability Company (the "Owner"), having an address of 8549 State Route 46 South and Tom Yuhasz, the President (the "Holder"), having an address of 8549 State Route 46 South, and the Ohio Environmental Protection Agency ("Ohio EPA") and the United States Environmental Protection Agency ("EPA"), as non-holder agencies, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

**WHEREAS**, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in Trumbull County, Ohio, in the Grand River watershed;

**WHEREAS**, pursuant to a Consent Decree entered into with the EPA and Ohio EPA, Yuhasz Bros., LLC has agreed to perform wetland and stream restoration activities within the Covenant Area and to protect the Covenant Area in perpetuity with an environmental covenant;

**WHEREAS**, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of the aquatic ecosystem resource 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.

**WHEREAS**, Yuhasz Bros., LLC proposes to fulfill its obligation to ensure the Covenant Area is protected in perpetuity by this Covenant.

Now therefore, Owner and Holder and EPA and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. Sections' 5301.80 to 5301.92.
2. Covenant Area. The Covenant Area is an approximately 121.9077 acre tract of real property (parcel 60-901281); located at State Route 534, in Trumbull County, Ohio, and more particularly described in Exhibit A [aerial image with covenant boundary] attached hereto and hereby incorporated by reference herein ("the Covenant Area").
3. The Owner is the fee simple owner of the Covenant Area.

4. The Owner is the holder of this Covenant.

5. Activity and Use Limitations. The Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

Division: Any division or subdivision of the Covenant Area is prohibited;

Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;

Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are approved by EPA and the Ohio EPA;

Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA;

Land Surface Alteration: Except as authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA, the removal of soil, sand, gravel, rock, minerals or other materials from the Covenant Area, or doing any act that would alter the topography of the Property shall be prohibited;

Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area;

Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA;

Recreational Trails and Vehicles: Recreational uses that disturb or compact the soils or destroy or inhibit growth of vegetation are prohibited. No use of any vehicle or equipment or activity performed for the purpose of performing or carrying out the Work required under the Work Plan shall be prohibited under this paragraph;

**Utilities:** Construction of utilities on the Covenant Area shall be prohibited. Underground or above-ground utilities may only be constructed if no other alternative is available and EPA and Ohio EPA have approved the exception;

**Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Covenant Area shall be prohibited, other than as part of activities that are authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA.

6. **Running with the Land.** This Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. Section 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. **Compliance Enforcement.** Compliance with this Covenant may be enforced pursuant to R.C. Section 5301.91 or other applicable law. Failure to timely enforce compliance with this Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Covenant shall restrict EPA or the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. **Rights of Access.** Owner hereby grants to EPA and Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Covenant.

9. **Compliance Reporting.** Owner and any Transferee shall submit to Ohio EPA, upon request by EPA and the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. **Notice upon Conveyance.** Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recorded location of this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE TRUMBULL COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT

**CONTAINS THE FOLLOWING ACTMITY AND USE LIMITATIONS:**

[In the notice, restate the activity and use restrictions from Paragraph 5 of this Covenant]

Owner shall notify EPA and Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- b. that this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
- c. that the Owner has identified all persons that hold any interest in, or right to, the Property ("Encumbrance") in Exhibit A attached to this Covenant.

12. Encumbrances. The Parties agree that a holder of an effective Encumbrance shall be permitted to conduct activities on, and make uses of, the Property for the limited purposes provided in the Encumbrance, subject to the provisions of the following paragraph.

When a holder of an Encumbrance performs any activity on the Property, the Owner and the Holders shall, or shall cause the Encumbrance holder to, restore the Property as quickly as possible to its original condition. Such restoration shall be designed and implemented with prior consultation with EPA and Ohio EPA and shall be incorporated into the Work Plan attached to the Consent Decree at Exhibit 2 for future maintenance. Owner will not approve the siting of any oil or gas wells or pipelines on the Property.

13. Amendment or Termination. This Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder[s], and the EPA and the Ohio EPA, pursuant to R.C. 5301.89 or 5301.90 and other applicable law. "Amendment" means any changes to the Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. "Termination" means the elimination of



all activity and use limitations set forth herein and all other obligations under this Covenant.

This Covenant may be amended or terminated only by a written instrument duly executed by EPA and the Director of Ohio EPA, the Holder[s], and the Owner[s] or Transferee[s] of the Covenant Area or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Covenant, the Owner[s] or Transferee[s] shall file such instrument for recording with the Trumbull County Recorder's Office, and shall provide a true copy of the recorded instrument to EPA and Ohio EPA.

14. Severability. If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Covenant, the Owner shall file this Covenant for recording, in the same manner as a deed to the property, with the Trumbull County Recorder's Office.

17. Effective Date. The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded as a deed record for the Covenant Area with the Trumbull County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Covenant to EPA and Ohio EPA;

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Covenant shall be submitted to:

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

United States Environmental Protection Agency, Region 5  
Christopher Grubb, Associate Regional Counsel  
77 W. Jackson Boulevard  
Mail Code: C-14J  
Chicago, IL 60604



Email: [grubb.christopher@epa.gov](mailto:grubb.christopher@epa.gov)

20. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representative of the Owner and Holder represent and certify that they are authorized to execute this Covenant.

This document was prepared by U.S. EPA and the Ohio EPA.

**IT IS SO AGREED:**

**OWNER:**

By: [Signature]  
Print Name: Thomas Yuhasz  
Title: V.P.  
Date: 5/23/22

State of Ohio )  
County of Achtabula ) ss:

Before me, a notary public, in and for said county and state, personally appeared, Tom Yuhasz, a duly authorized representative of Yuhasz Brothers LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Yuhasz Brothers LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 23 day of May, 2022.

[Signature]  
Notary Public



LAURA FISHER  
Notary Public, State of Ohio  
My Commission Expires  
July 7, 2026

**HOLDER:**

By: [Signature]  
Print Name: Thomas Yubasz  
Title: V.P.  
Date: 5/23/22

State of Ohio )  
County of Ashtabula ) ss:

Before me, a notary public, in and for said county and state, personally appeared, Tom Yubasz, a duly authorized representative of Yubasz Brothers LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Yubasz Brothers LLC

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 23 day of May, 2022.

[Signature]  
Notary Public



LAURA FISHER  
Notary Public, State of Ohio  
My Commission Expires  
July 7, 2026

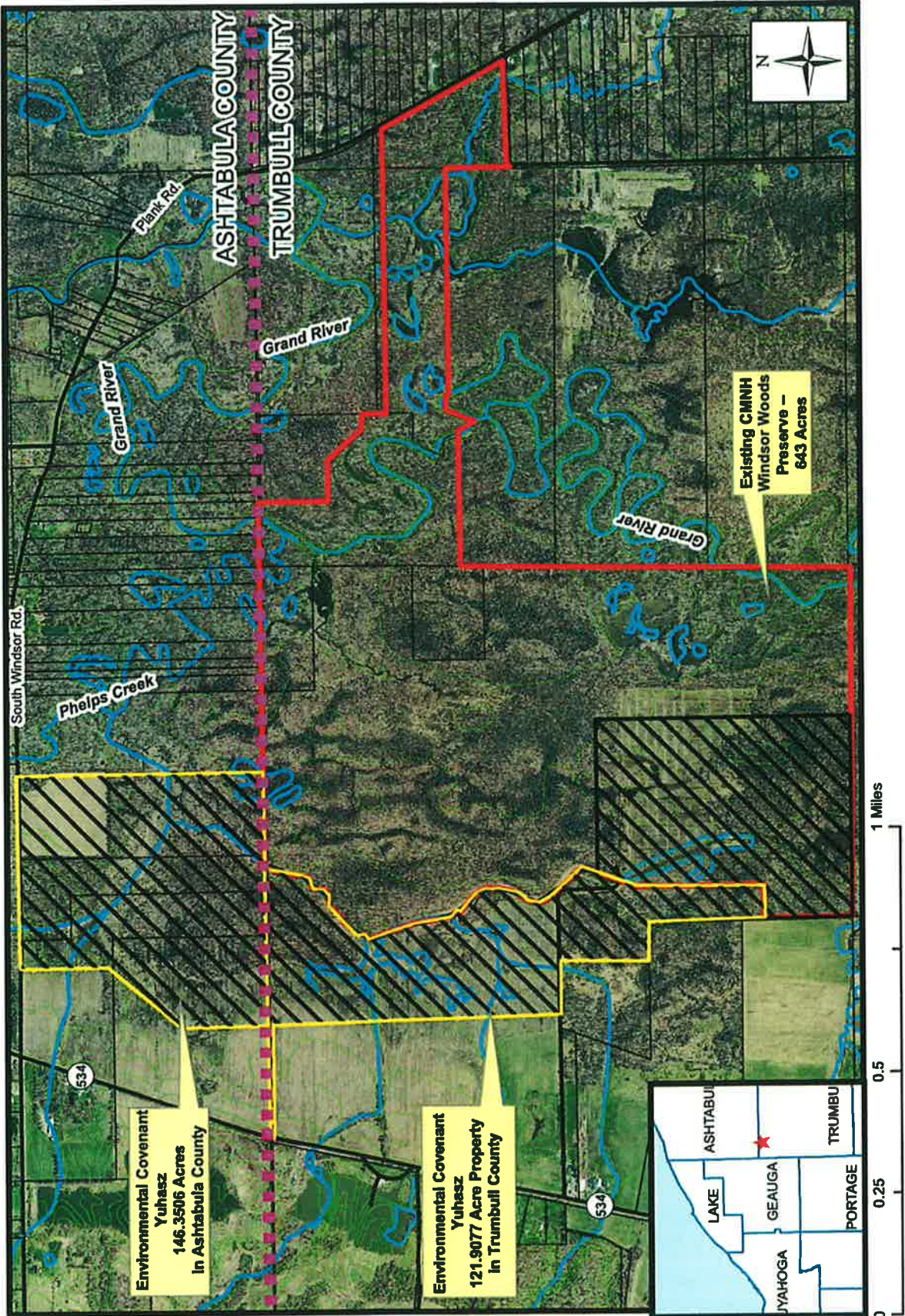






**Exhibit A**  
**Aerial Image with Covenant Boundary**

**Environmental Covenant Map - Exhibit A**  
**Yuhasz LLC Properties**  
**Windsor and Mesopotamia Townships Trumbull and**  
**Ashtabula Counties**





**To be recorded with Deed  
Records - R.C. Section 317.08**

**ENVIRONMENTAL COVENANT**

This Environmental Covenant ("Covenant") is entered into pursuant to Ohio Revised Code ("R.C.") Sections 5301.80 to 5301.92 by Yuhasz Bros., LLC, a Limited Liability Company (the "Owner"), having an address of 8549 State Route 46 South and Tom Yuhasz, the President (the "Holder"), having an address of 8549 State Route 46 South, and the Ohio Environmental Protection Agency ("Ohio EPA") and the United States Environmental Protection Agency ("EPA"), as non-holder agencies, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

**WHEREAS**, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in Ashtabula County, Ohio, in the Grand River watershed;

**WHEREAS**, pursuant to a Consent Decree entered into with the EPA and Ohio EPA, Yuhasz Bros., LLC has agreed to perform wetland and stream restoration activities within the Covenant Area and to protect the Covenant Area in perpetuity with an environmental covenant;

**WHEREAS**, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of the aquatic ecosystem resource 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.

**WHEREAS**, Yuhasz Bros., LLC proposes to fulfill its obligation to ensure the Covenant Area is protected in perpetuity by this Covenant.

Now therefore, Owner and Holder and EPA and Ohio EPA agree to the following:

1. **Environmental Covenant.** This instrument is an environmental covenant developed and executed pursuant to R.C. Sections' 5301.80 to 5301.92.
2. **Covenant Area.** The Covenant Area is two approximately 91.24 and 55.11 acre tracts of real property (parcels 61-004-00-006-00 and 61-004-00-004-00); located at South Windsor Road, in Ashtabula County, Ohio, and more particularly described in Exhibit A [aerial image with covenant boundary] attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. The Owner is the fee simple owner of the Covenant Area.
4. The Owner is the holder of this Covenant.
5. Activity and Use Limitations. The Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

Division: Any division or subdivision of the Covenant Area is prohibited;

Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;

Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are approved by EPA and the Ohio EPA;

Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA;

Land Surface Alteration: Except as authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA, the removal of soil, sand, gravel, rock, minerals or other materials from the Covenant Area, or doing any act that would alter the topography of the Property shall be prohibited;

Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area;

Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA;

Recreational Trails and Vehicles: Recreational uses that disturb or compact the soils or destroy or inhibit growth of vegetation are prohibited. No use of any vehicle or equipment or activity performed for the purpose of performing or carrying out the Work required under the Work Plan shall be prohibited under this paragraph;

**Utilities:** Construction of utilities on the Covenant Area shall be prohibited. Underground or above-ground utilities may only be constructed if no other alternative is available and EPA and Ohio EPA have approved the exception;

**Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Covenant Area shall be prohibited, other than as part of activities that are authorized by the Work Plan attached to the Consent Decree at Exhibit 2 or otherwise approved by EPA and the Ohio EPA.

6. **Running with the Land.** This Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. Section 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. **Compliance Enforcement.** Compliance with this Covenant may be enforced pursuant to R.C. Section 5301.91 or other applicable law. Failure to timely enforce compliance with this Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Covenant shall restrict EPA or the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. **Rights of Access.** Owner hereby grants to EPA and Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Covenant.

9. **Compliance Reporting.** Owner and any Transferee shall submit to Ohio EPA, upon request by EPA and the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. **Notice upon Conveyance.** Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recorded location of this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ASHTABULA COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_, or



BOOK \_\_\_\_, PAGE \_\_\_\_,]. THE ENVIRONMENTAL COVENANT  
CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[In the notice, restate the activity and use restrictions from Paragraph 5 of  
this Covenant]

Owner shall notify EPA and Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- b. that this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
- c. that the Owner has identified all persons that hold any interest in, or right to, the Property ("Encumbrance") in Exhibit A attached to this Covenant.

12. Encumbrances. The Parties agree that a holder of an effective Encumbrance shall be permitted to conduct activities on, and make uses of, the Property for the limited purposes provided in the Encumbrance, subject to the provisions of the following paragraph.

When a holder of an Encumbrance performs any activity on the Property, the Owner and the Holders shall, or shall cause the Encumbrance holder to, restore the Property as quickly as possible to its original condition. Such restoration shall be designed and implemented with prior consultation with EPA and Ohio EPA and shall be incorporated into the Work Plan attached to the Consent Decree at Exhibit 2 for future maintenance. Owner will not approve the siting of any oil or gas wells or pipelines on the Property.

13. Amendment or Termination. This Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder[s], and the EPA and the Ohio EPA, pursuant to R.C. 5301.89 or 5301.90 and other applicable law. "Amendment" means any changes to the Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations

when there is at least one limitation remaining. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Covenant.

This Covenant may be amended or terminated only by a written instrument duly executed by EPA and the Director of Ohio EPA, the Holder[s], and the Owner[s] or Transferee[s] of the Covenant Area or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Covenant, the Owner[s] or Transferee[s] shall file such instrument for recording with the Ashtabula County Recorder's Office, and shall provide a true copy of the recorded instrument to EPA and Ohio EPA.

14. Severability. If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Covenant, the Owner shall file this Covenant for recording, in the same manner as a deed to the property, with the Ashtabula County Recorder's Office.

17. Effective Date. The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded as a deed record for the Covenant Area with the Ashtabula County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Covenant to EPA and Ohio EPA;

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Covenant shall be submitted to:

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

United States Environmental Protection Agency, Region 5  
Christopher Grubb, Associate Regional Counsel  
77 W. Jackson Boulevard  
Mail Code: C-14J

Email: [grubb.christopher@epa.gov](mailto:grubb.christopher@epa.gov)

20. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representative of the Owner and Holder represent and certify that they are authorized to execute this Covenant.

This document was prepared by U.S. EPA and the Ohio EPA.

**IT IS SO AGREED:**

**OWNER:**

By: [Signature]  
Print Name: Thomas Yuhasz  
Title: V.P  
Date: 5/23/22

State of Ohio )  
County of Ashland ) ss:

Before me, a notary public, in and for said county and state, personally appeared, Tom Yuhasz, a duly authorized representative of Yuhasz Brothers LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Yuhasz Brothers LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 23 day of May, 2022.

[Signature]  
Notary Public



LAURA FISHER  
Notary Public, State of Ohio  
My Commission Expires  
July 7, 2026

**HOLDER:**

By: [Signature]  
Print Name: Thomas Yuhasz  
Title: V.P  
Date: 5/23/22

State of Ohio )  
County of Ashtabula ) ss:

Before me, a notary public, in and for said county and state, personally appeared, Tom Yuhasz, a duly authorized representative of Yuhasz Brothers LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Yuhasz Brothers LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 23 day of May, 2022.

[Signature]  
Notary Public



**LAURA FISHER**  
Notary Public, State of Ohio  
My Commission Expires  
July 7, 2028



**OHIO ENVIRONMENTAL PROTECTION AGENCY**

By: *Laura Factor*  
Laura Factor, Assistant Director

Date: 5/26/22

State of Ohio )  
County of Franklin ) ss:

Before me, a notary public, in and for said county and state, personally appeared, Laura Factor, the Assistant Director of Ohio EPA, who acknowledged to me that she did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 26<sup>th</sup> day of May, 2022.



*Charma Diane Casteel*  
Notary Public

**CHARMA DIANE CASTEEL**  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES

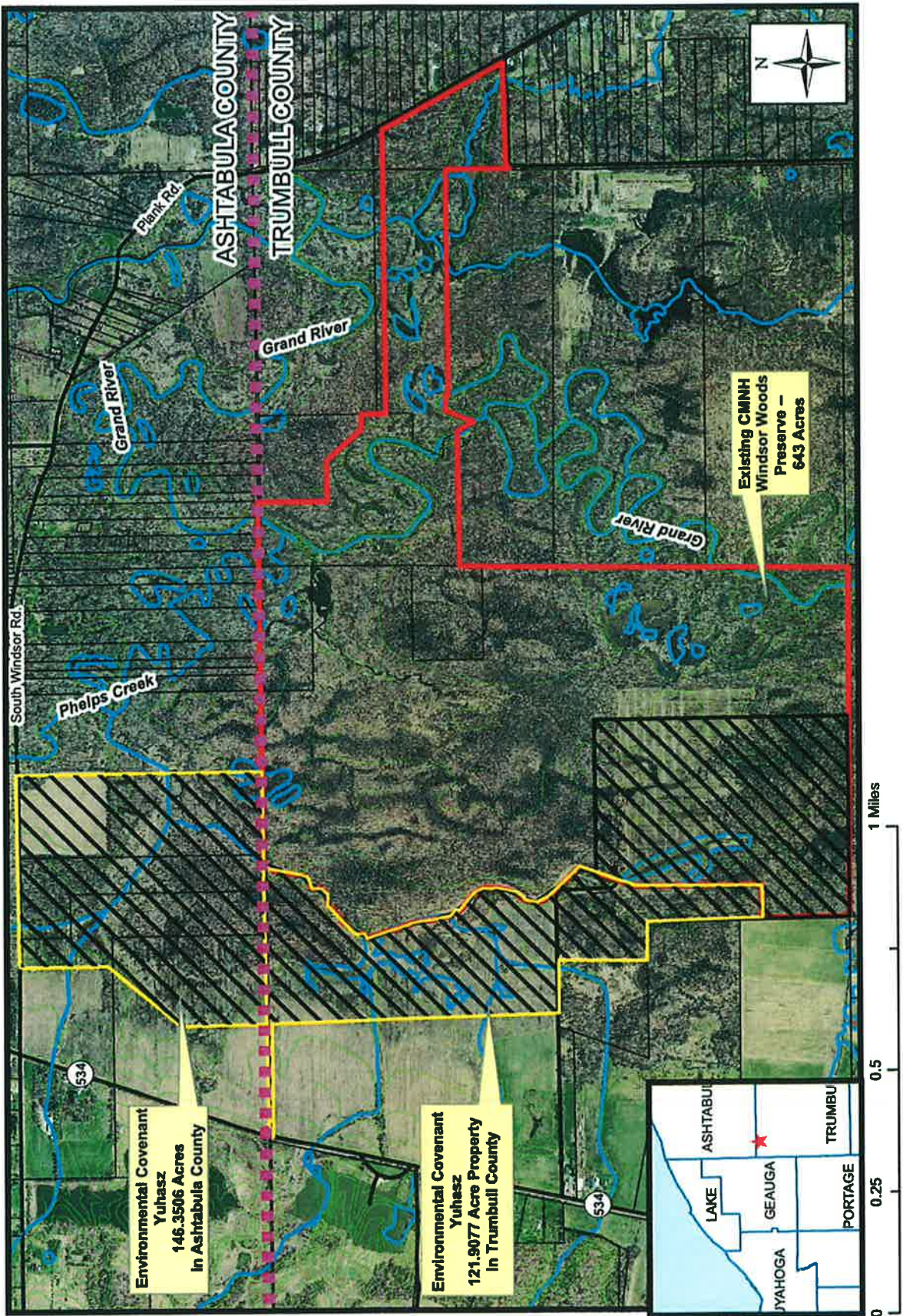
*May 10, 2024*



**Exhibit A**  
**Aerial Image with Covenant Boundary**



**Environmental Covenant Map - Exhibit A**  
**Yuhasz LLC Properties**  
**Windsor and Mesopotamia Townships Trumbull and**  
**Ashtabula Counties**





**CONSENT FOR ACCESS TO CERTAIN PROPERTY**  
**OF THE CLEVELAND MUSEUM OF NATURAL HISTORY**

**Property Owner:** Cleveland Museum of Natural History

**Property:** Parcel Numbers:

Ashtabula County

61-004-00-006-00 Present Owner: Yuhasz Bros LLC; address 0 State Route 543; 91.2396 acres

61-004-00-004-00 Present Owner: Yuhasz Bros LLC; address 0 State Route 543; 55.111 acres

Trumbull County

60-90128 Present Owner: Yuhasz Bros LLC; address State Route 543; 121.9077 acres

60-054900 Present Owner: Cleveland Museum of Natural History; address 0 Mahan Parker;  
617.282 acres

**Access Provisions:**

1. The Cleveland Museum of Natural History (“Museum”) understands that:
  - a. Yuhasz Bros. LLC (“Yuhasz”) has agreed to a Consent Decree with the U.S. Environmental Protection Agency (“EPA”) and the Ohio Environmental Protection Agency (“Ohio EPA”) in the matter of *United States and State of Ohio v. Yuhasz Bros. LLC*, which is being filed in Federal District Court for the Northern District of Ohio (“Consent Decree”);
  - b. Under the Consent Decree, Yuhasz is obligated to perform certain wetlands and related environmental restoration, mitigation, and monitoring activities (“Restoration Activities”) at the above-described property (“Property”) as detailed in a Work Plan attached to the Consent Decree at Exhibit 2 (“Work Plan”);
  - c. Under the Consent Decree, EPA and Ohio EPA are authorized to conduct certain monitoring activities on the Property to ensure successful completion of the Work Plan and compliance with the Consent Decree;
  - d. The Property (or portions thereof) where the Restoration Activities are to occur is owned by the Museum or may be owned by the Museum in the future; and
  - e. This Access Agreement is being made an exhibit to the Consent Decree.
2. The Museum has reviewed the Consent Decree and the Work Plan and finds that the work to be performed by Yuhasz on the Property is beneficial to the interests of the Museum. Accordingly, in due consideration for such benefits, the Museum hereby



consents to entry onto the Property by Yuhasz and/or its employees, agents, contractors, and authorized representatives for the sole purpose of fulfilling any of Yuhasz's obligations under the Consent Decree, including but not limited to all work called for in the Work Plan found at Exhibit 2 of the Consent Decree, so long as adequate notice of entry onto the Property is provided ("Adequate Notice"). For the purpose of this Access Agreement, notice to the Museum by e-mail or in writing to the signatory listed below, made 24 hours in advance of entry onto the Property, shall be considered Adequate Notice.

3. The Museum further consents to entry onto the Property by EPA, the United States Army Corps of Engineers, and Ohio EPA, and each of their employees, agents, contractors, and authorized representatives, with Adequate Notice, for the purposes of:
  - a. monitoring the activities required by the Consent Decree;
  - b. obtaining water, soil, or other samples collected for the purpose of assuring compliance with the Work Plan and Consent Decree; and,
  - c. obtaining or generating documentary evidence, including photographs or other data, that may be relevant to any aspect of the Consent Decree.
4. The Museum provides consent for the above-described activities until the earlier of:
  - a. The Museum's receipt of notice from EPA that access to the Property is no longer needed in connection with the Consent Decree; or
  - b. The termination of the Consent Decree.
5. The Museum agrees to notify the following individuals, or such other person as may be identified by EPA or Ohio EPA in the future, of any pending transfer of the Property or any change in the Museum's contact information:

**As to EPA:**

Monica Dix  
Wetlands Enforcement Section  
United States Environmental Protection Agency, Region 5  
email: [dix.monica@epa.gov](mailto:dix.monica@epa.gov) and [R5WECA@epa.gov](mailto:R5WECA@epa.gov)

**As to Ohio EPA:**

Ed Wilk or his Successor  
Ohio EPA, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
[Ed.Wilk@epa.ohio.gov](mailto:Ed.Wilk@epa.ohio.gov)

6. This Access Agreement shall become effective on the date that the Consent Decree becomes effective, under the terms of that Decree.

7. The undersigned, who shall be the contact person for the Museum, represents that he/she is authorized on behalf of the Museum to provide consent to the entry and access to the Property as provided for herein.

Date: 6/3/2022

Name: Lawrence E. Gibson

Title: CFAO

E-Mail Address: lgibson@cmnh.org

Signature: 

