

ODOT OFFICE OF REAL ESTATE

Interoffice Communication

"Quality Through Partnership"



MEMORANDUM

TO: Tom Pannett, Attorney General - Trans. Section
150 E. Gay St., 17th Fl., Columbus, OH 43215-3130

FROM: Denny Byrd, ODOT/Northwest Region
By: Marna Mulroney 

RE: North Cove Landfill Site: **Certified and Recorded** Copy of Environmental
Covenant, Toledo, Lucas County, Ohio

CC: Sue Kroeger, Esq., Ohio EPA,
Lazarus Government Center, 122 S. Front St., Columbus, OH 43215

DATE: February 2, 2007

Tom:

Enclosed please find the original recorded document relative to the above-captioned matter.

/mkm

Enc.

RECEIVED
OHIO EPA
2007 FEB -7 AM 9:55
LEONARD S. FOLEY



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

December 18, 2006

Thomas P. Pannett, P.E.
Assistant Legal Counsel
ODOT
1980 W. Broad St.
Columbus, OH 43223

Re: North Cove Landfill Site: Certified Copy of Environmental Covenant - For Recording

Dear Mr. Pannett:

I am pleased to enclose a certified copy of the original Environmental Covenant that was signed by Director Gordon Proctor and more recently by the Director of Ohio EPA. ODOT's Environmental Covenant was "batched" with the covenant completed this month for DaimlerChrysler's portion of the Site.

Please arrange to file the enclosed Environmental Covenant with the Lucas County Recorder's Office for recording in the same manner as a deed record for the Site. After the Recorder's Office marks a received date-stamp on the original record, assigns the record the owner name for indexing purposes, and scans the record for the database, I understand that the staff will return to you the date-stamped original. Please send me a copy of the date-stamped document for Ohio EPA's records for the Site, by January 12, 2007.

Thank you for your assistance with this matter. If you have any questions, feel free to contact me at 614-644-2849 or sue.kroeger@epa.state.oh.us.

Sincerely,

Sue Kroeger
Attorney

Enclosure

cc: Paul Jayko, Site Coordinator, DERR, NWDO
Dan Osterfeld, 401 Water Quality Certification Coordinator, DSW, CO
Heidi Sorin, Manager, DERR, CO

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncalk, Director

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO R.C. 317.08(A)



20070131-0006354

Pages: 14 Fee: \$124.00
01/31/2007 08:57:00 AM
T20070006941

Anita Lopez
Lucas County Recorder DEED

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Jackson, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Environmental Covenant signed by the Director of Ohio EPA and the Director of the Ohio Department of Transportation regarding the property known as North Cove Landfill site, located west of Jeep Parkway (formerly North Cove Blvd.) and east of Willys Parkway, in Toledo, Lucas County, Ohio, and further described in the attached Environmental Covenant, Exhibit A. The Environmental Covenant has been entered in the Ohio EPA Director's Journal on December 15, 2006.

Tonya R. Jackson
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 15 day of December, 2006.

Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:

Sue Kroeger, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049



SUSAN C. KROEGER
Attorney at Law
Notary Public
State of Ohio
Lifetime Commission

OHIO E.P.A.

DEC 15 2006

ENTERED DIRECTOR'S JOURNAL

To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the Ohio Department of Transportation ("Owner" or "ODOT") 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, defined *infra*, to the activity and use limitations set forth herein.

Whereas, this Environmental Covenant concerns a portion of the former North Cove Landfill Site (i.e., the "Site") that is owned by ODOT. The Site is located west of Jeep Parkway (formerly known as North Cove Blvd.), and east of Willys Parkway, in Toledo, Ohio. The western portion of the Site is currently a City park in the former Willys Test Track area. The eastern portion underlies Interstate Highway I-75, and runs adjacent to the Ottawa River, as well as underlies a small section of the Chrysler/Jeep facility parking lot. ODOT's portion of the Site does not include portions owned by Daimler Chrysler and the City of Toledo.

Whereas, in a Decision Document dated August 2000, the Director of Ohio EPA selected a remedial action for the Site requiring, among other things, the placement of additional cover soils, slope revetment of the Ottawa River banks, phytoremediation, institutional controls and long-term operation and maintenance.

Whereas, DaimlerChrysler Corporation and the City of Toledo as Defendants, and ODOT as Third-Party Defendant, entered into a Consent Order with Ohio EPA, filed with the Lucas County Court of Common Pleas on February 5, 2003, Case No. 96-

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

By: Jonny Jackson Date: 12-15-06

2141. Ohio EPA modified the remedy on November 4, 2003 to account for beneficial reuse options proposed for the Site.

Whereas, construction was undertaken in 2003 and 2004 as part of the Remedial Activities at the Site, as described in the 2003 Consent Order. As part of that work, on August 26, 2004, Ohio EPA granted to Owner a Water Quality Certification, Ohio EPA ID No. 042032 ("401 Certification") pursuant to Ohio law and Section 401 of the Clean Water Act, 33 U.S.C. §1344, as part of a nationwide permit from the United States Army Corps of Engineers. A condition of the 401 Certification required the installation of additional trees as part of the required stream mitigation. This Environmental Covenant pertains to the protection of these trees as well as the remaining components of the mitigation.

Whereas, DaimlerChrysler installed pre-cast articulated concrete block revetments along the northern and southern banks of the Ottawa River at the Site to eliminate the risk of direct contact with landfill waste and leachate, and affected soils and sediments.

Whereas, DaimlerChrysler implemented phytoremediation on the Ottawa River banks within the footprint of the former landfill, which included planting of Ohio native species of tall grasses and trees as a condition of the 2003 Consent Order.

Whereas, the DaimlerChrysler also planted additional trees outside the footprint of the former landfill as a requirement of the 401 Certification, to promote river bank and riparian mitigation outside of the revetment areas.

Whereas, the Use Restriction Agreement entered into by Ohio EPA and ODOT recorded with the Lucas County Recorder's Office on November 18, 2004, #20041118-0093270, established certain use restrictions for the Site, including the ODOT property, which are unaffected by the activity and use limitations contained herein. This Environmental Covenant does not supercede but supplements the Use Restriction Agreement.

Now therefore, ODOT 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 that mitigation-related property that is owned by ODOT within the Limited Access right of way of I-75 in Lucas County being approximately one-thousand linear feet (by one-hundred feet width) of riverbank along the north side of the Ottawa River, located within the City of Toledo, in Lucas County, Ohio, and more particularly described in Exhibit A attached hereto and

hereby incorporated by reference herein ("Property"). The Property is a portion of the larger Site referenced above; said Site being subject to additional legal restrictions not referenced herein.

3. ODOT ("Owner"), with its central office at 1980 W. Broad Street, Columbus, Ohio 43223, is the owner of the Property.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the remedial action described in the Decision Document and the 401 Certification, Owner hereby imposes and agrees to comply with the following activity and use limitations:
 - (a) Except with written approval of Ohio EPA, and consistent with all statutory and regulatory requirements, no person shall undertake or permit an activity on the Property that may interfere with, damage, or otherwise impair the trees planted as part of the mitigation. No person shall cut, remove, or destroy by means of herbicides or pesticides, or otherwise damage, the trees planted as part of the riparian mitigation, except with the prior written authorization of Ohio EPA and in accordance with applicable law. The only exception permitted is the replacement of trees in accordance with the 401 Certification and Decision Document.
 - (b) No person shall permit a residential, commercial, recreational, or agricultural use of the Property that interferes with the health of the trees planted as part of the mitigation. The Owner or Transferee shall demonstrate with a reasonable degree of certainty that a proposed use of the Property is permitted under this Environmental Covenant. Written approval by Ohio EPA is required prior to any change in the use of the Property.
 - (c) No person shall undertake or allow activities that interfere with the concrete revetment, except with the prior written authorization of Ohio EPA. The only exception permitted includes the maintenance or replacement of the revetment necessary to comply with the 401 Certification and Decision Document.
 - (d) If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee 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, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental 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 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 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 Environmental Covenant may be enforced pursuant to ORC § 5301.91. 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 take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. 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.

9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA on an annual basis for years 2006 through 2010 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 Property or any portion of the Property 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, DATED _____, 2006, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE LUCAS COUNTY RECORDER ON _____, 2006, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

As part of the remedial action described in the Decision Document, Owner hereby impose and agree to comply with the following activity and use limitations:

(a) Except with written approval of Ohio EPA, and consistent with all statutory and regulatory requirements, no person shall undertake or permit an activity on the Property that may interfere with, damage, or otherwise impair the trees planted as part of the mitigation. No person shall cut, remove, or destroy by means of herbicides or pesticides, or otherwise damage, the trees planted as part of the riparian mitigation, except with the prior written authorization of Ohio EPA and in accordance with applicable law. The only exception permitted is the replacement of trees in accordance with the 401 Certification and Decision Document.

(b) No person shall permit a residential, commercial, recreational, or agricultural use of the Property that interferes with the health of the trees planted as part of the mitigation. The Owner or Transferee shall demonstrate with a reasonable degree of certainty that a proposed use of the Property is permitted under this Environmental Covenant. Written approval by Ohio EPA is required prior to any change in the use of the Property.

(c) No person shall undertake or allow activities that interfere with the concrete revetment, except with the prior written authorization of Ohio EPA. The only exception permitted includes the maintenance or replacement of the revetment necessary to comply with the 401 Certification and Decision Document.

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's 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.

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

- A. That the Owner is the sole owner of the Property;
- B. that the Owner hold fee simple title to the Property which is free, clear and unencumbered;

- 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;
- 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.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated 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 when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination 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.

13. 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.

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

15. 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.

16. 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.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Toledo and County of Lucas.

18. 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:

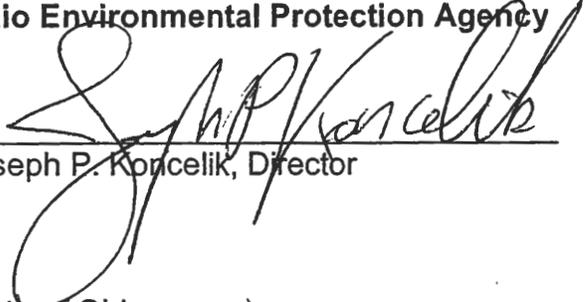
Manager, Remedial Response Program
Division of Emergency and Remedial Response
Ohio EPA
P.O. Box 1049
Columbus, OH 43216-1049

Site Coordinator, Former North Cove Landfill
Division of Emergency and Remedial Response
Ohio EPA—Northwest District Office
347 North Dunbridge Road
Bowling Green, OH 43402

Tim Hill, Administrator
ODOT, Office of Environmental Services
1980 West Broad Street
Columbus, Ohio 43223

IT IS SO AGREED:

Ohio Environmental Protection Agency

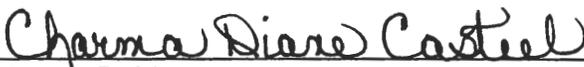


Joseph P. Koncelik, Director

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Joseph P. Koncelik, 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 14th day of DECEMBER, 2006.



Notary Public

**CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
MAY 10, 2009**

This instrument prepared by:

Thomas P. Pannett, P.E.
Assistant Legal Counsel
ODOT, Office of Chief Legal
1980 W. Broad Street
Columbus, OH 43223

Sue Kroeger, Attorney
Ohio EPA
122 S. Front Street
Columbus, OH 43215

Environmental Covenant
ODOT Property – North Cove Landfill Site

Exhibit A

[Legal description and map]

Beginning at a point on the northerly limited access right of way being 189.00 feet Left of centerline Station 290+00.00 southbound lane of interstate 75;

Thence North 39 degrees 40 minutes 12 seconds East, 269.49 feet along the northerly limited access right of way to a point at 180.00 feet Left of centerline Station 292+63.00 southbound lane of interstate 75;

Thence North 73 degrees 41 minutes 08 seconds East, 96.92 feet along the northerly limited access right of way to a point at 124.89 feet Left of centerline Station 293+41.17 southbound lane of interstate 75;

Thence North 46 degrees 36 minutes 27 seconds East, 201.03 feet along the northerly limited access right of way to a point at 101.99 feet Left of centerline Station 295+37.98 southbound lane of interstate 75;

Thence North 01 degrees 38 minutes 58 seconds West, 60.00 feet along the northerly limited access right of way to a point at 142.62 feet Left of centerline Station 295+81.43 southbound lane of interstate 75;

Thence North 49 degrees 06 minutes 04 seconds East, 430.97 feet along the northerly limited access right of way to a point at 105.41 feet Left of centerline Station 299+97.74 southbound lane of interstate 75;

Thence North 80 degrees 40 minutes 54 seconds East, 301.93 feet to a point at 52.39 feet Right of centerline Station 302+53.49 southbound lane of interstate 75;

Thence North 38 degrees 02 minutes 27 seconds East, 496.97 feet to a point at 90.07 feet Left of centerline Station 307+27.65 southbound lane of interstate 75;

Thence South 45 degrees 15 minutes 57 seconds East, 249.22 feet to a point on the southerly limited access right of way at 151.81 feet Right of centerline Station 307+88.19 southbound lane of interstate 75;

Thence South 57 degrees 00 minutes 18 seconds West, 191.72 feet along the southerly limited access right of way to a point at 153.91 feet Right of centerline Station 305+88.47 southbound lane of interstate 75;

Thence South 48 degrees 21 minutes 15 seconds West, 187.71 feet along the southerly limited access right of way to a point at 174.58 feet Right of centerline Station 303+93.49 southbound lane of interstate 75;

Thence South 44 degrees 18 minutes 07 seconds West, 104.47 feet along the southerly limited access right of way to a point at 189.29 feet Right of centerline Station 302+84.89 southbound lane of interstate 75;

Thence South 42 degrees 36 minutes 44 seconds West, 748.36 feet along the southerly limited access right of way at 229.70 feet Right of centerline Station 294+96.02 southbound lane of interstate 75;

Thence South 89 degrees 42 minutes 20 seconds West, 300.05 feet to a point on centerline Station 293+00.00 southbound lane of interstate 75;

Thence South 06 degrees 51 minutes 17 seconds West, 144.84 feet to a point at 76.12 feet Right of centerline Station 291+76.15 southbound lane of interstate 75;

Thence North 86 degrees 21 minutes 57 seconds West, 319.00 feet to the POINT OF BEGINNING at 189.00 feet Left of centerline Station 290+00.00 southbound lane of interstate 75;

And containing 9.618 acres of land, more or less, of which the present road occupies 9.618 acres of land, more or less.

This description was prepared and reviewed on August 25, 2003, by Craig Loehrke, Registered Surveyor Number 7585.

The Basis of Bearings are referenced to Right of Way plan LUC-75-4.54, Toledo Expressway System, Part 33, 1970 on file at ODOT District 2 offices. All Stations and Outs are referenced to I-75 Southbound baseline.

Craig A. Loehrke

Craig A. Loehrke
Registered Surveyor # 7585
Ohio Department of Transportation
District 2
317 E. Poe Road
Bowling Green, Ohio 43402

8-25-03

Date



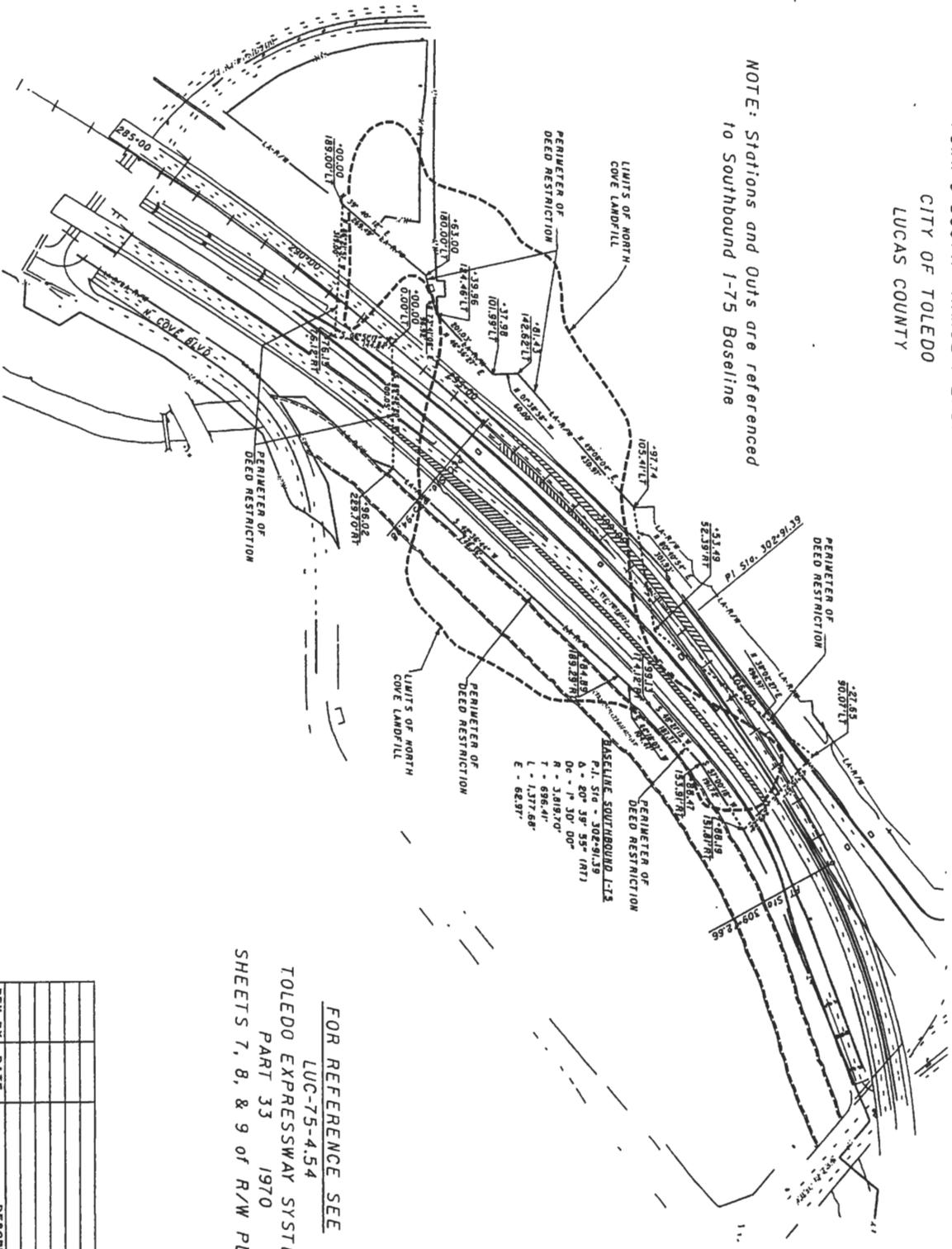
SEE ENV.

Return to: Ohio Dept. of Transportation
 North West Region
 241 Stanford Parkway
 Findlay, OH 45840

TOWN-9-SOUTH RANGE-7-EAST
 CITY OF TOLEDO
 LUCAS COUNTY



NOTE: Stations and Cuts are referenced to Southbound I-75 Baseline



BASELINE SOUTHBOUND I-75
 P.I. Sta. = 302+91.39
 Δ = 20° 38' 55" (RT)
 Dc = 1" 30' 00"
 R = 1418.70'
 T = 696.41'
 L = 1377.68'
 E = 62.97'

FOR REFERENCE SEE
 LUC-75-4.54
 TOLEDO EXPRESSWAY SYSTEM
 PART 33 1970
 SHEETS 7, 8, & 9 of R/W PLANS

REV. BY	DATE	DESCRIPTION

	LUC-75-4.54	PLAT OF DEED RESTRICTION	REV. DESIGNER C.A.L.	PID NO.	SCALE IN FEET	
			REV. REVIEWER C.A.L.			