



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
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

JUN 14 2010

CERTIFIED MAIL

91 7108 2133 3932 4443 0218

4pt

Mr. Lawrence J. Peck
Deputy Director
Columbus and Franklin County Metropolitan Park District
1069 West Main Street
Westerville, OH 43081

91 7108 2133 3932 4443 0201

10

**Re: Issuance of Covenant Not To Sue for the Whittier Peninsula – Former
Lazarus Distribution Center Property (#09NFA330)
Project ID # 125-001668-012**

Dear Mr. Peck:

I am pleased to inform you that on JUN 14 2010, the Director of the Ohio Environmental Protection Agency issued a covenant not to sue (CNS) to the Columbus and Franklin County Metropolitan Park District (Metro Parks) for the property known as the Whittier Peninsula – Former Lazarus Distribution Center and Southern Portion of Koch Asphalt and Cunard – Lang Properties, located at 560 West Whittier Street, Columbus, Franklin County, Ohio. The CNS was issued as final findings and orders pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300.

The CNS states that, based on the no further action (NFA) letter, and subject to all conditions set forth in these findings and orders, Ohio EPA covenants not to sue and releases Metro Parks and the city of Columbus, and their respective agents, employees, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities. The CNS and release of liability applies to the property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

Enclosed is a certified copy of the CNS and its exhibits for the recording of the documents in the same manner as a deed for the property, as instructed by the CNS (see the "Conditions and Limitations" section of the CNS.) The enclosed affidavit should be presented to the county recorder's office staff to support the required recording. Remember to submit to Ohio EPA after the recording a copy of the CNS that shows the filing date stamp of the county recorder's office.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director



gravel saturated zone. Petroleum-related VOCs were detected above unrestricted potable use standards (UPUS) in samples collected from two shallow monitoring wells in the vicinity of a former underground storage tank cavity. A weight of evidence demonstration was provided to demonstrate that the underlying limestone bedrock aquifer meets and will continue to meet UPUS.

Asbestos abatement activities were completed prior to demolition of the former Lazarus Distribution Center. No buildings remain on the property.

An RMP is included to provide protective measures from potential future exposure to contaminated soil and ground water beneath the two-foot point of compliance for excavation and construction activities. An environmental covenant will be in place restricting the property to recreational, commercial and industrial land uses and restricting the extraction of ground water for any purposes other than monitoring and remediation and in conjunction with excavation and construction activities including maintenance of subsurface utilities. The environmental covenant also prohibits the construction of structures with basements or other permanent underground or subsurface structures designed for routine human occupancy on the property.

Review History

During the review of the NFA letter, Ohio EPA identified several deficiencies in the NFA letter and communicated these deficiencies to the CP and volunteer in a comment letter on September 25, 2009. The CP submitted responses to Ohio EPA's comments under an addendum to the NFA letter issued December 8, 2009. The addendum, however, still contained outstanding deficiencies and Ohio EPA issued a notice of intent to deny (NOID) to the CP and volunteer on February 19, 2010. The CP submitted a final addendum to Ohio EPA on April 20, 2010.

The environmental covenant has been signed by representatives of the volunteer and property owner and is attached as Exhibit 4 of the DFFOs and becomes fully executed with your signature. The CNS becomes effective on the date that the volunteer records the environmental covenant with the county recorder's office.

Conclusions and Recommendation

Based upon the information provided by the CP in the NFA letter as amended, it appears that the property complies with the VAP applicable standards pursuant to ORC Chapter 3746 and OAC Chapter 3745-300, for recreational, commercial and industrial land uses and restricted ground water uses. Therefore, we recommend the issuance of a CNS for this property, and request that you sign, but do not date, the attached DFFOs and environmental covenant and the associated documentation at the noted tabs. If you have any questions, please do not hesitate to contact me at 8-3833 or Tiffani Kavalec at 4-3538.

Attachments

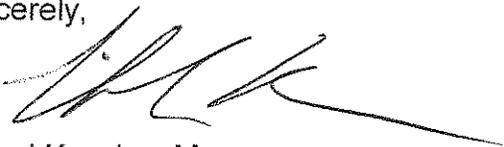
Further, the environmental covenant, attached to the CNS as Exhibit 4, must also be recorded in the same manner as a deed to the property (see the “Conditions and Limitations” section of the CNS). Please record the environmental covenant just prior to and separate from the recording of the CNS and its remaining exhibits. The CNS becomes effective on the date of the recording of the environmental covenant. Like the CNS recording, remember to submit to Ohio EPA a copy of the environmental covenant that shows the county recorder’s date stamp. For questions on the recording of these documents, you can consult Ohio EPA Legal Office attorney, Sue Kroeger, at (614) 644-3037.

The CNS includes a risk mitigation plan (RMP). OAC 3745-300-03 authorizes Ohio EPA to charge for its actual costs that it may incur related to site-specific activities, such as the monitoring of compliance with the RMP, including the review of the submitted reports. Ohio EPA will send a separate correspondence to provide the number of the VAP account established for the property and to ask you to verify the billing information.

This action of the Director is final and may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the Director’s action. The appeal must be accompanied by a filing fee of \$70.00, made payable to “Ohio Treasurer Kevin Boyce,” which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days after the appeal is filed with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General’s Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

Congratulations on the issuance of this CNS. Many persons within the agency, Metro Parks, the city of Columbus, and Burgess & Niple, Inc., among others, worked hard to remove the environmental barriers associated with redeveloping this property. If you have any questions or concerns, feel free to contact me at (614) 644-2924 or tiffani.kavalec@epa.state.oh.us.

Sincerely,



Tiffani Kavalec, Manager
Division of Emergency and Remedial Response
Assessment, Cleanup and Reuse Section

Enclosure

- c: Alan D. McKnight, Director, City of Columbus, Recreation and Parks Department
Sarah Harrell, Assistant City Attorney, City of Columbus, 90 W. Broad St.,
Columbus, OH 43215
Thomas J. Mignery, CP # 125, Burgess & Niple, Inc.
DERR CO/CDO Files (#09NFA330)
- ec: Frank Robertson, DERR/ACRE
Raymond R. Moreno, DERR/CDO
Deborah Strayton, DERR/CDO
Sue Kroeger, Legal Office

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO ORC 317.08(A)

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. Lassiter, 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 Covenant Not to Sue / Director's Final Findings and Orders issued by the Director, and entered in the Ohio EPA Director's Journal on June 14, 2010, regarding property known as Whittier Peninsula - Former Lazarus Distribution Center and Southern Portions of Koch Asphalt and Cunard - Lang Properties, located at 560 West Whittier Street in Columbus, Franklin County, Ohio and further described in the attached Covenant Not to Sue.

Tonya R. Lassiter
Tonya R. Lassiter
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 14th day of June, 2010.

Donald L. Vanterpool
DONALD L. VANTERPOOL, Attorney-At-Law
NOTARY PUBLIC, STATE OF OHIO
My Commission has no expiration date.
Section 147.03 R.C.
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

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

OHIO E.P.A.

JUN 14 2010

ENTERED DIRECTOR'S JOURNAL

By: Daryl Lassiter Date: 6-14-10

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

Columbus and Franklin County
Metropolitan Park District
1069 West Main Street
Westerville, OH 43081

Covenant Not to Sue

**Director's Final Findings
and Orders**

Regarding property known as:

Whittier Peninsula – Former Lazarus
Distribution Center and Southern Portions of
Koch Asphalt and Cunard-Lang Properties
560 West Whittier Street
Columbus, OH 43215

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency (the "Director") hereby makes the following Findings and issues the following Orders ("Findings and Orders").

FINDINGS

1. A No Further Action Letter, No. 09NFA330 (the "NFA Letter"), was submitted on February 12, 2009 to the Director under the Voluntary Action Program on behalf of the Columbus and Franklin County Metropolitan Park District (the "Volunteer"), by Thomas J. Mignery, CPG, a certified professional, No. CP 125, as defined in ORC 3746.01(E) and OAC 3745-300-01(A) (the "Certified Professional").
2. The Certified Professional issued the NFA Letter by his CP affidavit on February 9, 2009. The Certified Professional also submitted to the Director addenda to the NFA Letter, which were issued under CP affidavit on December 8, 2009 and April 20, 2010. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addenda.

3. The NFA Letter describes the investigational and remedial activities undertaken at the approximately 12.611-acre property, known as the Whittier Peninsula – Former Lazarus Distribution Center Property and Southern Portions of Koch Asphalt and Cunard-Lang Properties, located at 560 West Whittier Street, Columbus, Franklin County, Ohio (the "Property"). An exact legal description of the Property is attached hereto as Exhibit 1. A property location map is attached hereto as Exhibit 2. Based on information in the NFA Letter, the Property is owned by the city of Columbus and the parcel numbers are 010-036350, 010-067208, 010-010234 (partial parcel) and 010-249658 (partial parcel).
4. The Certified Professional prepared pursuant to OAC 3745-300-13(J) an executive summary of the NFA Letter, which is attached hereto as Exhibit 3.

Summary of the Voluntary Action for the Property

5. Based upon the information in the NFA Letter, the Volunteer undertook the following investigational and remedial activities regarding the Property:
 - a. A Phase I property assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property.
 - b. A Phase II property assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas and affected media, to assess environmental conditions related to releases of hazardous substances and/or petroleum.
 - c. Activity and use limitations contained in a proposed Environmental Covenant prepared pursuant to ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders.
 - d. A Risk Mitigation Plan, prepared in accordance with OAC 3745-300-15, that provides various risk mitigation measures for construction or excavation activities at the Property.
 - e. Remedial activities, conducted in accordance with OAC 3745-300-15, including the removal of approximately 100 cubic yards of lead - contaminated soil and covering remaining areas of lead - contaminated soil in the vicinity of 514 Furnace Street with a minimum of two feet of clean soil to achieve the applicable point of compliance, and abatement pursuant to OAC Chapter 3745-20 of asbestos-containing materials from the former Lazarus Distribution Center prior to its demolition.
 - f. A demonstration that the Property complies with applicable standards

following completion of remedial activities for the identified chemicals of concern in the identified areas and affected media at the Property through the use of generic numerical standards in accordance with OAC 3745-300-08, or the use of a property-specific risk assessment in accordance with OAC 3745-300-09.

6. The Certified Professional has verified by affidavit that the voluntary action was conducted and the NFA Letter was issued for the Property in accordance with ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible for the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.
7. At the time that analyses were performed, TestAmerica – Dayton, American Analytical Laboratories and DataChem Laboratories were certified laboratories, No(s). CL0018, CL0042 and CL0022, respectively, as defined in ORC 3746.01(D) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter (the "Certified Laboratories").
8. The Environmental Covenant will be recorded in the Franklin County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. A copy of the executed Environmental Covenant is attached hereto as Exhibit 4. The Environmental Covenant upon recording will:
 - a. Restrict the Property to recreational, commercial or industrial land uses.
 - b. Prohibit the extraction of ground water at or underlying the Property except for purposes of monitoring, remediation or in conjunction with excavation or construction activities including the maintenance of subsurface utilities.
 - c. Prohibit the construction of structures with basements or other permanent subsurface or underground structures designed for routine human occupancy on the Property.
9. The Risk Mitigation Plan, dated February 2009 and revised March 2010, was developed in accordance with OAC 3745-300-15. The Risk Mitigation Plan is attached hereto as Exhibit 5 and incorporated by reference herein. The implementation of the Risk Mitigation Plan is necessary to mitigate or eliminate human exposure to lead and volatile organic compounds at the Property, during construction or excavation activities.

Applicable Standards

10. Based on the information contained in the NFA Letter and all conditions set forth in these Findings and Orders, the Property meets applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for various uses including

recreational, commercial and industrial land use and restricted ground water use. The applicable standards for the Property are those in effect when the NFA Letter was issued on February 9, 2009. The applicable standards and the methods of achieving compliance with the standards for each complete exposure pathway, are identified in the NFA Letter, which contains a summary table titled "*Applicable Standards Determination and Complete Pathway Determination*" included as Table 8 in the Phase II property assessment report. The standards include one or more of the following:

- a. Generic numerical standards determined in accordance with OAC 3745-300-08.
 - b. Property-specific risk assessment standards developed in accordance with OAC 3745-300-09.
 - c. Background standards determined in accordance with ORC 3746.06(A) and OAC 3745-300-07(H).
 - d. Standards for residential (potable) use of ground water in the limestone bedrock zone underlying the Property, applied in accordance with ORC 3746.06(B).
11. Based on the implementation and maintenance of the remedies identified in this paragraph, the Property complies with applicable standards. Failure to implement one or more of the remedial activities may constitute noncompliance with applicable standards. The remedies requiring implementation include:
- a. The activity and use limitations set forth in the Environmental Covenant attached hereto, which once recorded will limit the Property to recreational, commercial or industrial land uses, prohibit the extraction of ground water at or underlying the property for any purpose except monitoring, remediation or in conjunction with excavation or construction including maintenance of subsurface utilities, and prohibit the construction of structures with basements or other permanent subsurface or underground structures designed for routine human occupancy on the Property.
 - b. The risk mitigation measures implemented under the Risk Mitigation Plan attached hereto, which mitigate exposure to chemicals of concern in soil and ground water for construction and excavation activities.
12. Pursuant to ORC 3746.12(A), the Director of Ohio EPA is authorized to issue a covenant not to sue for the Property through these Findings and Orders. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, the remedial activities for the Property are protective of public health and safety and the environment.

ORDERS

Covenant

1. Based on the NFA Letter, and subject to all conditions set forth in these Findings and Orders, Ohio EPA hereby covenants not to sue and releases the Columbus and Franklin County Metropolitan Park District and the city of Columbus and their respective agents, employees, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio (the "State") to perform additional investigational and remedial activities. This covenant not to sue and release of liability ("Covenant") applies to the Property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

Conditions and Limitations

Effectiveness of the Covenant— Recording of the Environmental Covenant

2. The Covenant provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within thirty (30) days after the issuance of these Findings and Orders, the Columbus and Franklin County Metropolitan Park District shall:
 - a. File with the Franklin County Recorder's Office for recording, in the same manner as a deed to the Property pursuant to ORC 3746.14 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA.
 - b. Submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Environmental Covenant for Whittier Peninsula – Former Lazarus Distribution Center, NFA Letter No. 09NFA330.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management

Officer and Ohio EPA's Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula – Former Lazarus Distribution Center Property.

Requirement to Record These Findings and Orders / Covenant Not to Sue

3. Within thirty (30) days after the issuance of these Findings and Orders, the Columbus and Franklin County Metropolitan Park District shall:
 - a. File with the Franklin County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), 3 (Executive Summary) and 5 (Risk Mitigation Plan).
 - b. Submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Covenant Not to Sue for NFA Letter No. 09DFA330.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula – Former Lazarus Distribution Center Property.

Requirement to Submit Annually a Risk Mitigation Plan Notification

4. Pursuant to ORC 3746.12(A) and OAC 3745-300-15(G), the Covenant provided in Order No. 1 of these Findings and Orders is conditioned on Ohio EPA's receipt of a notification regarding the RMP, as attached hereto and referenced in the Findings herein. This condition in no way supersedes any separate notification requirement included in the RMP (i.e., notice to contractors).
 - a. The notification shall be submitted annually, by June 15 of each year after the effective date of these Findings and Orders.
 - b. Each notification shall be submitted under affidavit by the person(s) who has knowledge of RMP implementation for the applicable notification period. The notification shall address:

- i. Whether implementation of the RMP occurred during the notification period.
 - ii. The events that required the implementation of the RMP, the exposures to contaminated environmental media that may have occurred, and the risk mitigation measures that were undertaken in accordance with the RMP.
- c. The submission shall include a cover letter that identifies "*Risk Mitigation Plan Annual Report for NFA Letter No 09NFA330.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula – Former Lazarus Distribution Center Property.

Limits of Covenant

5. Pursuant to ORC 3746.12(B)(1), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders. Upon a finding pursuant to ORC 3746.12(B)(2) that the Property or portion thereof no longer complies with applicable standards upon which issuance of the Covenant was based and receipt of the Director's notice of that fact and the requirements of ORC 3746.12(B)(3), the person(s) responsible for maintaining compliance with those standards shall receive an "opportunity to cure" the noncompliance. ORC 3746.12(B)(4) provides for revocation of the Covenant upon a Director's finding that the noncompliance has not been cured.
6. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the noncomplying use.
7. The Covenant shall not apply to releases of hazardous substances or petroleum that occur after the issuance of the NFA Letter.
8. The Covenant shall not apply:
 - a. To claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended.

- b. To claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency.
9. Nothing in the Covenant limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
10. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

Ohio EPA Access to Property

11. Pursuant to ORC 3746.21 or 3746.171 and the Environmental Covenant, and at reasonable times, upon proper identification, and stating the necessity and purpose as directed by applicable law, authorized representatives of the Director shall be granted access to the Property for the inspection or investigation purposes authorized under applicable law, including but not limited to determining whether the Property is being used in compliance with the activity and use limitations contained in the Environmental Covenant.

Transfer

12. Pursuant to ORC 3746.14 and OAC 3745-300-13(L), the NFA Letter and the Covenant Not to Sue/Findings and Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.

IT IS SO ORDERED:



Chris Korleski, Director
Ohio Environmental Protection Agency

JUN 14 2010

Date

Exhibit 1
Legal Description

August 10, 2004

DESCRIPTION OF 12.611 ACRES
SOUTH OF INTERSTATE ROUTE 70
EAST OF WHITTIER STREET
COLUMBUS, OHIO

Situated in the State of Ohio, County of Franklin, City of Columbus, being 2.204 acres of that 6.568 acre tract of land as described in a deed to The City of Columbus, Ohio, of record in Instrument No. 199909030226779, all of that 9.4686 acre tract of land as described in a deed to City of Columbus, Ohio, of record in Instrument No. 199902260048206, 0.716 acre of that 2.288 acre tract as described in a deed to The City of Columbus, Ohio, of record in Instrument No. 200012280261331 and 0.222 acre of Furnace Street right-of-way, all references herein being to the records located in the Recorder's Office, Franklin County, Ohio and being more particularly described as follows:

Beginning FOR REFERENCE at a point at the southwesterly corner of said 6.568 acre tract in the northerly perimeter of said 9.4686 acre tract and in the easterly right-of-way line of Furnace Street (60.00 feet in width); thence North $04^{\circ}00'00''$ East, along said easterly right-of-way line, a distance of 161.85 feet to the TRUE PLACE OF BEGINNING;

Thence North $86^{\circ}09'15''$ West, through the right-of-way of Furnace Street and said 2.288 acre tract, a distance of 268.75 feet to a point in the westerly perimeter of said 2.288 acre tract;

Thence South $13^{\circ}19'00''$ West, along said westerly perimeter, a distance of 143.01 feet to a point in the northerly perimeter of said 9.4686 acre tract;

Thence North $86^{\circ}00'00''$ West, along said northerly perimeter, a distance of 9.54 feet to an iron pin found at the northwesterly corner of said 9.4686;

Thence along the westerly perimeter of said 9.4686 acre tract the following courses;

1. South $04^{\circ}00'00''$ West, a distance of 10.00 feet to an railroad spike found;
2. South $86^{\circ}00'00''$ East, a distance of 12.83 feet to an railroad spike found;
3. South $04^{\circ}00'00''$ West, a distance of 302.65 feet to an iron pin found;
4. South $06^{\circ}47'43''$ East, a distance of 112.98 feet to a point;
5. South $30^{\circ}57'08''$ East, a distance of 115.51 feet to an iron pin found at the southwesterly corner of said 9.4686 acre tract;

Thence along the southerly perimeter of said 9.4686 acre tract the following courses:

1. South $86^{\circ}00'00''$ East, a distance of 407.24 feet to a point;
2. North $04^{\circ}25'34''$ East, a distance of 74.68 feet to an railroad spike found;
3. North $70^{\circ}06'29''$ East, a distance of 49.38 feet to a point;
4. North $86^{\circ}00'00''$ West, a distance of 53.00 feet to a point;
5. North $04^{\circ}25'34''$ East, a distance of 20.00 feet to a point;
6. South $86^{\circ}00'00''$ East, a distance of 441.75 feet to an railroad spike found at the southeasterly corner of said 9.4686 acre tract;

Thence North $04^{\circ}25'34''$ East, along the easterly line of said 9.4686 acre tract, a distance of 383.64 feet to an iron pin found at the northeasterly corner of said 9.4686 acre tract in the southerly line of said 6.568 acre tract;

Thence South 86°00'00" East, along said southerly line, a distance of 32.49 feet to a point at the southeasterly corner of said 6.568 acre tract;

Thence North 42°20'00" West, along the easterly perimeter of said 6.568 acre tract, a distance of 228.10 feet to a point;

Thence North 35°13'00" West, continuing along said easterly perimeter, a distance of 7.38 feet to a point;

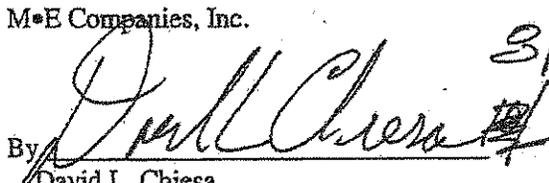
Thence North 86°09'15" West, through said 6.568 acre tract, a distance of 506.25 feet to the TRUE PLACE OF BEGINNING and containing 12.611 acres of land.

Bearings shown hereon are based on South 86°00'00" East, for a southerly line of the 9.4686 acre tract, of record in Instrument No. 199902260048206.

This description was prepared by M•E Companies, Inc., and is based on a survey performed in the field.



M•E Companies, Inc.

By  3/10/04
David L. Chiesa
Registered Surveyor No. 7740

Director's Final Findings & Orders – Covenant Not to Sue
Columbus and Franklin County Metropolitan Park District
Whittier Peninsula – Former Lazarus Distribution Center

Exhibit 2
Property Location Map



LAZARUS PROPERTY AND SOUTHERN PORTIONS OF CUNARD-LANG AND KOCH PROPERTIES COLUMBUS, OHIO

FIGURE 1

PROPERTY LOCATION MAP

SOURCE: SOUTHWEST COLUMBUS, OHIO 7.5 MINUTE U.S.G.S. QUADRANGLE MAP

BURGESS AND NIPLE, INC. ENGINEERS & ARCHITECTS

SCALE: 1"=2000' DATE: FEB. 2009

P:\PR35175\CADD\LAZARUS\ADD\2 SITE LOC FIG 1.DWG 4-4-06 9:04:41 AM COXD

Director's Final Findings & Orders – Covenant Not to Sue
Columbus and Franklin County Metropolitan Park District
Whittier Peninsula – Former Lazarus Distribution Center

Exhibit 3
Executive Summary

SECTION B
OHIO ENVIRONMENTAL PROTECTION AGENCY
VOLUNTARY ACTION PROGRAM

EXECUTIVE SUMMARY AND FILING DOCUMENT FOR THE
NO FURTHER ACTION LETTER-ADDENDUM NO. 2
FEBRUARY 2009
REVISED APRIL 2010

FOR

WHITTIER PENINSULA
FORMER LAZARUS DISTRIBUTION WAREHOUSE
COLUMBUS, OHIO

VOLUNTEER:

Columbus and Franklin County Metropolitan Parks District
1069 West Main Street
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1.0 INTRODUCTION

This executive summary of the No Further Action (NFA) has been prepared pursuant to Ohio Administrative Code (OAC) 3745-300-13(I). The purpose of the summary is to meet the requirements of OAC 3745-300-13 (H) and (J), to use the format provided by the Ohio Environmental Protection Agency (EPA) for submitting the NFA Letter, and OAC 3745-300-13 (J) for recording a summary of the NFA Letter with the County Recorder's Office. A complete copy of the original NFA letter is on file and will be made available at the Ohio EPA, Division of Emergency of Remedial Response (DERR) Voluntary Action Program (VAP) in accordance with OAC 3745-300-13(J) and at the VAP-Certified Professional's location.

The NFA letter was submitted to the Ohio EPA, DERR VAP on behalf of the Columbus and Franklin County Metropolitan Parks District (Metro Parks), volunteer, and City of Columbus (City), the owner, on February 9, 2009 by Mr. Thomas J. Mignery, VAP-Certified Professional (CP) 125 of Burgess & Niple, Inc. (B&N), the NFA Addendum No. 1 was submitted December 8, 2009, and the Addendum No. 2 was submitted April 19, 2010.

The original NFA and its addenda herein describes the Phase I and Phase II Property Assessments (Phase I and Phase II), for the approximate 12.611-acre property known as the Former Lazarus Distribution Warehouse Property (Property), located at the Whittier Peninsula with the frontal address of 560 West Whittier Street, Columbus, Ohio. The Phase II Property Assessment involved collecting soil and groundwater samples, as well as conducting a Human Health Risk Assessment (HHRA).

2.0 SUMMARY OF NO FURTHER ACTION LETTER

The CP, Mr. Thomas J. Mignery, issued an NFA Letter and its addenda based upon the Phase I, Phase II, HHRA, and Risk Mitigation Plan (RMP). An Environmental Covenant (Covenant) will be filed with the Franklin County Recorder's Office for modified residential land use, and restrictions on the use of groundwater for potable purposes on the Property. The RMP addresses health and safety requirements for construction workers if work is to be performed below the 2-foot Point of Compliance (POC).

A summary of the Phase I, Phase II, and HHRA is provided below. Complete copies of the Phase I, Phase II, and HHRA are contained in the original NFA Letter submittal and its addenda.

2.1 VAP Phase I Property Assessment

The VAP Phase I revealed suspected releases of hazardous substances and/or petroleum onto the Property. The Property inspection also revealed evidence of past operations where potential releases may have occurred. The Property inspection revealed suspected releases of hazardous substances and/or petroleum onto the Property. The inspection also revealed evidence of past operations where potential releases may have occurred. This evidence is based on the presence of groundwater monitoring wells in the two areas where underground storage tanks (USTs) were removed around the former Lazarus Distribution Center.

During the VAP Phase I, a review of the regulatory database report, and local, state and federal records did provide documentation on previous environmental issues that may have been present as the result of former operations on the Property. Spills or releases of hazardous substances, and/or petroleum products have been documented for the Property. The review of interviews and environmental documents provided information that raw materials and products used on the Property, as part of historic operations, consisted of petroleum products and/or products considered to be hazardous wastes.

Based on the potential environmental issues found during the environmental history review, potential contaminants on the Property generally include metals, petroleum hydrocarbons, volatile organic compounds (VOCs), and polynuclear aromatic hydrocarbons (PAHs).

The environmental history review documented several environmental issues at the Property which require additional environmental evaluation to determine if releases of hazardous substances or petroleum have occurred or have resulted in environmental impact to the Property. Identified Areas (IAs) that specifically resulted from the environmental history review include the following locations:

- IA No. 1 – National Steel/Franklin Steel
- IA No. 2 - Coke and Iron Ore Storage
- IA No. 3 – Northeastern portion of Property (514 Furnace Street)
- IA No. 4 - Gasoline leaking underground storage tank (LUST)
- IA No. 5 - Gasoline and diesel fuel LUST
- IA No. 6 - Fleet Maintenance Garage
- IA No. 7 - Chemical storage area at Boiler House
- IA No. 8 – Historic operations on Koch Asphalt property
- IA No. 9 – Historic operations on Southern Cunard-Lang property.

Based on the presence of the IAs, an NFA letter could not be prepared by a CP and therefore, a VAP Phase II Property Assessment compliant with OAC 3745-300-07 was recommended for the Property.

2.2 Phase II Property Assessment

The purpose of the Phase II was to update the Phase I and evaluate environmental impacts of the IAs reported in the Phase I, determine if VAP applicable standards were met, and if not, prepare and document the remedial efforts to meet the Property-specific VAP standards. This report documents those objectives.

B&N conducted a Phase II Property Assessment for Metro Parks at the Property located in Columbus, Ohio between June 2004 and May 2005. Fifty soil probes and 14 monitoring wells were completed during this investigation. Six additional monitoring wells utilized during this investigation were installed by DLZ prior to the current Phase II activities. Soil sampling results from 18 previously advanced soil borings were also used as part of the data evaluation for this investigation. EnviroCore completed all the soil probes on the Property. Monitoring wells were drilled and installed by Wright's Drilling. At each of the soil probe or monitoring well boring locations, soil and/or groundwater samples

were collected for analysis. American Analytical Laboratories (AAL), a VAP-certified laboratory, conducted most of the laboratory analyses for the Phase II. TestAmerica (a VAP-certified laboratory) also provided analytical services for the Phase II, which also included analysis of soils from the previous investigation.

2.2.1 Soil Investigation and Findings

Soil sampling was conducted at the Property beginning in June 2004 and ending in May 2005. Fifty-two soil samples were collected from soil probes, and 14 soil samples were collected from a hollow stem auger (HAS) borings during monitoring well installation. In addition, 18 soil samples were collected from borings advanced by DLZ during a previous investigation. Since the DLZ samples were analyzed by a VAP-certified laboratory, results of these analyses were also used in the current Phase II. The following sections summarize the soil analytical results by IA.

2.2.1.1 IA-1 – National Steel/Franklin Furnace Foundry and Boilers

Eighteen soil samples were collected from borings completed in IA-1, two of which were from the previous DLZ sampling event, and submitted to a VAP-certified laboratory for analysis. Sample intervals ranged from 0 to 5 feet below ground surface (bgs) to 16 to 18 feet bgs. The following summarizes the soil sampling results:

- **Inorganics** - Inorganics were detected at concentrations above the laboratory detection limits in every sample for which these analyses were performed. However, no inorganics were detected at levels equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- **VOCs** - Each of the soil samples collected from IA-1 were analyzed for VOCs. Toluene was detected in GP-5 (2- to 4-foot interval) at a concentration of 0.005 milligrams per kilogram (mg/kg), which is less than the respective recreational or construction worker soil standards of 520 mg/kg. No other VOCs were detected in any of the 16 soil samples at levels exceeding laboratory detection limits.
- **Semivolatile Organic Compounds (SVOCs)** – SVOCs, primarily PAHs, were detected in several of the soil samples submitted for analysis. None of the detected SVOCs exceeded the applicable standards.

- **Total Petroleum Hydrocarbon (TPH)** – Three soil samples were submitted for analysis of TPH. All TPH concentrations were below the VAP Soil Saturation Concentrations.

2.2.1.1.1 Multiple-Chemical Adjustment Standard (MCS) Determination – IA-1

An MCS determination was performed for the samples collected from IA-1. The sum of the carcinogenic and noncarcinogenic risk ratios for both the commercial and construction worker were below 1. Therefore, an MCS was not required for the soil results in IA-1 and the single-chemical standards are applicable.

2.2.1.2 IA-2 – Coke and Iron Ore Storage

Seven soil samples were collected from borings completed in IA-2, two of which were previously advanced by DLZ. Collected sample intervals ranged from 0 to 2 feet bgs to 8 to 10 feet bgs. The following summarizes the sampling results.

- **Inorganics** - Inorganics were detected at concentrations exceeding the laboratory detection limits. However, no inorganics were detected at levels equaling or exceeding the recreational or construction worker soil standards.
- **VOCs** - Each of the soil samples collected from IA-2 was analyzed for VOCs. Acetone was the only VOC detected, which was below applicable standards.
- **SVOCs** – No SVOCs were detected in the soil samples submitted from IA-2.
- **TPH** – TPH was analyzed in one soil sample. Although TPH Diesel Range Organics (DRO) was detected in the sample, concentrations were below the VAP standard.

2.2.1.2.1 MCS Determination – IA-2

The sums of the calculated risk ratios for both carcinogenic and noncarcinogenic compounds were below 1 for chemicals of concern (COCs) detected in IA-2. Therefore, an MCS was not calculated and the single chemical generic direct contact soil standards (SCGDCSSs) are applicable for IA-2.

2.2.1.3 IA-3 – 514 Furnace Building

Eight soil samples, seven of which were collected by B&N with one previously collected by DLZ, were collected from borings completed in IA-3. Collected sample intervals ranged from 0 to 2 feet bgs to 8 to 16 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** - Inorganics were detected at concentrations exceeding the laboratory detection limits in each of the soil samples collected. Lead was detected at a concentration of 12,500 mg/kg in GP-19 (0- to 2-foot interval) and in GP-21 (0 to 2 feet) at 1,640 mg/kg. Both of which exceed the respective recreational land use and construction worker scenario standards of 550 mg/kg and 1,600 mg/kg, respectively. It should be noted that these values were not used in the 95 percent upper confidence level (UCL) calculation because the soils surrounding these borings have since been removed. No other inorganics were detected at levels equaling or exceeding the soil standards for recreational land use or the construction worker standard. It should be noted that lead is a noncumulative, nonadditive COC, and was not used in the MCS determination.
- **VOCs** - Acetone was the only VOC detected, which was below the applicable standards. No other VOCs were detected in IA-3 soil samples at concentrations exceeding laboratory detection limits.
- **SVOCs** - SVOCs, primarily PAHs, were detected in several of the soil samples collected from IA-3. All detected concentrations were below applicable standards.
- **TPH** - Only one sample was analyzed for TPH in IA-3. Although TPH DRO was detected in this sample, concentrations were below VAP Soil Saturation concentrations.

2.2.1.3.1 MCS Determination - IA-3

An MCS determination was performed for the COCs detected in the samples collected from IA-3. The risk ratios for carcinogenic and noncarcinogenic compounds for both the commercial worker and construction worker were below 1. Therefore, an MCS was not required and the SCGDCSSs are applicable for IA-3.

2.2.1.4 IA-4 – Lazarus North Parking Lot LUST

Thirteen soil samples were collected from borings completed in IA-4, three of which were previously collected by DLZ. Collected sample intervals ranged from 0 to 4 feet bgs to 12 to 14 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** – Inorganic analyses were performed only on the three DLZ borings. All sampling results were below applicable standards.
- **VOCs** – The following compounds were detected in soil samples collected from IA-4: benzene, n-butyl benzene, sec-butyl benzene, chloroform, ethylbenzene, cumene, n-propyl benzene, and total xylene. No other VOCs were detected in the IA-4 soil samples at levels exceeding laboratory detection limits.
- **SVOCs** – A variety of SVOCs, primarily PAHs, were detected in three of the soil samples collected from IA-4. All detected concentrations were below the standards. No other SVOCs were detected above laboratory detection limits in soils collected from IA-4.
- **TPH** - TPH DRO/Gas Range Organics (GRO) was detected in several soil samples from IA-4 at concentrations below the listed standards.

2.2.1.4.1 MCS Determination – IA-4

An MCS determination was performed on the COCs detected in the soils in IA-4. The sum of the risk ratios for both commercial and construction worker standards for carcinogenic and noncarcinogenic compounds were below 1. Therefore, the single-chemical standards are applicable for IA-4.

2.2.1.5 IA-5 – Lazarus Southwest Parking Lot LUST

Ten soil samples were collected from borings completed in IA-5, three of which were previously collected by DLZ. Collected sample intervals ranged from 0 to 4 feet bgs to 12 to 14 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** - Several constituents were detected at concentrations above the laboratory detection limits. However, none of the inorganic concentrations exceeded soil standards for recreational land use or the construction worker scenario.
- **VOCs** - Acetone was the only VOC compound detected in the samples submitted from IA-5, which were below all applicable standards. No other VOCs were detected in the IA-5 soil samples at levels exceeding laboratory detection limits.
- **SVOCs** - Each of the soil samples was analyzed for SVOCs. None of the analyzed soils contained concentrations of SVOCs at levels exceeding laboratory detection limits.
- **TPH** - TPH GRO/DRO was detected in several of the soil samples submitted for analysis; however, all concentrations were below VAP Soil Saturation concentrations.

2.2.1.5.1 MCS Determination - IA-5

An MCS determination was performed on the soil results from IA-5. The sum of the carcinogenic and noncarcinogenic risk ratios are below 1 for both the commercial land use and construction worker exposure standards. Therefore the SCGDCSSs are applicable for IA-5.

2.2.1.6 IA-6 - Fleet Maintenance Garage

Seven soil samples were collected from borings completed in IA-6, two of which were previously collected by DLZ. Collected sample intervals ranged from 0 to 2 feet bgs to 10 to 12 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** - Inorganics were detected at concentrations above the laboratory detection limits in every sample for which these analyses were performed. However, no inorganics were detected at levels equaling or exceeding the soil standards for recreational land use or the construction worker scenario.
- **VOCs** - Chlorobenzene was detected in one sample collected from IA-6 at a concentration below the applicable VAP standards. No other VOCs were detected in IA-6 soil samples at concentrations exceeding laboratory detection limits.

- **SVOCs** - SVOC analyses were conducted on each of the soil samples collected from the borings completed in IA-6. SVOCs were detected only in the sample submitted from GP-15 (0- to 2-foot interval), however, none of the detected concentrations exceeded any of the applicable standards.
- **TPH** - TPH DRO/GRO was detected in several of the samples submitted for TPH analyses. None of these detections exceeded the VAP standards.

2.2.1.6.1 MCS Determination – IA-6

An MCS determination was performed on the soil samples collected from IA-6. The sums of the carcinogenic and noncarcinogenic risk ratios for both the commercial land use and construction worker exposure standards were below 1. Therefore, the SCGDCSSs are applicable in IA-6.

2.2.1.7 IA-7 – Boiler House

Seven soil samples were collected from borings completed in IA-7, two of which were collected previously by DLZ. Collected sample intervals ranged from 0 to 2 feet bgs to 6 to 8 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** - Inorganics were detected at concentrations above the laboratory detection limits in each of the samples collected. No inorganics were detected at levels exceeding the applicable soil standards.
- **VOCs** – No VOCs were detected in any of the samples analyzed from IA-7.
- **SVOCs** – No SVOCs were detected in any of the samples analyzed.
- **TPH** – Two samples were submitted for TPH analyses from IA-7. Although TPH DRO was detected in one of the samples, concentrations were below applicable standards.

2.2.1.7.1 MCS Determination – IA-7

An MCS determination was performed on the soil samples collected from IA-7. The sum of the carcinogenic and noncarcinogenic risk ratios were below 1 for both the commercial and construction standards. Therefore, the SCGDCSSs are applicable for IA-7.

2.2.1.8 IA-8 – Southern Portion Koch Property

Seven soil samples were collected from borings completed in IA-8, of which two were previously collected by DLZ. Collected sample intervals ranged from 0 to 2 feet bgs to 12 to 14 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** - Inorganics were detected at concentrations above the laboratory detection limits in IA-8 soils submitted for inorganics analysis. No inorganics were detected at levels exceeding the soil standards for recreational land use nor the VAP soil standard for the construction worker scenario.
- **VOCs** - No VOCs were detected in the soil samples submitted from IA-8.
- **SVOCs** – SVOCs were detected in the DLZ sample submitted from 3-SB-1. All detected concentrations were below applicable standards.
- **TPH** – TPH DRO was detected in the samples submitted from DLZ. No detected concentrations were above VAP standards.

2.2.1.8.1 MCS Determination – IA-8

An MCS determination was performed on the data from IA-8. The sum of the carcinogenic and noncarcinogenic risk ratios for both commercial workers and construction workers are below 1. Therefore, the SCGDCSS are applicable in IA-8.

2.2.1.9 IA-9 – Southern Portion Cunard-Lang Property

Seven soil samples were collected from borings completed in IA-9, one of which previously collected by DLZ. Collected sample intervals ranged from 0 to 2 feet bgs to 10 to 12 feet bgs. The following summarizes the soil sampling results.

- **Inorganics** - Inorganics were detected at concentrations above the laboratory detection limits in each of the collected IA-9 soils. No inorganics were detected at levels exceeding the applicable standards.
- **VOCs** - VOCs were only detected in the soil samples submitted from GP-43 (4 to 6 feet). Concentrations were below the applicable standards.
- **SVOCs** – SVOCs were detected in the soil samples submitted from borings GP-43 (4 to 6 feet) and GP-107 (8 to 10 feet). Detections were below applicable standards.
- **TPH** – TPH DRO was detected in the soil sample submitted from DLZ, below VAP standards.

2.2.1.9.1 MCS Determination – IA-9

An MCS determination was performed for the data collected from IA-9. The sum of the carcinogenic and noncarcinogenic risk ratios for both commercial land use and construction/excavation worker exposure is below 1. Therefore, the SCGDCSS are applicable for IA-9.

2.2.1.10 Soil Leaching to Groundwater

A leaching evaluation is made to ensure the underlying groundwater zone is protected from compounds in soils leaching to the groundwater and causing unrestricted potable use standards (UPUS) to be exceeded. In this case, it has been determined that groundwater in the unconsolidated sand and gravel aquifer is impacted in the northern former LUST area (IA-4).

Leaching is evaluated in two ways: (1) by comparing maximum soil concentrations with previously derived leach-based soil values provided in the *Ohio EPA Leach-based Soil Values Technical Guidance Document* (February 2002), and (2) by performing a leaching calculation for those COCs which are not listed on the Leach-based Soil Values table. Addendum Number 1 of the NFA submittal discusses the leaching calculations. It was determined that concentrations of lead in soil in IA-3 do not meet UPUS, however downgradient monitoring wells do not have exceedances of lead. A transport model was performed using leach derived data for lead in IA-3 and the results of the model determined that concentrations of lead in groundwater would not breach the property boundary.

A HHRA has been completed to evaluate the potential risk to human health from COCs detected on the Property in the Phase II. The results of the HHRA are used to determine if the current and future level of risk to human health is at an acceptable level for the future land use options. The HHRA was prepared using the *Support Document for the Development of Generic Numerical Standards and Risk Assessment Procedures*, the VAP, Division of Emergency and Remedial Response (DERR), Ohio EPA, July 1996, revised February 2002, and supplemental references as cited in Section 9.0. The HHRA considered the exposure of potential receptors to current conditions at the Property and the anticipated future land use of the Property.

2.2.2 Groundwater Investigations and Findings

Groundwater sampling was performed to determine if various historical operations had impacted groundwater underlying the Property, and if potentially impacted groundwater was migrating off-Property. Groundwater samples were collected from the Property monitoring well network. A total of 21 groundwater samples were collected from the monitoring wells during the B&N Phase II.

- Twenty-one groundwater samples from 19 monitoring wells were collected during July 2004. Six of the sampled monitoring wells (MW-11S, MW-11D, MW-12S, MW-12D, MW-13S, and MW-13D) were installed by DLZ during a site investigation prior to the current Phase II. It should be noted that these six monitoring wells were redeveloped by B&N prior to sampling. The remaining 14 monitoring wells (MW-16, MW-17, MW-18, MW-19, MW-22, MW-30, MW-31, MW-32, MW-33, MW-34, MW-35, MW-36, MW-37, and MW-38) that were sampled were installed by B&N during current investigation activities. The following summarizes the groundwater sampling results:**Inorganics** - Arsenic and barium were the only inorganic parameters detected in groundwater from the monitoring wells in samples collected during the B&N groundwater sampling event. Barium was detected in every sample analyzed, at concentrations ranging from 15

micrograms per liter ($\mu\text{g/l}$) to 247 $\mu\text{g/l}$. The detected concentrations are all below the barium UPUS of 2,000 $\mu\text{g/l}$. Arsenic was detected above laboratory detection limits in MW-11S, MW-12S, MW-17, MW-18, MW-30, MW-31, MW-32, and MW-33. The detected arsenic concentrations ranged from 7.8 $\mu\text{g/l}$ to 36.5 $\mu\text{g/l}$, which are below the arsenic UPUS of 50 $\mu\text{g/l}$.

It should be noted that arsenic and barium commonly occur naturally in Ohio groundwater. Therefore, the detected concentrations of arsenic and barium in groundwater underlying the Property are believed to be natural groundwater quality and not a result to historical operations. Various metal concentrations exceeded the laboratory detection limits in groundwater sampled by DLZ. Lead concentrations in groundwater sampled by DLZ exceeded UPUS in MW-11S, MW-12S, MW-13S, and MW-13D. This data however is suspect based on DLZ's sampling procedure. DLZ did not record turbidity readings in the field prior to sampling and field filtering during metal sampling was not performed according to sampling forms. It is believed that elevated concentrations of metals in DLZ samples are related to high turbidity which allowed particles to adhere to fines within the groundwater and therefore do not accurately represent groundwater quality.

- **VOCs** - Each of the groundwater samples were analyzed for VOCs. Only two monitoring wells, MW-12S and MW-33, contained VOCs at levels exceeding laboratory detection limits during the B&N Phase II. Both of these wells are located in IA-4, which is associated with former USTs in the north parking lot of the Lazarus Distribution Center. MW-12S contained detectable concentrations of benzene, ethylbenzene, toluene, and xylene, while MW-33 contained detectable concentrations of benzene and ethylbenzene. Benzene was detected at concentrations of 360 $\mu\text{g/l}$ in MW-12S and 69 $\mu\text{g/l}$ in MW-33, which are both above the benzene UPUS of 5 $\mu\text{g/l}$. Ethylbenzene was detected at concentrations of 3,200 $\mu\text{g/l}$ in MW-12S and 230 $\mu\text{g/l}$ in MW-33; the MW-12S detected concentration exceeds the ethylbenzene UPUS of 700 $\mu\text{g/l}$. MW-12S sample contained detected concentrations of toluene (50 $\mu\text{g/l}$) and xylene (3,500 $\mu\text{g/l}$) were below the UPUS values of 100 $\mu\text{g/l}$ and 10,000 $\mu\text{g/l}$, respectively. The benzene concentration of 7.3 $\mu\text{g/l}$ in MW-12D exceeded UPUS (5.0 $\mu\text{g/l}$) in the groundwater sample collected during the DLZ Phase II. This data, however, is suspect based on DLZ's sampling procedure. DLZ used dedicated bailers to collect groundwater samples. Low flow purge techniques are recommended when sampling groundwater, especially for

VOCs, to reduce turbidity and to ensure groundwater collected is flowing horizontally into the sampling screen and not represent stagnant groundwater that has gathered in the well to insure that an accurate representation of groundwater is sampled. Subsequent groundwater samples collected during B&N's Phase II from MW-12D and analyzed for benzene displayed concentrations below laboratory detection limits.

- **SVOCs** - SVOCs were detected in three monitoring wells: MW-12S and MW-33. These two monitoring wells are located in IA-4. MW-12S and MW-33 contained naphthalene concentrations of 710 $\mu\text{g/l}$ and 150 $\mu\text{g/l}$, both of which exceed the UPUS of 140 $\mu\text{g/l}$. No other monitoring wells contained SVOCs at concentrations exceeding laboratory detection limits during the B&N Phase II. Naphthalene and isopropylbenzene were detected in MW-12S during the DLZ Phase II. Only naphthalene exceeded UPUS and is consistent with the concentration reported during the B&N Phase II.

Based on the groundwater sampling results, UPUS was exceeded only in IA-4 in the area of the former UST. Based on the network of groundwater monitoring wells in IA-4, UPUS is exceeded in an area of limited extent, in an approximately 50-foot radius of the former UST cavity. Groundwater sampling results downgradient do not indicate any UPUS exceedances. No COCs are detected in monitoring wells MW-34 and MW-35, approximately 40 feet downgradient of the impacted wells. No exceedances were reported in downgradient well MW-16, approximately 400 feet from impacted monitoring well MW-33. The downgradient property boundary is approximately 440 feet from the UPUS exceedance. Given the amount of time that the USTs were in place, release occurred, proper tank closure, source removal, and subsequent NFA from the Bureau of Underground Storage Tank Regulations (BUSTR), the impacted groundwater will not migrate off site.

2.2.3 Protection of Groundwater Meeting UPUS

When groundwater in a saturated zone underlying the Property complies with UPUS, any remedial activities undertaken at the Property must ensure that the migration of hazardous substances or petroleum from sources or source areas on the Property will not result in UPUS being exceeded anywhere within the saturated zone. These remedial activities provide the protection of groundwater meeting the UPUS.

To determine if the provisions for POGWMUPUS apply for groundwater zones underlying a property, it first must be determined if the groundwater zones beneath a property meet or exceed UPUS. This can be accomplished by one of the following methods:

1. One sampling event can be conducted at a groundwater monitoring well located within the suspected area of contamination if UPUS is exceeded by at least one order of magnitude or UPUS is exceeded and historical groundwater data on the property indicates that property sources have impacted the groundwater in excess of the UPUS; or
2. Two sampling events can be conducted at a groundwater monitoring well located within the suspected area of contamination within a timeframe of 48 hours to 90 days; or
3. A weight of evidence approach can be conducted without sampling to demonstrate that the groundwater zone does not contain concentrations of any COC exceeding UPUS. This is accomplished by using relevant property-specific information which may include the nature, type, concentration and mass of COCs; type, concentration, and mass of COCs present in the soils or bedrock; the physical and chemical characteristics of the soil or bedrock; separation distance between source and groundwater; modeling results; or other lines of evidence.

Two groundwater zones underlie the Property: a shallow, unconsolidated sand and gravel and a consolidated bedrock saturated zone. Both zones are evaluated for POGWMUPUS applicability. The following presents the POGWMUPUS applicability for the Property.

2.2.3.1 Sand and Gravel Aquifer

For the buried valley sand and gravel aquifer underlying the Property, the provisions for POGWMUPUS do not apply because this zone of saturation does not meet UPUS. Groundwater results from MW-12S (360 µg/l) and MW-33 (69 µg/l) indicate that the benzene UPUS of 5 µg/l was exceeded by at least one order of magnitude.

2.2.3.2 Silurian-Devonian Bedrock Aquifer

POGWMUPUS does apply to the Silurian-Devonian bedrock aquifer underlying the Property and the unconsolidated sand and gravel aquifer. It applies in this situation because it is assumed that the groundwater in the limestone aquifer is not impacted due to the historical activities at the Property. There are several qualitative points of evidence indicating that downward migration of contaminants has not and will not occur, and therefore the requirements of POGWMUPUS apply and will be maintained for the limestone aquifer. These points are as follows:

1. The COCs detected at levels exceeding the UPUS, benzene and ethylbenzene, have a lower specific gravity than water. Therefore, these parameters are likely to impact only the top portion aquifer, and it is unlikely that they will migrate vertically downward in the absence of pumping stresses. This is most likely the reason that MW-12S is impacted while nested monitoring well MW-12D, which is screened in a lower part of the unconsolidated aquifer, detected no COCs at levels exceeding laboratory detection limits. It should be noted that benzene concentrations in groundwater collected from MW-12D during the DLZ Phase II exceeded UPUS. However due to DLZ sampling procedures, groundwater VOC data is suspect and not accurately represented. Since the COCs present in the sand and gravel are not migrating vertically downward, it is assumed they will not impact the underlying Silurian-Devonian bedrock aquifer.
2. As discussed in Section 2.5, groundwater in the sand and gravel buried valley aquifer and upper portion of the Silurian-Devonian aquifer (above the base of the Tymochtee Dolomite) is expected to discharge to the Scioto River. For the sand and gravel aquifer, the Property-specific groundwater elevation contour map indicates groundwater indeed flows towards, and presumably discharges to, the Scioto River.
3. The boring log description from BN-1 describes a weathered shale/shale layer at least 7 feet in thickness between the unconsolidated sand and gravel aquifer and the underlying limestone bedrock. The weathered shale/shale layer is expected to act as a confining layer preventing the downward vertical migration of groundwater from the unconsolidated sand and gravel aquifer to the limestone bedrock aquifer.

No Property-specific information exists for the underlying limestone aquifer. However, the hydrogeologic characteristics of both the sand and gravel buried valley aquifer and limestone aquifer south of downtown Columbus have been researched extensively by the U.S. Geological Survey (USGS) to determine the relationships between the two aquifers, the Scioto River, the City of Columbus South well field, various quarry operations and lakes, and solid waste landfills (deRoche and Razem, 1981; Sedam et al, 1989; Childress et al, 1991; Cunningham et al, 1996; Schalk, 1996; Nalley and Haefner, 1999). In general, these publications indicate that groundwater from the upper portion of the limestone aquifer discharges to the Scioto River south of downtown Columbus, except in the presence of dewatering stresses. These conclusions are based on groundwater elevation measurements. Sedam et al (1989) specifically states, "In general, bedrock water levels near the Scioto River tended to be slightly higher (usually less than 1.0 foot) than levels in the glacial aquifer. In areas of considerable dewatering, the difference was not apparent."

It is reasonable to conclude that the upper portion of the limestone aquifer underlying the Property footprint locally discharges to the Scioto River buried valley, based on the above discussion and the fact that no long-term dewatering operations are located in the vicinity of the Whittier Peninsula. Because groundwater flows from the limestone aquifer to the buried valley sand and gravel aquifer and to the Scioto River, it is anticipated that contaminants have not migrated against this hydraulic gradient to the limestone aquifer. It should be noted that future placement of a high-capacity, long-term dewatering operation in the vicinity of the Whittier Peninsula could locally change the Scioto River from a gaining stream to a losing stream, as well as cause a hydraulic reversal of flow from the sand and gravel aquifer to the limestone aquifer.

2.2.4 Results and Conclusions

The following summarizes results and conclusions of the Phase II:

1. Complete exposure pathways for the Property are:
 - a. Dermal contact with and ingestion of soil,
 - b. Inhalation of vapors (indoors and outdoors) from soil,
 - c. Inhalation and ingestion of fugitive dusts from soil.

- d. COCs in soils leaching to groundwater,
 - e. Dermal contact with and ingestion of groundwater, and
 - f. Inhalation of vapors (indoors and outdoors) from groundwater.
2. The intended future land use of the Property and adjacent properties is for a mixed use urban park, nature preserve, and possibly commercial/office space.
 3. The receptors for the Property involve the following:
 - a. Child and adult recreational visitors,
 - b. Commercial workers on the Property, and
 - c. Construction/excavation workers on the Property.
 4. Saturated zones were evaluated beneath the Property:
 - a. Groundwater was first encountered in the sand and gravel aquifer during drilling activities at an approximate depth of 14-feet bgs. Groundwater in the sand and gravel aquifer is classified as Critical Resource with no urban setting designation (USD), or capable of yielding greater than 100 gallons per minute (gpm) over a 24-hour period. As this is the most conservative VAP groundwater classification, no yield testing was performed.
 5. The POC for soil is 2 feet for commercial and industrial land use and for the child and adult recreational exposure. The POC for the construction worker is considered to be the depth of an excavation (10 feet) at the Property.
 6. Demonstration of compliance with VAP applicable standards by complete exposure pathway are as follows:
 - a. Soil - Dermal Contact and Ingestion - For all three receptor populations, VAP risk-based standards are met across the Property based upon removal of shallow soils surrounding borings GP-19 and GP-21. Soils left in place which exceed the

recreational standard within the 0- to 2-foot POC in the area surrounding the 514 Furnace Street building were covered with at least 2 feet of VAP-certified clean fill material to mitigate direct contact by a recreational visitor. Work performed across the Property by construction/excavation workers will require the implementation of an RMP. The RMP will outline precautions necessary to reduce the risk of the construction workers exposure to lead-impacted soils.

- b. Soil - Inhalation of Vapors (indoors and outdoors) and Fugitive Dusts – For all three receptor populations, VAP risk-based standards are met across the Property upon implementation of an Environmental Covenant prohibiting structures with basements.
- c. Groundwater – Dermal Contact and Ingestion – For all receptor populations, VAP UPUSs are exceeded in IA-4. Therefore, an Institutional Control prohibiting potable and nonpotable use of groundwater at the Property is recommended.
- d. Groundwater – Inhalation of Vapors (Indoor and Outdoor) – For all receptor populations, Ohio VAP risk-standards are met across the Property upon implementation of an Environmental Covenant prohibiting structures with basements.
- e. Leach-Derived Groundwater – Soils exceed Ohio EPA Leach-Based Soil Values in the area of IA-4, where groundwater is already impacted.

It should be noted that as part of the HHRA, the IAs were evaluated and based upon similar historical industrial practices, similar COCs, and, in turn, similar soil and groundwater data, IAs were combined into three Risk Units (RUs). The RUs are summarized as follows:

- RU-1: IA-1 through IA-3 and IA-6 through IA-9
- RU-2: IA-4
- RU-3: IA-5.

The Property will meet all VAP applicable standards, and therefore is protective of human health and the environment if the following conditions are met:

- An Environmental Covenant is required to comply with VAP direct-contact soil standards, which limits land use of the Property to recreational. Recreational land use is recognized by the VAP as Modified Residential. VAP-defined residential land use will be prohibited.
- An Environmental Covenant prohibiting potable and nonpotable use of groundwater at the Property. No person shall extract the groundwater located at or underlying the Property or any portion thereof for any purpose, potable or otherwise, except for groundwater investigation, monitoring, or remediation of the groundwater, or in conjunction with construction or excavation activities or maintenance of subsurface utilities.
- An Environmental Covenant prohibiting structures with basements across the Property. Slab-on-grade structures will not be prohibited.
- Based upon HHRA results, an RMP will be required for the entire Property if construction or excavation work is to be performed below the 0- to 2-foot POC. The RMP will detail precautions required to mitigate the risk of the construction worker working in potentially impacted soils (generally located surrounding the former 514 Furnace Street building). The RMP will discuss such issues as wearing long-sleeved shirts, frequent hand washings, and prohibiting eating, drinking, and smoking within the work zone. Additionally, if construction work is to be performed within the saturated zone, the RMP will outline precautions required to reduce the risk to the construction worker of exposure to potentially impacted groundwater (generally located within IA-4, north of the former Lazarus warehouse, surrounding the former LUST). In addition to the precautions outlined for working with the soils, the RMP will outline such precautions as wearing waterproof boots and potentially water-resistant clothing.

2.3 Remedial Activities

The following is a description of the remedial tasks completed to meet applicable standards:

- decommissioning groundwater monitoring wells,
- collecting confirmation samples during removal and disposal of contaminated soil,
- backfilling to meet the POC, and
- surveying the areas to confirm the POC was met.

These remedial activities were based on the nature of the COCs as compared to applicable standards and due to the development of the Property.

Soil samples were collected during remedial activities along the northern property boundary and analyzed for lead near IA-3. Analytical results exceeded the direct contact standards in several samples collected from this area. Confirmation soil samples were collected from June 2006 to May 2007.

Direct push technology was used to delineate the extent of lead impacts in soil around the northern and eastern Property boundaries. The extent of impacts was determined once soil results were reported below applicable standards. The POC was met by placing a minimum of 2 feet of clean fill over the impacted area. The clean fill cover extended to the nearest boring that had concentrations below applicable standards and sloped to final design grade.

To ensure that the 2-foot POC was achieved along the sloping cover of the eastern Property boundary of IA-3, impacted soil was excavated from original ground surface and backfilled with clean fill. The excavated area extended east 6 feet from the eastern Property boundary and was at least 2 feet deep.

Although concentrations of lead in soils collected from IA-3 exceeded applicable standards, analytical groundwater results collected from monitoring wells during two sampling events on the adjacent property to the south were below the UPUS. Due to the length of time that the soil and fill materials have been there and the lack of elevated lead concentrations in groundwater below the source area, it is believed that impacted soil has not effected groundwater below IA-3.

3.0 CONCLUSIONS

The HHRA demonstrates an acceptable human health risk for commercial, recreational (child exposure), and construction worker exposure within the 2-foot POC. However, the following restrictions will be implemented:

- An institutional control in the form of an environmental covenant limiting land use of the Property to Modified Residential (recreational) land use (prohibiting unrestricted residential land use), and commercial and industrial land use, but not restricting the visitation of children to the Property.
- An Environmental Covenant prohibiting potable and nonpotable use of groundwater at the Property. No person shall extract the groundwater located at or underlying the Property or any portion thereof for any purpose, potable or otherwise, except for groundwater investigation, monitoring, or remediation of the groundwater, or in conjunction with construction or excavation activities or maintenance of subsurface utilities.
- An Environmental Covenant prohibiting subsurface structures for routine human occupancy (basements) for the entire Property.

The institutional controls will be implemented by the City and Metro Parks through an environmental covenant that will be filed with the Franklin County recorder's office within 60 days of the issuance of a Covenant Not to Sue from the Ohio EPA. Additionally, an RMP will be implemented for construction or utility workers at the Property if work is to be performed below the 2-foot POC.

Upon filing of the Environmental Covenant, the Property meets all acceptable risk goals and is protective of public health and safety and the environment.

Director's Final Findings & Orders – Covenant Not to Sue
Columbus and Franklin County Metropolitan Park District
Whittier Peninsula – Former Lazarus Distribution Center

Exhibit 4
Environmental Covenant

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the City of Columbus (the "City") and the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting certain property to the activity and use limitations set forth herein.

WHEREAS, the City, having offices at 90 West Broad Street, Columbus, Ohio 43215, is the owner of 12.611 acres of property generally located along West Whittier Street, Columbus, Franklin County, Ohio (more particularly described on Exhibit A hereto, and referred to herein as the "Property");

WHEREAS, Columbus and Franklin County Metropolitan Park District ("Metro Parks"), as lessee, and the City, as lessor, entered into a lease agreement with respect to property owned by the City that includes and encompasses the Property;

WHEREAS, the Property has undergone remediation pursuant to Ohio's Voluntary Action Program (VAP), ORC Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300;

WHEREAS, Thomas J. Mignery, Certified Professional 125, issued a no further action (NFA) letter for the Property on February 9, 2009 (NFA Letter) and submitted the NFA Letter to Ohio EPA, with a request for a covenant not to sue (CNS) (NFA Letter No. 09NFA330);

WHEREAS, this Environmental Covenant supports issuance of the NFA letter and CNS and contains activity and use limitations to protect against exposure to any hazardous substances or petroleum that may remain in soil or ground water on or underlying the Property;

WHEREAS, the CNS, Executive Summary, and complete NFA Letter for the Property may be reviewed by contacting the Records Management Officer, Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program, P.O. Box 1049, Columbus, Ohio 43216-1049, or by telephone at (614) 644-2924, or the Central District Office at 50 West Town Street, Columbus, Ohio 43215, or by telephone at (614) 728-3778, or the City at 90 West Broad Street, Columbus, Ohio 43215, or by telephone at (614) 645-8430.

Now therefore, the City 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 an approximately 12.611-acre of real property owned by the City, located along West Whittier Street, Columbus, Franklin County, Ohio, and more particularly described in Exhibit A hereto.
3. Owner. The City, having offices at 90 West Broad Street, Columbus, Ohio 43215, is the owner of the Property.
4. Holder. Owner, identified above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the voluntary action described in the NFA Letter, Owner hereby imposes and agrees to comply with the following activity and use limitations:
 - A. *Limitation for Recreational, Commercial or Industrial Land Uses.* The Property is hereby limited to "recreational" land use as defined herein, or "commercial" or "industrial" land use, as defined in OAC 3745-300-08(B)(2)(c)(ii) and (B)(2)(c)(iii) (effective October 21, 2002), or any combination of those uses.
 - i. Recreational land use means surficial use of the Property, which include but are not limited to: picnic areas and shelters, playfields, open lawns, other green spaces, wildlife and city viewing opportunities, boardwalks, overlook decks, bike and multiple purpose trails including a pedestrian promenade, nature trails, paths and walkways, educational programming facilities, public art displays, pet play areas, restrooms, and any activities and uses incidental to such land use.

Recreational land use excludes any land use as residences (including single or multiple family housing, condominiums and apartments); structures with basements, day care facilities; schools, colleges, and other educational institutions; nursing homes, elder care and other long-term health care facilities; and correctional facilities.
 - ii. OAC 3745-300-08(B)(2)(c)(ii) defines commercial land use as "land use with potential exposure of adult workers during a business day and potential exposure of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include but are not limited to warehouses; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail

warehouses; repair and service establishments for appliances and other goods; professional offices; banks and credit unions; office buildings; retail businesses selling foods or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities.”

- iii. OAC 3745-300-08(B)(2)(c)(iii) defines industrial land use as “land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.”

- B. *Ground Water Limitations:* No person shall extract the ground water located at or underlying the Property or any portion thereof for any purpose, potable or otherwise, except for ground water investigation, monitoring, or remediation of the ground water, or in conjunction with construction or excavation activities or maintenance of subsurface utilities.
- C. *Subsurface Structure Limitation:* No basement or other permanent subsurface or underground structure designed for routine human occupancy shall be constructed on the Property.

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. Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply

with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC § 3746.12 is void on and after the date of the commencement of the noncomplying use.

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. 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 _____, 2010, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON _____, 2010, IN [DOCUMENT _____, OR BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT LIMITS THE PROPERTY USE TO RECREATIONAL, COMMERCIAL OR INDUSTRIAL LAND USE, OR ANY COMBINATION OF THOSE USES, PROHIBITS USE OF GROUND WATER, AND PROHIBITS SUBSURFACE STRUCTURES, AS FURTHER DESCRIBED IN THE ENVIRONMENTAL COVENANT.

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

- 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;
- That the Owner holds fee simple title to the Property and to the best of the City's knowledge, the Property is subject only to the encumbrances listed on the attached Exhibit B;
- 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 of by which Owner may be bound or affected.

11. 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 Franklin County Recorder's Office, and shall provide a file-and date-stamped copy of the recorded instrument to Ohio EPA.

12. 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.

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

14. 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 Franklin County Recorder's Office.

15. 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 Franklin County Recorder.

16. Distribution of Environmental Covenant. Within 30 days of recording the Environmental Covenant, the Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA and Metro Parks in accordance with the Notice paragraph herein.

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

Ohio EPA:

DERR Records Management Officer
Division of Emergency and Remedial Response
Ohio EPA
PO Box 1049
Columbus, Ohio 43216-1049

and

Site Coordinator for 09NFA330
Division of Emergency and Remedial Response
Ohio EPA, Central District Office
50 West Town Street Suite 700
Columbus, Ohio 43215

City of Columbus:

City of Columbus
Real Estate Management Office
90 W Broad Street
Columbus, Ohio 43215

Metro Parks:

Columbus and Franklin County Metropolitan Park District
1069 West Main Street
Westerville, Ohio 43081-1181

The undersigned Owner represents and certifies that he/she is authorized to execute this Environmental Covenant:

IT IS SO AGREED:

THE CITY OF COLUMBUS, OHIO



Alan D. McKnight

Director, Columbus Recreation & Parks Department

As authorized by Columbus City Council Ordinance No. 0586-2010 passed on April 19, 2010.

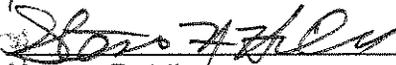
5/17/2010 Date

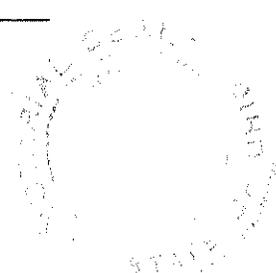
State of Ohio)
County of Franklin) ss:

Before me, a notary public, in and for said county and state, personally appeared Alan McKnight, a duly authorized representative of Recreation & Parks, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of City of Columbus.

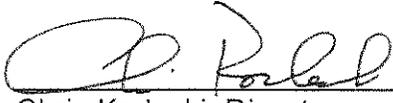
IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 17 day of May, 2010.

STEPHEN H. HILAND
Notary Public, State of Ohio
My Commission Expires 05-28-2012


Notary Public



OHIO ENVIRONMENTAL PROTECTION AGENCY


Chris Korleski, Director

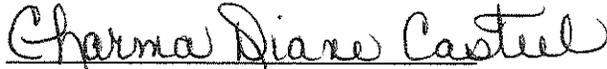
6/11/10
Date

State of Ohio)
County of Franklin) ss:

Before me, a notary public, in and for said county and state, personally appeared CHRIS KORLESKI, 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 11th day of JUNE, 2010.




Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2014

This instrument prepared by:
Sarah L. Harrell, Esq.
Assistant City Attorney
City of Columbus
90 W. Broad Street
Columbus, Ohio 43215

EXHIBIT A

August 10, 2004

DESCRIPTION OF 12.611 ACRES
SOUTH OF INTERSTATE ROUTE 70
EAST OF WHITTIER STREET
COLUMBUS, OHIO

Situated in the State of Ohio, County of Franklin, City of Columbus, being 2.204 acres of that 6.568 acre tract of land as described in a deed to The City of Columbus, Ohio, of record in Instrument No. 199909030226779, all of that 9.4686 acre tract of land as described in a deed to City of Columbus, Ohio, of record in Instrument No. 199902260048206, 0.716 acre of that 2.288 acre tract as described in a deed to The City of Columbus, Ohio, of record in Instrument No. 200012280261331 and 0.222 acre of Furnace Street right-of-way, all references herein being to the records located in the Recorder's Office, Franklin County, Ohio and being more particularly described as follows:

Beginning FOR REFERENCE at a point at the southwesterly corner of said 6.568 acre tract in the northerly perimeter of said 9.4686 acre tract and in the easterly right-of-way line of Furnace Street (60.00 feet in width); thence North 04°00'00" East, along said easterly right-of-way line, a distance of 161.85 feet to the TRUE PLACE OF BEGINNING;

Thence North 86°09'15" West, through the right-of-way of Furnace Street and said 2.288 acre tract, a distance of 268.75 feet to a point in the westerly perimeter of said 2.288 acre tract;

Thence South 13°19'00" West, along said westerly perimeter, a distance of 143.01 feet to a point in the northerly perimeter of said 9.4686 acre tract;

Thence North 86°00'00" West, along said northerly perimeter, a distance of 9.54 feet to an iron pin found at the northwesterly corner of said 9.4686;

Thence along the westerly perimeter of said 9.4686 acre tract the following courses;

1. South 04°00'00" West, a distance of 10.00 feet to an railroad spike found;
2. South 86°00'00" East, a distance of 12.83 feet to an railroad spike found;
3. South 04°00'00" West, a distance of 302.65 feet to an iron pin found;
4. South 06°47'43" East, a distance of 112.98 feet to a point;
5. South 30°57'08" East, a distance of 115.51 feet to an iron pin found at the southwesterly corner of said 9.4686 acre tract;

Thence along the southerly perimeter of said 9.4686 acre tract the following courses:

1. South 86°00'00" East, a distance of 407.24 feet to a point;
2. North 04°25'34" East, a distance of 74.68 feet to an railroad spike found;
3. North 70°06'29" East, a distance of 49.38 feet to a point;
4. North 86°00'00" West, a distance of 53.00 feet to a point;
5. North 04°25'34" East, a distance of 20.00 feet to a point;
6. South 86°00'00" East, a distance of 441.75 feet to an railroad spike found at the southeasterly corner of said 9.4686 acre tract;

Thence North 04°25'34" East, along the easterly line of said 9.4686 acre tract, a distance of 383.64 feet to an iron pin found at the northeasterly corner of said 9.4686 acre tract in the southerly line of said 6.568 acre tract;

Thence South 86°00'00" East, along said southerly line, a distance of 32.49 feet to a point at the southeasterly corner of said 6.568 acre tract;

Thence North 42°20'00" West, along the easterly perimeter of said 6.568 acre tract, a distance of 228.10 feet to a point;

Thence North 35°13'00" West, continuing along said easterly perimeter, a distance of 7.38 feet to a point;

Thence North 86°09'15" West, through said 6.568 acre tract, a distance of 506.25 feet to the TRUE PLACE OF BEGINNING and containing 12.611 acres of land.

Bearings shown hereon are based on South 86°00'00" East, for a southerly line of the 6.568 acre tract, of record in Instrument No. 199902260048206.

This description was prepared by M•E Companies, Inc., and is based on a survey performed in the field.



M•E Companies, Inc.

By  3/10/04
David L. Chiesa
Registered Surveyor No. 7740

EXHIBIT B

PROPERTY ENCUMBRANCES

1. Public Rights of Way
2. Easement to Columbus Southern of record in Official Record 26678, page G01.
3. Easement of Record, D.B. 1498, PG. 355, Ingress Egress
4. Easement of Record, D.B. 3563, PG. 458, Electrical
5. Easement of Record, D.B. 13166, PG. B06, Ingress Egress

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Director's Final Findings & Orders – Covenant Not to Sue
Columbus and Franklin County Metropolitan Park District
Whittier Peninsula – Former Lazarus Distribution Center

Exhibit 5
Risk Mitigation Plan

Risk Mitigation Plan

*Former Lazarus Distribution Center
Property and Southern Portions of
Koch Asphalt and Cunard-Lang
Properties
Columbus, Ohio*

Prepared for:

Columbus and Franklin County
Metropolitan Park District

February 2009

Revised March 2010

RISK MITIGATION PLAN
FORMER LAZARUS DISTRIBUTION CENTER PROPERTY
AND
SOUTHERN PORTIONS OF KOCH ASPHALT AND CUNARD-LANG PROPERTIES
COLUMBUS, OHIO

PREPARED FOR
COLUMBUS & FRANKLIN COUNTY
METROPOLITAN PARK DISTRICT
WESTERVILLE, OHIO

FEBRUARY 2009
REVISED MARCH 2010

BURGESS & NIPLÉ, INC.
Engineers and Architects
5085 Reed Road
Columbus, Ohio 43220

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LIST OF FIGURES

Figure	Description
1	Property Location Map
2	Property Map

1.0 INTRODUCTION

1.1 Purpose

The Columbus and Franklin County Metropolitan Park District (Metro Parks) contracted with Burgess & Niple, Inc. (B&N) to prepare a Human Health Risk Assessment (HHRA) in conformance with the Ohio Environmental Protection Agency (EPA) Voluntary Action Program (VAP) for their property located at the former Lazarus Distribution Center and the southern portions of the Koch-Asphalt and Cunard-Lang properties (Property), located on the Whittier Peninsula. As part of the HHRA, this Risk Mitigation Plan (RMP) has been submitted. **Figure 1** displays the Property location. **Figure 2** displays the Property.

Risk mitigation measures are defined by Ohio Administrative Code (OAC) 3745-300-15(G), as “health and safety precautions and other such remedial activities that mitigate or eliminate human exposure to the chemicals of concern (COCs) at a property.” Risk mitigation measures provide protection and reduce the risk to persons working in construction or excavation in environmental media from exposure of COCs above target risk or hazard goals, in areas where the point of compliance (POC) may be breached. The RMP details the measures needed to meet this objective as described below.

1.2 Site History

The Whittier Peninsula, the area containing the Property and surrounding areas, has historically been used for a number of industrial facilities and processing plants. The operations of these historic practices include a railroad car repair and manufacturing complex, asphalt processing, concrete manufacturing, storage and distribution facilities, automotive machining, and electrostatic painting. Property use and historic documentation confirmed building construction and property development on the Property as far back as the late 1800s.

No industrial operations are currently present on the Property. At the time of the Phase II, the Property consisted of a warehouse (Lazarus Distribution Center) with adjacent boiler house, the 514 Furnace Street building, and the southern portions of the Cunard-Lang and Koch Asphalt properties, which were unoccupied and all structures associated with former operations had been removed. Since completion of the Phase II, the Lazarus Distribution Center warehouse has been razed along with the associated boiler house and 514 Furnace Street building. Recreational development of the Property has begun with the installation of a wetlands/water feature in the northwest corner of the Property and a playground and a rock climbing wall on the former Lazarus Warehouse pad.

The area to the south of the Lazarus warehouse is presently used by the City of Columbus for a police impound lot. The area to the southeast of the Property is Columbus Scrap. Areas of trash and debris were observed throughout the Columbus Scrap property during the site investigation.

The intended future use of the Property is for an urban park and/or nature preserve, essentially recreational land use. There are no recreational land-use standards under the VAP; therefore, they were developed as part of the Property-specific risk assessment. Under the VAP, recreational land use is defined as Modified Residential land use. However, recreational land-use terminology will be used throughout most of this report.

Results of the Phase I and Phase II Property Assessments indicate that the COCs on the Property are metals and VOCs resulting from historical industrial practices at the Property. The environmental media involved in the Phase II Property Assessment are soil and groundwater.

An HHRA was conducted based upon the results of the Phase II. Results of the risk assessment indicate that the Property meets the VAP applicable standards within the 2-foot POC upon soil removal surrounding the former 514 Furnace Street building (IA-3), and upon implementation of several institutional controls, which consist of the following:

- An Environmental Covenant defining land use as Modified Residential, which covers a recreational land use, is required to comply with VAP risk-based standards. This will limit potential exposure of a receptor population to impacted media at the Property. Residential development of the Property will be prohibited.
- An Environmental Covenant prohibiting potable and nonpotable use of groundwater at the Property is required, with the exception of groundwater investigation, monitoring, or remediation of the groundwater, or in conjunction with construction or excavation activities or maintenance of subsurface utilities.
- An Environmental Covenant prohibiting structures with basements on the Property is required. This will not prohibit slab-on-grade structures.

During remedial action surrounding the 514 Furnace building, lead was detected in soils within the 0-2 ft POC above recreational standards. It was determined that these soils extended to a much greater extent

then anticipated, including onto the adjacent property, the Northern Tier. Therefore, IA-3 was extended based on these soil sampling results. A clean backfill cover of at least 2 feet was placed across the impacted area. However, the construction/excavation workers still need to be protected if soil is excavated beneath the 2-foot POC in the area of the former 514 Furnace Street property (shown on **Figure 2**). Therefore, the RMP needs to be in place for excavation work below the 2 ft POC across the entire Property. This RMP provides instructions for protecting workers against potential exposure beneath the POC.

It should be noted that orange snow fencing was placed at the original ground surface prior to placing clean cover backfill in the area of 514 Furnace Street over the area in which samples exceeded TCLP to act as a visual barrier to warn the excavation worker when the 2 ft POC is about to be breached. If the snow fencing is to be breached, the RMP will be implemented.

In addition, groundwater surrounding IA-4 contain concentrations of benzene, ethylbenzene, and naphthalene above Unrestricted Potable Use Standards (UPUS). Groundwater was encountered at approximately 14 ft bgs. Utilizing the RMP anytime the 2 ft POC is breached will protect the construction/excavation worker on the Koch portion of the Property. The results of the HHRA identify that there is a limitation for a construction worker to be in contact with impacted soils and groundwater on the basis of 60 days per year. Moreover, the reasonably anticipated exposure is much more limited due to the proposed development intention of limiting soil excavations to only subsurface utility trenches, due to the proposed placement of clean fill on top of impacted soils.

1.3 Implementing the RMP

1.3.1 Requirements

As mentioned above, the RMP will be implemented any time work is to be performed at 2 feet or below on the entire Property. This will typically include construction and excavation work. All workers performing construction/excavation activities are required to have the following training:

- Occupational Safety & Health Administration (OSHA) 40-hour health and safety training for hazardous waste workers;
- 8-hour annual refresher training;
- Respirator fit testing; and
- Medical surveillance.

Prior to initiating any construction or excavation activities requiring this RMP, the contractor will conduct a health and safety training session to review pertinent project-related health and safety issues. This may include the following:

- Site safety plan;
- OSHA safety and health standards;
- Physical and chemical hazards which may be encountered on site;
- Typical symptoms for various exposure levels of known site contaminants;
- Personal protective clothing, its uses and limitations;
- Personal and equipment decontamination procedures;
- Emergency response and evacuation procedures;
- Air-monitoring-data interpretation and action levels;
- Location of first aid equipment;
- Location of the list of emergency phone numbers;
- Directions to the nearest medical facilities;
- Locations of sanitary facilities.

The site health and safety officer will hold daily safety meetings (discretionary) with all site personnel to review previous day's activities and relevant data.

1.3.2 Area Covered by RMP

To be conservative, the RMP will be in place for the entire Property as shown on **Figure 2**.

1.3.3 Notification to Contractors

The Owner, or the volunteer, of the Property is responsible for notifying the Contractor of this RMP. Moreover, the intent of the owner and/or the volunteer is to provide the RMP in all construction bid documents associated with the Property development. Note that this RMP does not replace any OSHA requirements that may apply at the site. This RMP imposes measures to protect construction and excavation workers from exposure to contamination that may exist in environmental media above VAP construction/excavation standards.

1.3.4 Contractor Communications

The Contractor is responsible for understanding and following this RMP. The Contractor may incorporate the information into the Contractor's HASP, i.e., to coordinate site activities. The Contractor is responsible for communicating the information to all Contractor workers and its Subcontractors on the Property. Contractors are to implement the RMP to protect workers from potential health effects from metal and volatile organic compound exposure.

2.0 SUMMARY OF POTENTIAL HEALTH RISKS

Potential hazards associated with the affected portion of the Property involve potential exposure to soil with lead concentrations in excess of the VAP construction/excavation worker standard and to groundwater with VOC concentrations which exceed UPUS. The presence of lead in exceedance of VAP standards and VOCs in excess of UPUS direct-contact issues.

Under normal ambient conditions, lead will not volatilize to become an airborne hazard. Worker contact may occur through dermal contact and inhalation of contaminated airborne dusts. Skin contact and contamination of clothing with soils should be avoided within excavation areas and around excavated soils. Efforts should be taken to limit worker exposures to the greatest extent possible. Use of personal protective equipment (PPE) outlined in this RMP will help to prevent skin contact and contamination of clothing. Ingestion of site contaminants is also a potential hazard. Following good personal hygiene habits will limit the unintentional ingestion of contaminant residue from hand-to-mouth actions (eating, smoking, drinking, etc.). As discussed in the next section, the Contractor's Site Safety Officer will determine the level of PPE required.

As such, skin contact and contamination of clothing with impacted should be avoided within excavation areas which reach the saturated zone. Efforts should be taken to limit worker exposures to the greatest extent possible. Use of personal protective equipment (PPE) outlined in this RMP will help to prevent skin contact and contamination of clothing. Ingestion of site contaminants is also a potential hazard. Following good personal hygiene habits will limit the unintentional ingestion of contaminant residue from hand-to-mouth actions (eating, smoking, drinking, etc.). As discussed in the next section, the Contractor's Site Safety Officer will determine the level of PPE required.

3.0 PRECAUTIONS AGAINST EXPOSURE

The following presents procedures for mitigating exposure to COCs during construction/excavation activities on the Property. Generally, the following procedures should be followed:

- Wear clothes that limit skin area available for contact with soil below 2 feet. This should include wearing gloves, hard hats, long sleeve shirts, and long pants.
- Within the saturated zone, wear 'slosh' boots (knee boots which are waterproof), gloves, and potentially clothing (such as Tyvek® coveralls) that will limit skin area available for contact with the impacted groundwater.
- Wash hands frequently and before eating and smoking.
- Wash hands and other exposed skin before leaving the work area.
- Cover cuts, scrapes, and other open skin areas.
- Remove work clothes after leaving the Property, and wash hair and body.

Specifically, Standard Level D PPE should be worn. The Standard Level D involves the following:

- Safety glasses, steel toe/shank safety boots, hardhat, and gloves. Tyvek® coveralls and rubber gloves are optional.

In addition, it is recommended that if excessive dust is being generated during excavation, some type of dust suppression, such as wetting the soils, may be warranted.

The RMP should be followed to determine if an upgrade to the PPE level of protection or monitoring is needed for the work at the Property.

4.0 HANDLING ENVIRONMENTAL MEDIA

Soil generated during construction or excavation activities from anywhere on the Property should be handled consistent with the VAP regulations. Groundwater is approximately 14 feet below grade and is not expected to be an issue for construction/excavation activities on this Property, with the exception of the area within IA-4. VOCs above UPUS have been detected in the groundwater within IA-4. If groundwater is to be removed from this area, the groundwater should be containerized and properly disposed. Any groundwater needing removal and disposal off the Property should be taken to a licensed disposal facility consistent with the VAP regulations and other Ohio EPA waste disposal regulations.

Soils excavated below the 2-foot POC will be removed and disposed of off-Property or as discussed below. Impacted soils will be excavated using a backhoe and deposited into a dump truck. The heavy equipment used during excavation will be decontaminated before leaving the Property. The remaining soils can be handled as follows:

- Soils excavated from the top 2 feet can be placed anywhere on the Property. That is the POC for the Property.
- Soil excavated beneath the 2-foot POC should not be mixed with soil within the 2-foot POC, and can be placed back only beneath the 2-foot POC, or properly disposed of off the Property. This soil cannot remain on the surface of the Property.
- Any areas needing to be backfilled must be filled with clean soil meeting calculated VAP recreational standards.

Additionally, soil excavated or removed from the Property must be handled in accordance with applicable law. For example, if soil is classified as contaminated solid or hazardous waste then it must be taken to the appropriate licensed facility

5.0 ANNUAL NOTIFICATION

The Owner, or the volunteer, must notify the Ohio EPA annually as to whether the RMP was implemented. If it was implemented, the notification must include the following:

- Events that required implementation,
- Types of exposures to hazardous substances or petroleum that occurred,
- Risk mitigation measures undertaken, including handling and disposal of soil, and
- Identification that the 60-day per year exposure for a construction worker was met.

This notification should be made annually to the Ohio EPA, as directed by the VAP.

6.0 TERMINATION OF RISK MITIGATION PLAN

The RMP will remain in place as long as the Covenant Not to Sue for the Property is in force for a recreational and commercial/industrial property. The RMP will no longer be needed if, in the future, the Property meets modified residential (recreational) property specific VAP standards or the VAP construction and excavation worker standards below the 2-foot interval demonstrated within No Further Action Letter.



P:\PR35175\CADD\LAZARUS\ADD2\SITE_LOC.FIG.1.DWG 4-4-06 9:04:41 am COXD

LAZARUS PROPERTY AND SOUTHERN
 PORTIONS OF CUNARD-LANG AND
 KOCH PROPERTIES
 COLUMBUS, OHIO
 FIGURE 1
PROPERTY LOCATION MAP
 BURGESS AND NIPLE, INC.
 ENGINEERS & ARCHITECTS
 SCALE: 1"=2000'
 DATE: FEB. 2009

SOURCE: SOUTHWEST COLUMBUS, OHIO
 7.5 MINUTE U.S.G.S. QUADRANGLE MAP



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
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

MEMORANDUM

TO: Shelley Wilson, Executive Administrator for Real Property, Tax Equalization Division, Dept. of Taxation
Amy Alduino, Office of Urban Development, Dept. of Development

FROM: Chris Korleski, Director, Ohio Environmental Protection Agency

DATE: 6/11/10

RE: Covenant Not to Sue Issued to the Columbus and Franklin County Metropolitan Park District for the Whittier Peninsula – Former Lazarus Distribution Center and Southern Portions of Koch Asphalt and Cunard – Lang Properties

As Director of the Ohio Environmental Protection Agency, I certify that the Columbus and Franklin County Metropolitan Park District has performed investigational and remedial activities at the property listed below and has been issued a covenant not to sue under the authority of Ohio Revised Code ("ORC") Chapter 3746. This information is being provided in satisfaction of ORC 5709.87(B).

Property Name: Whittier Peninsula – Former Lazarus Distribution Center and Southern Portions of Koch Asphalt and Cunard – Lang Properties

Property Address: 560 West Whittier Street, Columbus, OH 43215

Property Owner: City of Columbus

Property Owner Address: 1111 East Broad Street, Columbus, OH 43205

Parcel Number(s): 010-036350, 010-067208, 010-010234 (partial) and 010-249658 (partial)

County: Franklin

Taxing District: City of Columbus (010)

Date Covenant Not to Sue Issued: JUN 14 2010

Attached, for your information, is a copy of the legal description of the property.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Ohio EPA is an Equal Opportunity Employer



If additional information regarding the property or the voluntary action is required, I suggest you first contact Thomas J. Mignery, the certified professional for the property, at (614) 459-2050. In the alternative, you can contact Ray Moreno with the Ohio Environmental Protection Agency at (614) 728-3833.

c: Lawrence J. Peck, Columbus and Franklin County Metropolitan Park District
1069 West Main Street, Westerville, OH 43081

Alan D. McKnight, City of Columbus, Recreation and Parks Department
1111 East Broad Street, Columbus, OH 43205

Thomas J. Mignery, Burgess & Niple, Inc.
5085 Reed Road, Columbus, OH 43220

Clarence E. Mingo II, Franklin County Auditor
373 S. High Street, 21st Floor, Columbus, OH 43215

DERR CO/CDO Files (#09NFA330)

ec: Tiffani Kavalec, Manager, Ohio EPA, DERR/ACRE
Deborah Strayton, Ohio EPA, DERR/CDO
Sue Kroeger, Ohio EPA, Legal

August 10, 2004

DESCRIPTION OF 12.611 ACRES
SOUTH OF INTERSTATE ROUTE 70
EAST OF WHITTIER STREET
COLUMBUS, OHIO

Situated in the State of Ohio, County of Franklin, City of Columbus, being 2.204 acres of that 6.568 acre tract of land as described in a deed to The City of Columbus, Ohio, of record in Instrument No. 199909030226779, all of that 9.4686 acre tract of land as described in a deed to City of Columbus, Ohio, of record in Instrument No. 199902260048206, 0.716 acre of that 2.288 acre tract as described in a deed to The City of Columbus, Ohio, of record in Instrument No. 200012280261331 and 0.222 acre of Furnace Street right-of-way, all references herein being to the records located in the Recorder's Office, Franklin County, Ohio and being more particularly described as follows:

Beginning FOR REFERENCE at a point at the southwesterly corner of said 6.568 acre tract in the northerly perimeter of said 9.4686 acre tract and in the easterly right-of-way line of Furnace Street (60.00 feet in width); thence North 04°00'00" East, along said easterly right-of-way line, a distance of 161.85 feet to the TRUE PLACE OF BEGINNING;

Thence North 86°09'15" West, through the right-of-way of Furnace Street and said 2.288 acre tract, a distance of 268.75 feet to a point in the westerly perimeter of said 2.288 acre tract;

Thence South 13°19'00" West, along said westerly perimeter, a distance of 143.01 feet to a point in the northerly perimeter of said 9.4686 acre tract;

Thence North 86°00'00" West, along said northerly perimeter, a distance of 9.54 feet to an iron pin found at the northwesterly corner of said 9.4686;

Thence along the westerly perimeter of said 9.4686 acre tract the following courses;

1. South 04°00'00" West, a distance of 10.00 feet to an railroad spike found;
2. South 86°00'00" East, a distance of 12.83 feet to an railroad spike found;
3. South 04°00'00" West, a distance of 302.65 feet to an iron pin found;
4. South 06°47'43" East, a distance of 112.98 feet to a point;
5. South 30°57'08" East, a distance of 115.51 feet to an iron pin found at the southwesterly corner of said 9.4686 acre tract;

Thence along the southerly perimeter of said 9.4686 acre tract the following courses:

1. South 86°00'00" East, a distance of 407.24 feet to a point;
2. North 04°25'34" East, a distance of 74.68 feet to an railroad spike found;
3. North 70°06'29" East, a distance of 49.38 feet to a point;
4. North 86°00'00" West, a distance of 53.00 feet to a point;
5. North 04°25'34" East, a distance of 20.00 feet to a point;
6. South 86°00'00" East, a distance of 441.75 feet to an railroad spike found at the southeasterly corner of said 9.4686 acre tract;

Thence North 04°25'34" East, along the easterly line of said 9.4686 acre tract, a distance of 383.64 feet to an iron pin found at the northeasterly corner of said 9.4686 acre tract in the southerly line of said 6.568 acre tract;

Thence South 86°00'00" East, along said southerly line, a distance of 32.49 feet to a point at the southeasterly corner of said 6.568 acre tract;

Thence North 42°20'00" West, along the easterly perimeter of said 6.568 acre tract, a distance of 228.10 feet to a point;

Thence North 35°13'00" West, continuing along said easterly perimeter, a distance of 7.38 feet to a point;

Thence North 86°09'15" West, through said 6.568 acre tract, a distance of 506.25 feet to the TRUE PLACE OF BEGINNING and containing 12.611 acres of land.

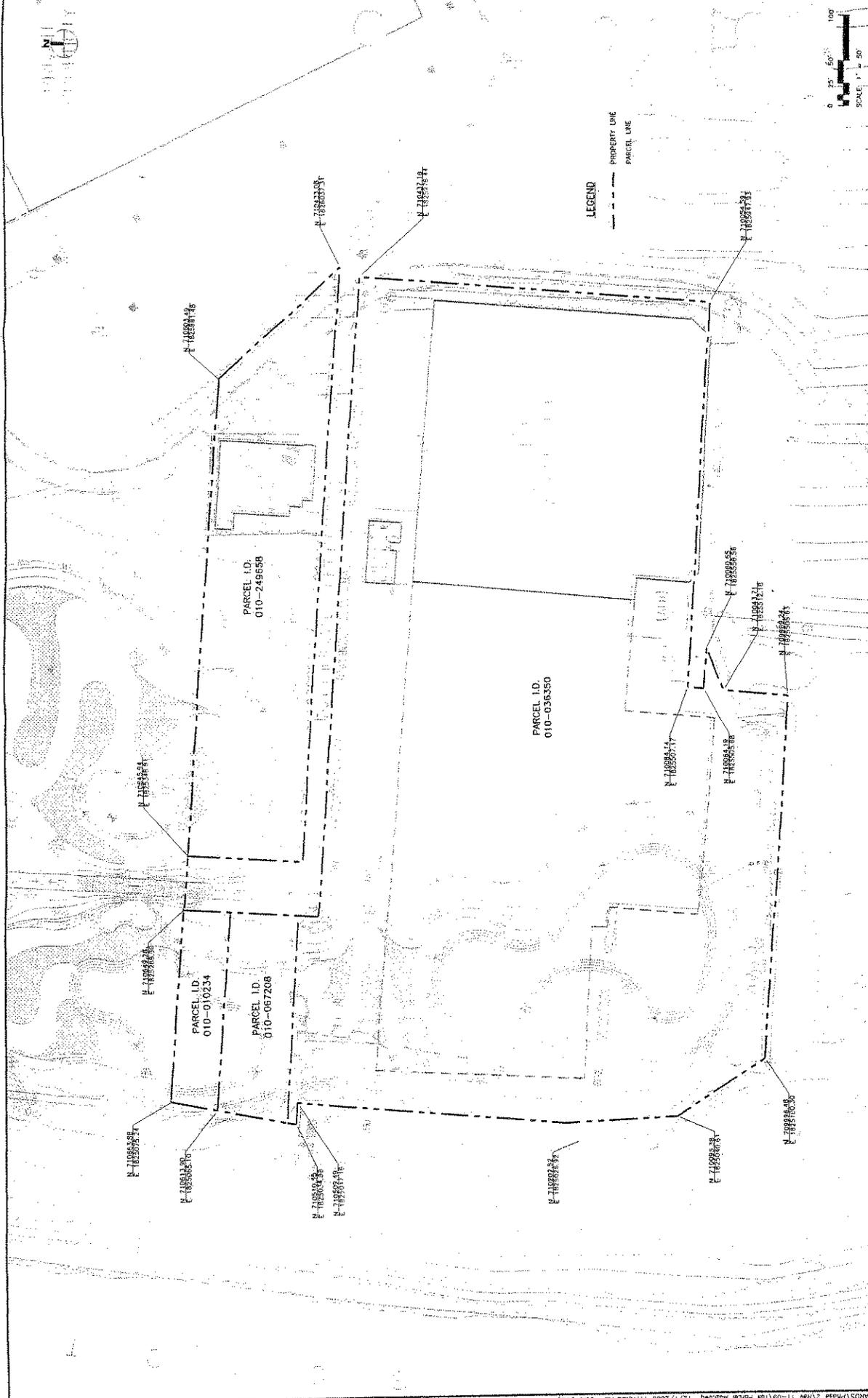
Bearings shown hereon are based on South 86°00'00" East, for a southerly line of the 9.4686 acre tract, of record in Instrument No. 199902260048206.

This description was prepared by M•E Companies, Inc., and is based on a survey performed in the field.



M•E Companies, Inc.

By *David L. Chiesa* ^{3/10/04}
David L. Chiesa
Registered Surveyor No. 7740



Burgess & Niple, Inc. COLUMBUS, OHIO		BURGESS & NIPLE		LAZARUS PROPERTY AND SOUTHERN PORTIONS OF CUNARD-LANG AND KOCH PROPERTIES		TAX PARCEL MAP	
REVISIONS NO. DATE BY	DATE BY	JOB NO. P353175	DRAWN BY: EDW	CHECKED BY: EDW	DATE: NOV. 2009	AS NOTED	SHEET NO. 1 OF 1