



City of Dublin

**Office of the City Manager**

5200 Emerald Parkway • Dublin, OH 43017-1090

Phone: 614-410-4400 • Fax: 614-410-4490

# Memo

**To:** Members of Dublin City Council

**From:** Marsha I. Grigsby, City Manager 

**Date:** June 6, 2013

**Initiated By:** Paul A. Hammersmith, P.E., Director of Engineering/City Engineer  
Kenneth B. Richardson, P.E., P.S., Engineering Manager – Design

**Re: Resolution No. 32-13 - Authorizing the City Manager to Enter into an Environmental Covenant with the Ohio Environmental Protection Agency (EPA) as part of the Hyland-Croy and Brand Road Intersection Project**

## Background

Improvements currently under construction at the intersection of Hyland-Croy Road, Brand Road, and Mitchell-Dewitt Road, including a modern roundabout, require the replacement of the existing bridge over the North Fork Indian Run stream and more than 200 feet of impact to the stream. Design efforts were undertaken by the City's design consultant to minimize stream impact during the design process, thereby avoiding the need for environmental permitting by the Ohio EPA. However, due to a 16-inch gas transmission main in close proximity to the existing bridge and proposed bridge, the stream impacts could not be reduced to less than 200 feet – the threshold for required environmental stream mitigation action. The 16-inch gas main is located in a private easement, and the cost of relocating the gas main would have exceeded several hundred thousand dollars.

## Summary

A very practical way for the City of Dublin to meet the Ohio EPA requirements for stream impact mitigation is establish a perpetual environmental covenant on 2.56 acres of City-owned property located adjacent to the stream. The amount of land was determined by Ohio EPA regulations on stream mitigation and how much this project impacted the land. The covenant limits the use and activity that may occur on the 2.056 acres. The covenant acreage is totally contained within Reserve "E" of "Oak Park" -- a subdivision located in the southwest quadrant of the Hyland-Croy Road/Brand Road/Mitchell-DeWitt Road intersection. Most of Reserve "E" is located within the 100-year flood plain of the North Fork Indian Run. As part of the covenant agreement, the City will be required to plant several species of trees and shrubs approved by the Ohio EPA in the covenant area. These plants will be monitored by the Ohio EPA for five years after the construction is complete on the intersection.

## Recommendation

Staff recommends approval of Resolution No. 32-13, authorizing the City Manager to enter into the Environmental Covenant with the Ohio EPA on 2.056 acres of City-owned property located in the southwest quadrant of the Hyland-Croy Road/Brand Road/Mitchell-Dewitt Road intersection.

# RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

**32-13**

Resolution No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENVIRONMENTAL COVENANT WITH THE OHIO ENVIRONMENTAL PROTECTION AGENCY AS PART OF THE HYLAND-CROY AND BRAND ROAD INTERSECTION PROJECT.**

**WHEREAS**, the City of Dublin intends to construct a project located at the intersection of Hyland-Croy, Brand, and Mitchell-DeWitt Roads ("the Project Site"), which will impact certain surface water features located on the Project Site and the approvals for which project required that the Owner obtain a 401 water quality certification (WQC), pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1344 from Ohio EPA and Section 404 Nationwide Permit (404 NWP) from the United States Army Corps of Engineers (USACE); and

**WHEREAS**, Dublin is the owner in fee of certain real property, which contains the Covenant Area and is situated in Union County, Ohio in the Scioto River watershed; and

**WHEREAS**, the City is entering into this environmental covenant pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 by Dublin, and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations; and

**WHEREAS**, in order to mitigate such impacts on the Project Site and as a condition of being issued the 401 WQC, Ohio EPA ID No. 103657 and Section 404 NWP, USACE No. LRH-2010-743-SCR and the Ohio EPA and USACE have required that Dublin obtain mitigation property and to protect this property in perpetuity with an environmental covenant; and

**WHEREAS**, to meet the conditions in the 401 WQC and 404 NWP, Owner will construct and implement the mitigation requirements contained in the Owner's 401 WQC and 404 NWP on a specific area ("the Covenant Area") of the Owner's property; and

**WHEREAS**, the Covenant Area is important in the protection of the existing or designated use of the waters of the state, pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313 and § 6111.041 of the Ohio Water Pollution Control Act. The specific conservation values (hereinafter "Conservation Values") of the Covenant Area have been documented in a document entitled "Application for Section 401 Water Quality Certification, dated August 3, 2010"; and

**WHEREAS**, Dublin proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant attached hereto as Exhibit "A."

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring, that:

Section 1. The City Manager is hereby authorized to execute the attached Environmental Covenant.

Section 2. This Resolution shall take effect and be in force upon passage in accordance with Section 4.04(a) of the Revised Charter.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 by the City of Dublin, a municipality ("Owner"), having an address of 5200 Emerald Parkway, Dublin, Ohio 43017 and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

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

**WHEREAS**, the Owner intends to construct a project located at the intersection of Hyland-Croy, Brand, and Mitchell-DeWitt Roads ("the Project Site"), which will impact certain surface water features located on the Project Site and the approvals for which project required that the Owner obtain a 401 water quality certification (WQC) pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1344 from Ohio EPA and Section 404 Nationwide Permit (404 NWP) from the United States Army Corps of Engineers (USACE);

**WHEREAS**, in order to mitigate such impacts on the Project Site and as a condition of being issued the 401 WQC, Ohio EPA ID No. 103657 and Section 404 NWP, USACE No. LRH-2010-743-SCR and the Ohio EPA and USACE have required that Owner obtain mitigation property and to protect this property in perpetuity with an environmental covenant;

**WHEREAS**, to meet the conditions in the 401 WQC and 404 NWP, Owner will construct and implement the mitigation requirements contained in the Owner's 401 WQC and 404 NWP on a specific area ("the Covenant Area") of the Owner's property;

**WHEREAS**, the Covenant Area is important in the protection of the existing or designated use of the waters of the state pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313 and § 6111.041 of the Ohio Water Pollution Control Act. The specific conservation values (hereinafter "Conservation Values") of the Covenant Area have been documented in a document entitled "Application for Section 401 Water Quality Certification, dated August 3, 2010".

**WHEREAS**, Owner proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.

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

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

2. Covenant Area. The Covenant Area is an approximately 2.056 acre tract of real property located at the Project Site, in Union County, Ohio, and more particularly described in Exhibit A and Exhibit B attached hereto and hereby incorporated by reference herein the "Covenant Area".

3. The City of Dublin is the fee simple owner of the Covenant Area.

4. The City of Dublin is the holder of this Environmental Covenant.

5. Activity and Use Limitations. As part of the conditions set forth in the 401 WQC and 404 NWP issued to Owner and given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

- a. Division: Any division or subdivision of the Covenant Area is prohibited;
- b. Commercial, Industrial, or Agricultural Activities: Commercial development or industrial activity on the Covenant Area is prohibited. Included in this prohibition are any agricultural activities, including, but not limited to row cropping, grazing, and drainage improvement projects;
- c. Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the 401 WQC and 404 NWP approved by the Ohio EPA and USACE;
- d. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the 401 WQC and 404 NWP approved by the Ohio EPA and USACE;
- e. Land Surface Alteration: The removal of soil, sand, gravel, rock, minerals or other materials from the Covenant Area, or doing any act

that would alter the topography of the Property shall be prohibited;

- f. Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and
- g. Recreational Uses: The use of ATVs or other recreational use off-road vehicles, as well as the construction of horse trails within the Covenant Area is prohibited. Other than unpaved walking trails and pedestrian crossings, recreational uses that disturb or compact the soils or destroy or inhibit the growth of vegetation are prohibited within the Covenant Area.
- h. Utilities: The Owner shall not construct, or permit others to construct utilities within the Covenant Area, except as approved by Ohio EPA.
- i. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the 401 WQC and the 404 NWP approved by the Ohio EPA and USACE.
- j. Other Activities: Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Covenant Area shall be prohibited.

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 Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

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

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors,

and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant.

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

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this 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 \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE UNION COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. Division: Any division or subdivision of the Covenant Area is prohibited;
- b. Commercial, Industrial, or Agricultural Activities: Commercial development or industrial activity on the Covenant Area is prohibited. Included in this prohibition are any agricultural activities, but not limited to row cropping, grazing, and drainage improvement projects;
- c. Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the 401 WQC and the 404 NWP approved by the Ohio EPA and USACE;
- d. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the 401 WQC and 404 NWP approved by the Ohio EPA and USACE;
- e. Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and

- f. Recreational Uses: The use of ATVs or other recreational use off-road vehicles, as well as the construction of horse trails within the Covenant Area is prohibited. Other than unpaved walking trails and pedestrian crossings, recreational uses that disturb or compact the soils or destroy or inhibit the growth of vegetation are prohibited within the Covenant Area.
- g. Utilities: The Owner shall not construct, or permit others to construct utilities within the Covenant Area, except as approved by Ohio EPA.
- h. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the 401 WQC and the 404 NWP approved by the Ohio EPA and USACE.

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

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

- a. that the Owner is the sole owner of the Covenant Area;
- b. that the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered
- c. 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; and
- d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder, and the Ohio EPA, pursuant to R.C. §§ 5301.89 or 5301.90 and other applicable law. "Amendment" means 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. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Owner's obligations pursuant to the 401 WQC and 404 NWP.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, the Owner, and the Holder. 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 Union County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA and USACE.

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

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

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

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

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, USACE, the Holder, any lessee, any other person who signed the Environmental Covenant, each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

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

Environmental Manager  
Environmental Mitigation and Special Permitting Section  
Division of Surface Water  
Ohio EPA



**OHIO ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_  
Scott J. Nally, Director

\_\_\_\_\_  
Date

State of Ohio        )  
                          )        ss:  
County of Franklin )

Before me, a notary public, in and for said county and state, personally appeared Scott J. Nally, 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 \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public

This instrument prepared by:

Philip K. Hartmann, Esq.  
Ice Miller, LLP  
250 West Street  
Columbus, Ohio 43215

**EXHIBIT A (1 of 3)**

**Legal Description of the Covenant Area**

**ENVIRONMENTAL COVENANT  
2.056 ACRES**

Situated in the State of Ohio, County of Union, City of Dublin, Jerome Township, lying in Virginia Military Survey Number 6595, being on, over, and across Reserve "E" of "Oak Park", a subdivision of record in Plat Book 5, Page 260 (all references are to the records of the Recorder's Office, Union County, Ohio) and being more particularly described as follows:

Beginning, for reference, at the northeasterly corner of Lot 33 of said "Oak Park";

thence South 05° 18' 59" East, with the easterly line of said Lot 33, a distance of 18.36 feet to a point in the southeasterly perimeter of said Reserve "E";

thence South 68° 07' 26" East, with said southeasterly perimeter, a distance of 39.81 feet to the TRUE POINT OF BEGINNING;

thence across said Reserve "E", the following courses and distances:

North 24° 12' 08" West, a distance of 98.45 feet to a point;

North 64° 21' 16" West, a distance of 341.34 feet to a point;

North 23° 27' 05" East, a distance of 162.68 feet to a point;

South 65° 10' 01" East, a distance of 410.03 feet to a point;

South 27° 19' 04" East, a distance of 34.70 feet to a point of curvature;

with the arc to the right, having a central angle of 22° 01' 50", a radius of 200.00 feet, an arc length of 76.90 feet, a chord bearing of South 16° 18' 09" East and a chord distance of 76.43 feet to a point of tangency;

South 05° 17' 14" East, a distance of 138.08 feet to a point in said southeasterly perimeter;

thence with said southeasterly perimeter, the following courses and distances:

North 85° 33' 54" West, a distance of 88.70 feet to a point;

North 68° 07' 26" West, a distance of 54.36 feet to the TRUE POINT OF BEGINNING and containing 2.056 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Daniel A. Neer   
Professional Surveyor No. 8533

3/18/13  
Date

DAN/February 20, 2013  
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Evans, Mechwart, Hambleton & Tilton, Inc.  
 Engineers • Surveyors • Planners • Scientists  
 5500 New Albany Road, Columbus, OH 43054  
 Phone: 614.775.4500 Toll Free: 888.775.3648  
 emht.com

# ENVIRONMENTAL COVENANT

VIRGINIA MILITARY SURVEY NUMBER 6595  
 CITY OF DUBLIN, COUNTY OF UNION, STATE OF OHIO

Date: 02/21/2013

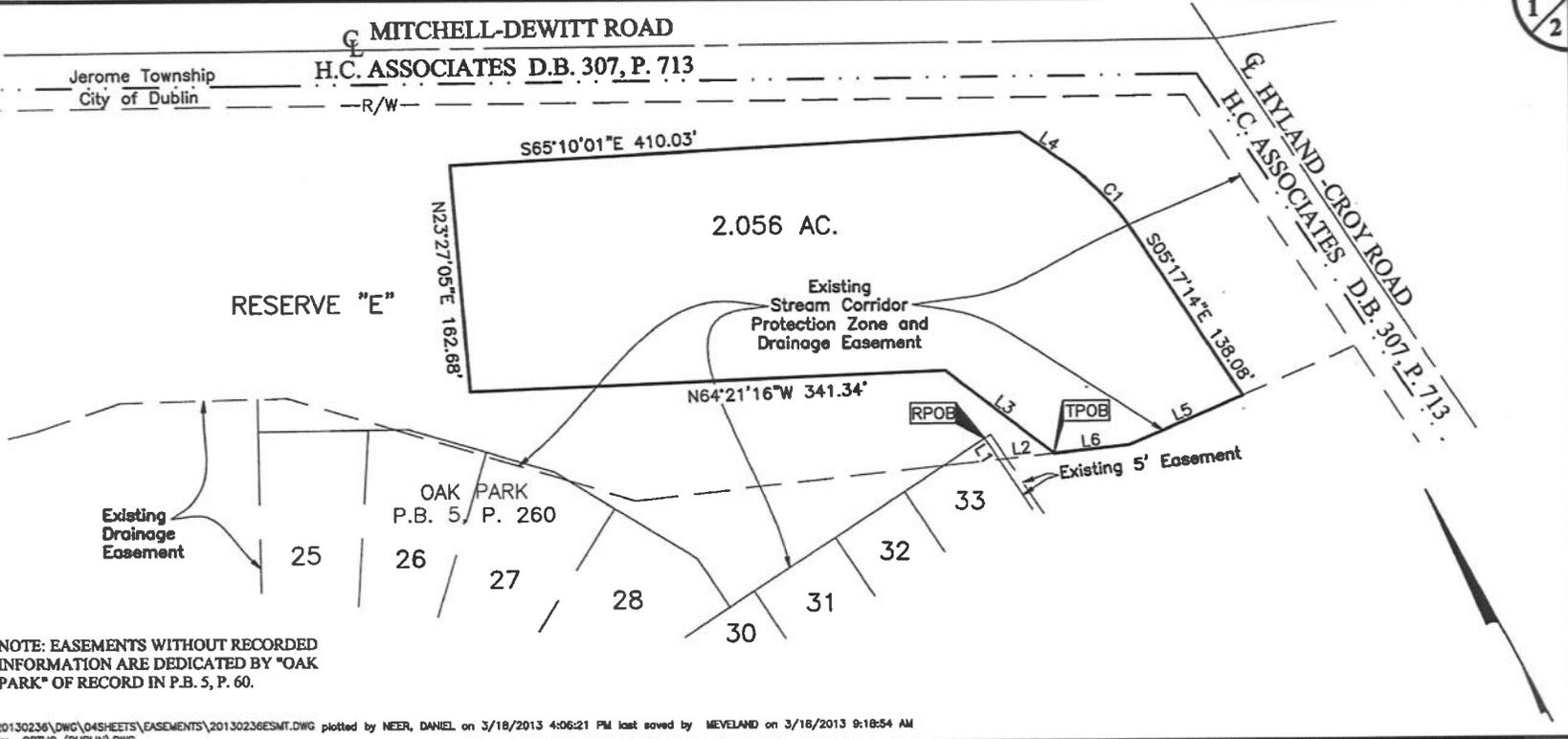
Scale: 1" = 100'

Job No. 2013-0236

1/2

Legal Description of the Covenant Area

EXHIBIT A (2 of 3)



NOTE: EASEMENTS WITHOUT RECORDED INFORMATION ARE DEDICATED BY "OAK PARK" OF RECORD IN P.B. 5, P. 60.

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 Xref: ORTHO (DUBLIN).DWG



Evans, Mechwart, Hambleton & Tilton, Inc.  
 Engineers • Surveyors • Planners • Scientists  
 5300 New Albany Road, Columbus, OH 43054  
 Phone: 614.775.4300 Toll free: 866.775.3648  
 emht.com

# ENVIRONMENTAL COVENANT

VIRGINIA MILITARY SURVEY NUMBER 6595  
 CITY OF DUBLIN, COUNTY OF UNION, STATE OF OHIO

Date: 02/21/2013

Scale: 1" = N/A

Job No. 2013-0236

2/2

Line Table		
Line Number	Direction	Length
L1	S05°18'59"E	18.36'
L2	S68°07'26"E	39.81'
L3	N24°12'08"W	98.45'
L4	S27°19'04"E	34.70'
L5	N85°33'54"W	88.70'
L6	N68°07'26"W	54.36'

Curve Table					
Curve Number	Delta	Radius	Length	Chord Bearing	Chord Distance
C1	22°01'50"	200.00'	76.90'	S16°18'09"E	76.43'



By *Daniel Neer*  
 Daniel Neer  
 Professional Surveyor No. 8533

3/18/13  
 Date



Evans, Mechwart, Hambleton & Tilton, Inc.  
 Engineers • Surveyors • Planners • Scientists  
 5500 New Albany Road, Columbus, OH 43054  
 Phone: 614.775.4500 Toll Free: 888.775.3648  
 emht.com

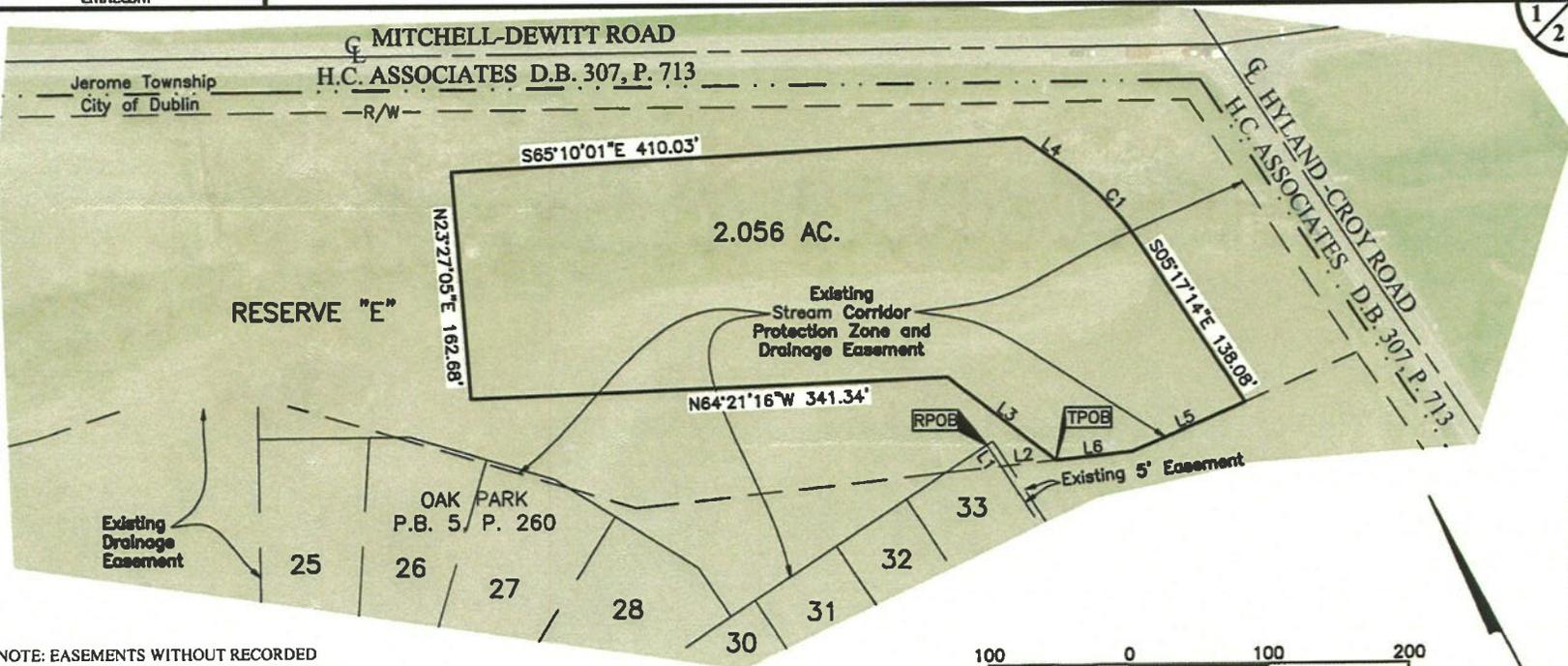
# ENVIRONMENTAL COVENANT

VIRGINIA MILITARY SURVEY NUMBER 6595  
 CITY OF DUBLIN, COUNTY OF UNION, STATE OF OHIO

Date: 02/21/2013

Scale: 1" = 100'

Job No. 2013-0236



NOTE: EASEMENTS WITHOUT RECORDED INFORMATION ARE DEDICATED BY "OAK PARK" OF RECORD IN P.B. 5, P. 60.



\\20130236\DWG\04SHEETS\EASEMENTS\20130236ESMT.DWG plotted by CRAMER, JAMES on 4/10/2013 11:38:20 AM last saved by DNEER on 3/18/2013 4:21:04 PM