

02/08/2016

TRANSFER NOT NECESSARY
IN COMPLIANCE WITH SEC. 319.202 R.C.
ANITA LOPEZ, AUDITOR
LUCAS COUNTY, OHIO

BY: DWISNIEWSKI

PARCEL: 78-30447

COUNT: 2

TRANS #: **16-200979**



20160208-0005065

Pages: 10 Fee: \$0.00

02/08/2016 02:58:24 PM

T20160004273

Phil Copeland
Lucas County Recorder DEED

To be recorded with Deed
Records - ORC 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the Lucas County Commissioners (Owner) and the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Background. The King Road Landfill (Property) is located at 3501 and 3601 King Road, Sylvania Township, Lucas County, Ohio. The landfill Site occupies a total of approximately 104 acres. The 79-acre disposal area is bounded by the former railroad right-of-way to the north, King Road to the east, Covert Road to the south, and Silica Road to the west. Approximately 70 acres of this 79-acre disposal area are believed to have been disturbed by waste disposal activity. The former soil borrow area, now known as the Borrow Pit Pond, contains ponded water and marsh-like vegetation.

The Lucas County Commissioners purchased the Site in 1953. Landfilling operations commenced at the Site in January 1954 under the direction of the Lucas County Sanitary Engineer. The facility was operated by the County until May 8, 1967, when Park Forest Development, Inc. was contracted to operate the landfill. On March 15, 1970, the County resumed control of landfill operations. Commercial waste haulers were prohibited from using the landfill on August 21, 1973, after which usage of the landfill gradually lessened. Information was provided documenting the acceptable closure in 1969 of an approximately 43 acre portion of the nearly 70 acre King Road Landfill. The County's final landfill permit expired in December 1975. The remaining 27 acres were subject to closure under Ohio Administrative Code 3745-27-10(A)(2) effective July 29, 1976.

Since the cessation of waste disposal activities in 1976, few modifications to the facility have been made. Beginning in May 1980 and continuing through July 1991, a transfer station was operated near the main gate on King Road. In October 1991, a perimeter fence was installed to control Site access by unauthorized individuals.

A Remedial Investigation (RI) was conducted during 1993-94, and the results were issued in a November 1994 RI Report. A supplemental investigation was conducted in 1995 and a revised RI Report was issued in February 1996. The primary objectives of the RI investigation were to identify which contaminants were leaving the Property, the pathways through which this migration was occurring, and what risk to human health and the environment was associated with this migration. A Feasibility Study (FS) Report identifying and evaluating a total of nine (9) remedial alternatives was completed in October 2002 for the Site. The FS Report is a compilation of the draft FS Report (nine alternatives), a modification of the FS Report to include an additional alternative (Alternative No. 10), and several iterations of an alternative (Alternative No. 11) submitted to Ohio EPA by the Lucas County Commissioners for consideration as an addendum. Ohio EPA issued a Preferred Plan in December 2010, a Decision Document on September 10, 2012, and a Modified Decision Document on September 9, 2014.

Environmental Covenant: King Road Landfill

The Administrative Record for this Site, including the Preferred Plan, the Decision Document, and the Modified Decision Document, is maintained at the Ohio EPA, Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio.

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

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns the approximately 104-acre property, located at 3501 and 3601 King Road in Sylvania Township, Lucas County, Ohio, identified as permanent parcel numbers 7830447 and 7831937, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (Property).

3. Owner. The Board of County Commissioners of Lucas County (Owner), with offices located at One Government Center, Suite 800, in Toledo, Ohio, currently own the Property.

4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant is the Owner listed above.

5. Activity and Use Limitations. In accordance with the Decision Document issued by Ohio EPA on September 10, 2012, as modified by the Modified Decision Document issued by Ohio EPA on September 9, 2014, Owner hereby imposes the following activity and use limitations on the Property and agrees to comply with such limitations, unless this Environmental Covenant is amended pursuant to paragraph 13 herein:

- A. The Property shall be kept in a natural state, except for existing structures, and structures associated with remedial activities approved by Ohio EPA pursuant to the Decision Document issued by Ohio EPA on September 10, 2012, as modified by the Modified Decision Document issued by Ohio EPA on September 9, 2014; no other buildings, billboards or structures of any kind, either temporary or permanent, shall be placed or erected on the Property.
- B. Ground Water Prohibition. No person shall drill, construct, install, develop, operate or use any ground water well, or extract, cause the extraction of, or use any ground water, located at or underlying the Property for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water.
- C. There shall be no filling, excavating, or removal of top soil, sand, gravel, rock, minerals or other materials on or at the Property, nor any building of roads or change in topography of the land in any manner, other than that caused by the forces of nature, except in accordance with the Decision Document issued by Ohio EPA on September 10, 2012, as modified by the Modified Decision Document issued by Ohio EPA on September 9, 2014.
- D. No power or petroleum transmission lines may be constructed, nor any other

Environmental Covenant: King Road Landfill

interests in the Property shall be granted for this purpose. However, the Owner reserves the right to maintain and repair, or allow others to maintain and repair telephone, electric, water, and other utility lines or mains, and monitoring wells, owned by the Owner or located within existing easements. The area affected by the repair work shall be the minimum necessary to accomplish the task. Upon completion of all construction for such utilities, the area shall be restored as appropriate.

- E. No towers for communication or otherwise shall be constructed on the Property.
- F. Use of vehicles for recreation, including snow mobiles, all-terrain vehicles or other motorized vehicles, shall not be permitted on the Property.
- G. Hunting and trapping on the Property are prohibited.
- H. Each and every other activity or construction that is inconsistent with the purpose of this Environmental Covenant or which may endanger, affect or impair the natural or scenic state of the Property is prohibited.
- I. The Property shall not be subdivided. The Owner, its successors or assigns shall notify the Trustees of any proposed transfer of the Property, or any portion thereof, at least ninety (90) days prior to any such proposed transfer. The Owner, its successors or assigns shall not transfer the Property, or any portion thereof, without the prior written consent of the Trustees.
- J. Notwithstanding the foregoing, in accordance with section 5.6 of the Decision Document issued by Ohio EPA on September 10, 2012, beneficial reuse projects (e.g., multiuse path, vehicle parking area, and University research projects) will be allowed at the Property, on a case by case basis, subject to a detailed written proposal, which is expected to be submitted to Ohio EPA through the office of the Lucas County Sanitary Engineer. Sufficient detail, as determined by Ohio EPA, will be required for each beneficial reuse project in order to allow Ohio EPA to evaluate each project.

6. Breach. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, or any other person constitutes a breach of the activity and use limitations, Owner shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action.

7. Running with the Land. This Environmental Covenant, including the activity and use limitations set forth in paragraph 5 herein, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC §5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property including, but not limited to, owners of an interest in fee simple,

Environmental Covenant: King Road Landfill

mortgagees, easement holders, and/or lessees.

8. Compliance Enforcement. In the event of a violation of this Environmental Covenant, a civil action for injunctive and/or other equitable relief may be maintained by the Ohio Attorney General on behalf of Ohio EPA, or other parties authorized by law pursuant to ORC § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the activity and 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 enforce this Environmental Covenant. Nothing in this Environmental Covenant shall restrict Ohio EPA from exercising its authority under applicable law.

9. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA, on an annual basis until the year 2024, and thereafter upon request by Ohio EPA, written documentation verifying compliance with this Environmental Covenant.

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

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE LUCAS COUNTY RECORDER ON _____, 2016, IN [DOCUMENT _____, or BOOK _____, PAGE _____].

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in the Property. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

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

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property and that the Owner has conducted a current title search that shows that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

Environmental Covenant: King Road Landfill

- D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and,
- E. that this Environmental 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.

13. Amendment. This Environmental Covenant may be amended by consent of all of the following: the Owner or a Transferee; and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment" as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations so long as there is at least one activity and use limitation remaining.

This Environmental Covenant may be amended only by a written instrument duly executed by the Director of Ohio EPA, and the Owner or Transferee of the Property, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Lucas County Recorder's Office, and shall provide a file and date-stamped copy of the recorded instrument to Ohio EPA.

14. Severability. If any provision of this Environmental 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 Environmental 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 Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Lucas County Recorder's Office.

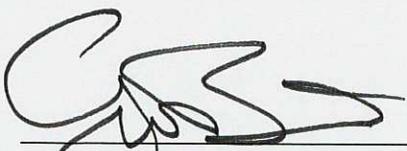
17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Lucas County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to 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 Environmental Covenant shall be submitted to:

Environmental Covenant: King Road Landfill

OHIO ENVIRONMENTAL PROTECTION AGENCY



Craig W. Butler, Director

2/2/16

Date

State of Ohio)
County of Franklin) ss:

Before me, a notary public, in and for said county and state, personally appeared Craig W. Butler, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 2nd day of February, 2016.



Charima Diane Casteel
Notary Public
CHARIMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
Date of My Commission Expiration
May 10, 2019

This instrument prepared by:

John A. Borell, Esq.
Lucas County Prosecutor's Office
Lucas County Courthouse
Toledo, Ohio 43604

Mark J. Navarre, Esq.
Ohio EPA Legal Office
50 W. Town Street
Columbus, Ohio 43216-1049

Commissioners Box

EXHIBIT A

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Commitment No.: 147861

1. Effective Date: **June 06, 2014, 8:00 am**
2. The policy or policies to be issued are: **POLICY AMOUNT**
 - (a) ALTA Owner's Policy -
Proposed Insured: **Informational Commitment**
 - (b) ALTA Loan Policy -
Proposed Insured:
3. **Fee Simple** interest in the land described in this Commitment is owned, at the effective date by:

Board of Lucas County Commissioners of Lucas County, Ohio, by instrument recorded as Volume 1523 of Deeds, page 310 and Deed No. 93-284-A11 and re-recorded as Deed No. 93-326-D07.

4. Legal description of the land:

Parcel 1

A) That part of the south 13 chains and 44 links of the northwest quarter and the south thirteen chains and forty four links of the west one half of the northeast quarter of Section twenty, Town nine, South, Range six East, in Sylvania Township, that lies easterly of the center line of Silica Road, also;

The Northwest quarter of the southeast quarter of Section twenty, Town nine South, range six East in Sylvania Township, excepting from all of the above described property a strip of land sixty feet in width extending southeasterly from the centerline of Silica Road to the east line of the west one half of the east one half of said Section twenty; the northerly line of said strip of land being twenty three and fifty hundredths feet northerly of and parallel with the centerline of the main track of the Toledo, Angola, and Western Railway Company as now constructed.

B) The northeast quarter of the southeast quarter of Section twenty, Town nine South, range six East in Sylvania Township; excepting therefrom the northerly forty feet thereof. Being all subject to legal highways.

LESS AND EXCEPT FROM A AND B ABOVE THE FOLLOWING DESCRIBED PARCEL:

That part of the North ½ of the Southeast ¼ of Section 20, Town 9 South, Range 6 East in Sylvania Township, Lucas County, Ohio, bounded and described as follows:

Beginning at the intersection of the East line of said Section 20 and the North line of Trotter Whelan Co. Plat II (as recorded in Volume 43, pages 41 and 42, Book of Plats, Lucas County, Ohio, Records), said intersection being a point at Station 66+07.18 on the centerline of King Road; thence

First American Title Insurance Company This commitment is invalid unless the
Insuring provisions and Schedules A
& B are attached

North 84° 56' 03" West, along aforesaid North line of Trotter Whelan Co. Plat II, a distance of 85.00 feet to a point 85.00 feet left of Station 66+07.24; thence North 05° 01' 20" East, a distance of 5.00 feet; thence North 70° 15' 24" East, a distance of 49.56 feet to its intersection with a line that is 40.00 feet west of and parallel to the East line of said Section 20; thence North 05° 01' 20" East, along aforesaid parallel line, a distance of 1,261.71 feet to its intersection with the South right of way line of the Waterfront Electric Railway; thence South 84° 54' 48" East, along aforesaid South right of way line, a distance of 40.00 feet to its intersection with the East line of said Section 20; thence South 05° 01' 20" West, along the East line of said Section 20 (being centerline of King Road), a distance of 1,287.55 feet to the point of beginning.

Containing 1.198 acres (52,195 square feet) of land, more or less, of which the present road occupies 0.887 acres (38,627 square feet).

The above description is based on a survey for said Improvement #756 dated 12/12/85 by Donald A. Hamm, Registered Surveyor No. 4977.

Grantors, for itself, its successors and assigns reserves the rights of ingress and egress over and above described property.

Parcel 2

A) A strip of land one hundred fifty five feet in width extending Easterly from the center of Ten Mile Creek in the Southeast quarter of the Northwest quarter of Section twenty, Town nine South, Range six East in Sylvania Township, Lucas County, Ohio, a distance of five hundred fifty feet; also a strip of land sixty feet in width extending Easterly from said last above described strip to the East line of the West one half of the East one half of Section twenty, the Northerly line of each of said strips of land being twenty three and fifty hundredths feet Northerly of and parallel with the centerline of the main track of the Toledo, Angola and Western Railway Company as now constructed, excepting therefrom that part thereof lying Westerly of the centerline of Silica Road.

Subject to legal highways.

B) A strip of land forty feet in width off the North side of the Northeast quarter of the Southeast quarter of Section twenty, Town nine South, Range six East, containing one and twenty one hundredths of an acre of land, more or less, all in Sylvania Township, Lucas County, Ohio excepting therefrom that part thereof conveyed to the Board of Lucas County, Ohio Commissioners in Deed 88-453A09

Less and except: That part of the North 40.00 feet of the Northeast 1/4 of the Southeast 1/4 of Section 20 and also that part of the North 50.00 feet of the Southwest 1/4 of Section 21, all in Town 9 South Range 6 East in Sylvania Township, Lucas County, Ohio bounded and described as follows:

Beginning at the Northwest corner of the Southwest 1/4 of said Section 21, and being a point at Station 79+34.73 on the centerline of right of way of King Road; thence South 89° 34' 36" East, along the North line of the Southwest 1/4 of said Section 21, a distance of 40.11 feet to a point 40.00 feet right of Station 79 + 37.73; thence South 04° 43' 00" West, parallel to the West line of the Northwest 1/4 of said Section 21, a distance of 3.11 feet to a point 40.00 feet right of Station 79 + 34.84(back); thence South 05° 01' 20" West, parallel to the West line of the Southwest 1/4 of said Section 21, a distance of 47.05 feet to its intersection with a line that is 50.00 feet south of and parallel to the North line of the Southwest 1/4 of said Section 21 and being a point 40.00 feet right of Station 78 + 87.79; thence North 89° 34' 36" West, along the line that is 50.00 feet South of and parallel to the North line of the Southwest 1/4 of said Section 21, a distance of 40.13 feet to a point on the West line of the Southwest 1/4 of said Section 21 at Station 78 + 84.57; thence North 05° 01' 20"

East, along the West line of the Southwest 1/4 of said Section 21 (being also the centerline of right of way of King Road) a distance of 10.16 feet to its intersection with a line that is 40.00 feet south of and parallel to the North line of the Southeast 1/4 of said Section 20, at Station 78 + 94.73; thence North 84 ° - 54' -48" West, along the line that is 40.00 feet south of and parallel to the North line of the Southeast 1/4 of said Section 20, a distance of 40.00 feet to a point 40.00 feet left of Station 78 + 94.77; thence North 05° -01' -20" East, parallel to the East line of the Southeast 1/4 of said Section 20, a distance of 39.85 feet to a point 40.00 feet left of Station 79 + 34.62 (back); thence North 04 ° - 43' -00" East, parallel to the East line of the Northeast 1/4 of said Section 20, a distance of 0.15 feet to its intersection with the North line of the Southeast 1/4 and being a point 40.00 feet left of Station 79+ 34.99 thence South 84° 54' -48" East, along the North line of the Southeast 1/4 of said Section 20, a distance of 40.00 feet to the point of beginning. Containing 3607 square feet of land of which the present road occupies 2705 square feet.

The above description is based on a survey for said improvement # 756 dated 12/12/85 by Donald A. Hamm, Registered Surveyor No. 4977.

My
78-30447
78-31937