

11-2-2005
RECORD Execution Copy
PAUL R. McKLEGAN
RECORDER 108⁰⁰
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Nov 2 | 55 PM '05

TRANSFER NOT NECESSARY
PATRICK J. MARSHALL
11/2/05 COUNTY AUDITOR

203581

DEED AND AGREEMENT OF
CONSERVATION EASEMENT

OR VOL 723 PG 439

This Deed and Agreement of Conservation Easement ("Conservation Easement") is made as of the 31 day of MAY, 2005, by and between Clarence M. Everly, Jr. (the "Grantor"), having an address at 8276 Amsterdam Road SE, Amsterdam, Ohio 43903, and Jefferson Soil and Water Conservation District (the "Grantee"), having an address at 131 Main Street, Wintersville, Ohio 43953.

WHEREAS, the Grantor is the owner in fee of certain real property situated in Jefferson County, Ohio which is more particularly identified and described in Exhibit A attached hereto (the "Property"); and

WHEREAS, in order to protect the quality of the surface waters located on certain real property in the vicinity of the Property and commonly known as the "Apex Sanitary Landfill", Grantor has agreed with the owner of the Apex Sanitary Landfill to grant a conservation easement in and to the "Property"; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect the conservation values of the Property for the benefit of this generation and generations to come.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Grant of Easement**: Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Property of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Property, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Property by Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of himself, his heirs, successors and assigns with the Grantee its successors and assigns to do and refrain from doing, severally and collectively, upon the Property, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, is and will be for the benefit of Grantee.

2. **Term of Easement**: The easement granted hereunder shall be perpetual and shall have no expiration date.

3. **Conservation Values**: The Property possesses substantial value in conserving and protecting the physical, biological and chemical integrity of Goose Creek and is important in the protection of the existing or designated use of the waters of the state pursuant to §303 of the Clean Water Act, 33 U.S.C. §1313 and §6111.041 of the Ohio Water Pollution Control Act. The

RETURN TO: VORVIS, SATER, SEMOUR & PEASE LLP BOX
52 E. GAY ST.
COLUMBUS, OH 43215
Attn: Tim Ross

specific conservation values of the Property have been documented in the 401/404 permit applications and supporting materials, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Property at the time of the grant ("Baseline Documentation"), which are incorporated herein by reference and are intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The parties acknowledge that this Baseline Documentation is an accurate representation of the Property at the time of this grant.

4. **Prohibited Actions:** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:

- a. **Division:** Any division or subdivision of the Property is prohibited.
- b. **Commercial Activities:** Commercial development or industrial activity is prohibited.
- c. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots is prohibited.
- d. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides is prohibited.
- e. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials from the Property, or doing any act that would alter the topography of the Property shall be prohibited; provided, however, the owner of the Apex Sanitary Landfill ("Apex") is authorized to conduct all activities necessary to comply with Section III. A.1.d. of the Section 401 Certification issued by the Ohio Environmental Protection Agency ("Ohio EPA") to Apex Energy, Inc. and dated November 11, 2004 (the "Section 401 Certification").
- f. **Dumping:** Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Property. In the case that such material is found dumped on the Property, the Grantor will remove all such material and properly dispose of the same at no cost to the Grantee.
- g. **Water Courses:** Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered.
- h. **Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, or ecological integrity of the Property shall be prohibited.

5. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Property:

- a. **Right to Enter:** The Grantee has the right to enter the Property at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor. The Grantee may not, however, unreasonably interfere with the Grantor's use and quiet enjoyment of the Property. Except as set forth in subsection e. below, the Grantee has no right to permit others to enter the Property, and the general public is not granted access to the Property under this Conservation Easement.
- b. **Right to Preserve:** The Grantee has the right to prevent any activity on or use of the Property that is inconsistent with the terms or purposes of this Conservation Easement.
- c. **Right to Require Restoration:** The Grantee shall have the right to require the restoration of the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
- d. **Signs:** The Grantee shall have the right to place signs on the Property which identify the land as being protected by this Conservation Easement. The number and content of any such signs are subject to the Grantor's prior approval.
- e. **Property Visits:** The Grantee shall have the right to enter and use the Property for educational purposes under the following conditions:
 - i. Grantee shall provide general liability insurance in the amount of \$1,000,000 and name the Grantor as an additional insured;
 - ii. Grantee shall provide Grantor with a "hold harmless" affidavit with respect to potential injuries (including death) or damages to personal property incurred by visitors to the Property under the supervision of Grantee for each scheduled event approved by Grantor;
 - iii. Grantee shall provide Grantor with a schedule for entry of the Property and a minimum of thirty working days notice prior to the Property visit; and
 - iv. For safety purposes, Grantee shall limit the visits to the Property and shall direct travel to and from the Property's main entrance to access the Property.

6. **Permitted Uses:** Grantor reserves to himself, and to his personal representatives, heirs, successors and assigns, all rights accruing from his ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. **Right to Convey:** The Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Property. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. **Right to Maintain:** The Grantor retains the right to maintain, renovate and replace any existing structure(s), if any, on the Property as noted in the Baseline Documentation, in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure, and requires the Grantee's prior written approval.
- c. **Right to Access:** The Grantor shall retain the right of unimpeded access to the Property; provided, however, Apex and the Ohio EPA shall have such rights of access needed to conduct all activities required to comply with Section III.A.1.d. of the Section 401 Certification, including all required monitoring.

7. **Grantee's Remedies:** In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies and shall be subject to the following limitations:

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of the Grantee's right to enforce the terms of this Conservation Easement.
- b. **Acts Beyond Grantor's Control:** The Grantee may not bring an action against the Grantor for modifications occurring to the Property which result from causes beyond the Grantor's control. Examples include, without limitation: unintentional fires, storms, natural earth movement, trespassers or the Grantor's well-intentioned actions in response to an emergency which result in changes to the Property. The Grantor has no responsibility under this Conservation Easement for such unintended modifications. The Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Conservation Easement.
- c. **Notice and Demand:** If the Grantee determines that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Grantee shall provide written notice to the Grantor unless the violation constitutes immediate and irreparable harm. The written notice shall identify the violation and request corrective action to cure the violation or restore the Property.
- d. **Failure to Act:** If, for a twenty-eight (28) day period after the date of written notice provided pursuant to subparagraph c. above, the Grantor continues violating this Conservation Easement, or if the Grantor does not abate the violation and begin to implement corrective measures within the foregoing twenty-eight (28) day period requested by the Grantee, or fails to continue diligently to cure such violation until finally cured, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement and

recover any damages for the loss of the conservation values protected hereunder. The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Property. If a court determines that the Grantor has failed to comply with this Conservation Easement, then the Grantor also agrees to reimburse all reasonable costs and attorneys fees incurred by the Grantee in compelling such compliance.

- e. **Unreasonable Litigation:** If the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and attorneys fees incurred in defending the action.
- f. **Grantor's Absence:** If the Grantee determines that this Conservation Easement is, or is expected to be, violated, the Grantee will make a good faith effort to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Easement, then the Grantee may pursue its lawful remedies without prior notice and without awaiting the Grantor's opportunity to cure.
- g. **Actual or Threatened Non-Compliance:** Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantor acknowledges that Grantee's remedies at law for any violation of the terms hereof are inadequate and Grantee is entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or inadequacy of otherwise available legal remedies.
- h. **Cumulative Remedies:** The preceding remedies of the Grantee are cumulative. Any, or all, of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement.
- i. **Unexpected Change in Conditions:** If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Grantee will then be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Property at the effective date of this Conservation Easement.
- j. **Eminent Domain:** If the Property is taken, in whole or in part, by power of eminent domain, then the Grantee will be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Property at the effective date of this Conservation Easement.

8. **Ownership Costs and Liabilities:** In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. The Grantee and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any other property located on the Property or otherwise. The Grantor agrees to defend the Grantee against such claims and to indemnify the Grantee against all costs and liabilities relating to such claims during the tenure of the Grantor's ownership of the Property. The Grantor is responsible for posting the Property's boundaries and for discouraging any form of trespass that may occur.

9. **Cessation of Existence:** If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the mutual consent of Grantor and Ohio EPA.

10. **Termination:** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.

11. **Recordation:** Grantee shall record this instrument in a timely fashion in the official records of Jefferson County, Ohio and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

12. **Assignment:** This Conservation Easement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer. As a condition of such transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

13. **Liberal Construction:** This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Property. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

14. **Notices:** For purposes of this Conservation Easement, notices may be provided to either party, by personal delivery or by mailing a written notice to that party at the address shown at the outset of this agreement, or at the last known address of a party, by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U.S. Postal Service.

15. **Severability:** If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.

16. **Subsequent Transfers:** This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Property and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Property shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantor shall incorporate the terms of this Conservation Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer.

17. **Termination of Rights and Obligations:** A party's future rights and obligations under this Conservation Easement shall terminate upon the transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

18. **Applicable Law:** This Conservation Easement shall be governed by, and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.

19. **Entire Agreement:** This Conservation Easement, together with the Baseline Documentation, sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

IN WITNESS WHEREOF, the Grantor and Grantee have set their hands on the day and year first above written.

WITNESSES

Beck Spohn
Michelle Bold

GRANTOR: CLARENCE M. EVERLY, JR.

BY: *Clarence M. Everly, Jr.*
Clarence M. Everly, Jr.

WITNESSES

Linda Fancher
Linda Fancher

GRANTEE: JEFFERSON SOIL AND WATER CONSERVATION DISTRICT

BY: *Ellen G. Mott*
Name -
Title - *Chair*

STATE OF OHIO)
) SS
COUNTY OF JEFFERSON)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-mentioned grantor, Clarence M. Everly, Jr., who acknowledged that he did sign the foregoing instrument as his free and voluntary act and deed, this 31 day of MAY, 2005.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this 31 day of MAY, 2005.

Gary W. Quinn
Notary Public
MY COMMISSION EXPIRES JUNE 10, 2009

STATE OF OHIO)
) SS
COUNTY OF JEFFERSON)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-mentioned grantee by ELMERGE NOWAK, who acknowledged that he/she did sign the foregoing instrument as his/her free and voluntary act and deed, as individual, and as an appropriate representative, by and with full authority of the District, this 6th day of Sept., 2005.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this 6th day of Sept., 2005.

Betty A. Deitch
Notary Public
BETTY A. DEITCH
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 6-5-06

This instrument prepared by:
Loretta M. Shahada, Esq.
Apex Environmental, LLC
Dominion Tower, Suite 3100
625 Liberty Avenue
Pittsburgh, PA 15222

Exhibit A

September 6, 2005

EVERLY - CONSERVATION EASEMENT

**DESCRIPTION FOR APEX ENVIRONMENTAL LLC
OF A 1.993 ACRE TRACT**

Situated in the Township of Springfield, Village of Amsterdam, County of Jefferson and State of Ohio.

Being located in the Northwest Quarter of Section 18, Township 11, Range 4 and being part of a 9.208 acre tract (Parcel No. 35-01390.000) as conveyed to Clarence M. Everly Jr. by a Warranty Deed as recorded in Deed Volume 519 at Page 212 of the Jefferson County Deed Records and being more fully described as follows:-

COMMENCING at a concrete monument (found) at the southwest corner of the Northwest Quarter of Section 18;

THENCE with the south line of the Northwest Quarter, South 88 deg. 35 min. 00 sec. East, 538.32 feet to a point (passing through a point (on line) at 425.78 feet on the west right-of-way of the Lake Erie, Alliance and Wheeling Railroad;

THENCE leaving said south line and with a line perpendicular, North 1 deg. 25 min. 00 sec. East, 274.47 feet to the PLACE OF BEGINNING of the tract herein to be described;

THENCE from said beginning with the boundary of the Conservation Easement, with a curve to the right having a radius of 75.00 feet, a central angle of 74 deg. 19 min. 16 sec., for an arc length of 97.28 feet to a point (chord bearing North 37 deg. 23 min. 32 sec. West, 90.60 feet);

THENCE North 0 deg. 13 min. 43 sec. West, 77.94 feet to a point;

THENCE North 16 deg. 02 min. 02 sec. West, 95.19 feet to a point;

THENCE with a curve to the left having a radius of 185.00 feet, a central angle 49 deg. 59 min. 17 sec., for an arc length of 161.40 feet to a point (chord bearing North 19 deg. 49 min. 40 sec. West, 156.33 feet);

THENCE North 43 deg. 28 min. 12 sec. West, 99.06 feet to a point;

Everly - Conservation Easement
Description for Apex Environmental LLC
of a 1.993 Acre Tract
September 6, 2005
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THENCE North 29 deg. 47 min. 31 sec. West, 67.85 feet to a point;
THENCE North 24 deg. 33 min. 27 sec. West, 109.42 feet to a point;
THENCE North 18 deg. 35 min. 30 sec. West, 111.98 feet to a point;
THENCE North 17 deg. 33 min. 32 sec. West, 69.24 feet to a point;
THENCE North 04 deg. 33 min. 43 sec. West, 77.47 feet to a point;
THENCE North 06 deg. 27 min. 50 sec. West, 148.60 feet to a point;
THENCE North 83 deg. 33 min. 18 sec. East, 21.19 feet to a point;
THENCE South 41 deg. 17 min. 07 sec. East, 48.31 feet to a point;
THENCE South 17 deg. 16 min. 53 sec. East, 55.92 feet to a point;
THENCE South 06 deg. 38 min. 00 sec. West, 32.66 feet to a point;
THENCE South 16 deg. 16 min. 06 sec. East, 83.03 feet to a point;
THENCE South 31 deg. 11 min. 18 sec. East, 38.40 feet to a point;
THENCE South 30 deg. 27 min. 33 sec. East, 98.16 feet to a point;
THENCE South 09 deg. 50 min. 37 sec. East, 115.13 feet to a point;
THENCE South 35 deg. 16 min. 33 sec. East, 48.51 feet to a point;
THENCE South 25 deg. 08 min. 11 sec. East, 56.12 feet to a point;
THENCE South 48 deg. 01 min. 00 sec. East, 127.53 feet to a point;
THENCE South 25 deg. 20 min. 01 sec. East, 73.96 feet to a point;
THENCE South 11 deg. 36 min. 37 sec. East, 51.32 feet to a point;
THENCE South 15 deg. 13 min. 03 sec. West, 38.71 feet to a point;
THENCE South 33 deg. 49 min. 23 sec. East, 33.79 feet to a point;
THENCE South 21 deg. 48 min. 44 sec. East, 100.20 feet to a point;

THENCE South 00 deg. 00 min. 00 sec. East, 6.24 feet to a point on the northwesterly line of a 2.592 acre tract as conveyed to Dolores and Joseph J. McLaughlin (Official Record 133, Page 627);

THENCE South 57 deg. 05 min. 33 sec. West, 14.01 feet to a point at a corner of said 2.592 acre tract;

THENCE with the west line of said 2.592 acre tract, South 02 deg. 02 min. 07 sec. East, 44.34 feet to a point;

THENCE South 16 deg. 08 min. 34 sec. West, 30.81 feet to a point;

THENCE South 25 deg. 06 min. 10 sec. West, 53.47 feet to a point;

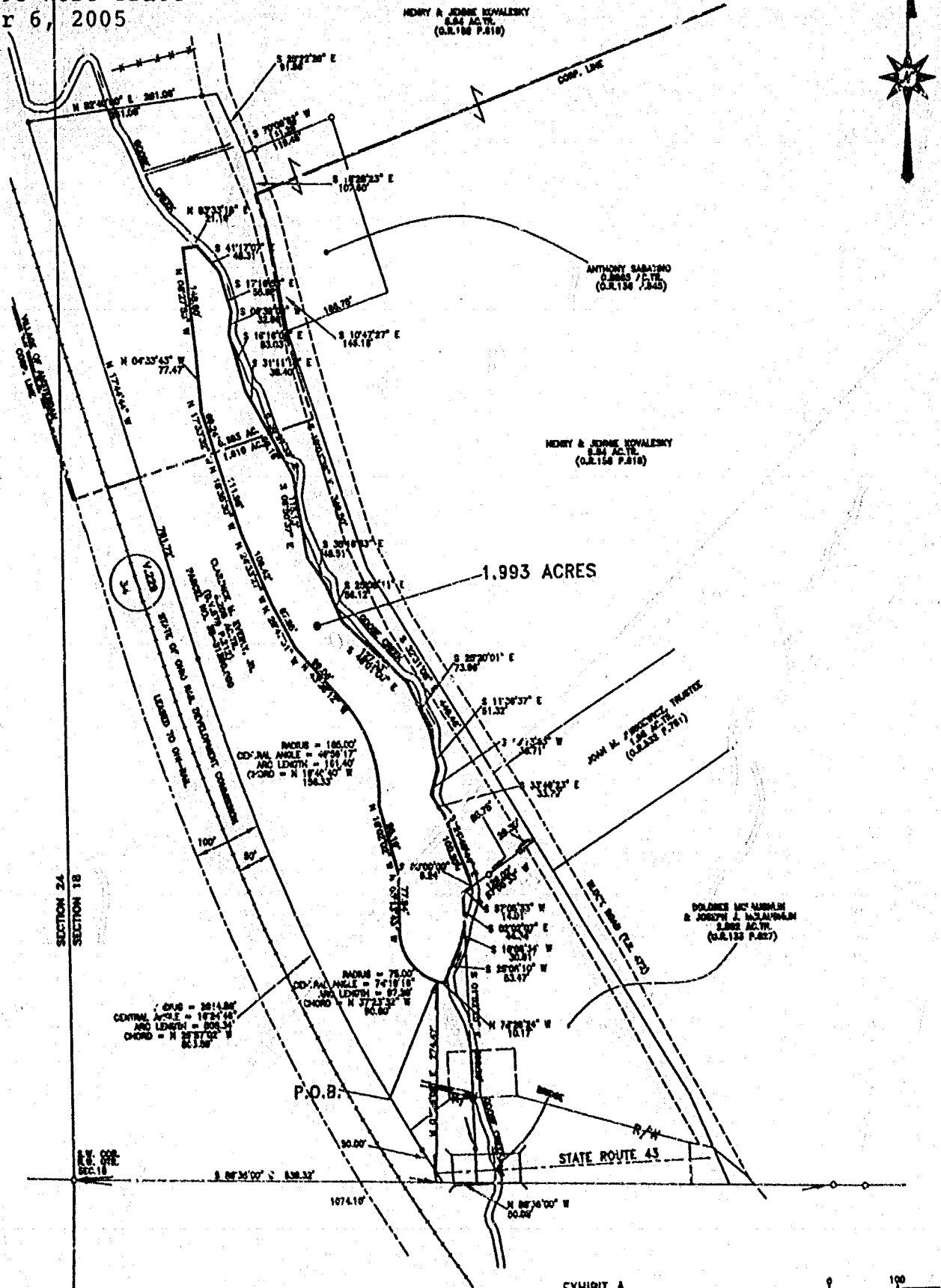
THENCE North 78 deg. 28 min. 24 sec. West, 10.17 feet to a point at the PLACE OF BEGINNING, containing 1.993 acres, more or less, but subject to all legal highways, right-of-ways and easements.

The above described 1.993 acres comprises 0.383 of an acre in the Village of Amsterdam and 1.61 acres in Springfield Township.

Bearings are oriented to the south line of the Northwest Quarter of Section 18 (Deed Volume 579, Page 212).

Plat and Description Prepared By
Frank E. Bair, Reg. Surveyor #5918

Description for Apex Environmental LLC
Of a 1.993 Acre Tract
September 6, 2005
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NOTE: BOUNDARY ARE ORIENTED TO THE SOUTH LINE
OF THE NORTHWEST QUARTER OF SECTION 18
(N.V.779 P.818)
IRON PINS INDICATED (81) ARE 8 1/4" IRON BARS
WITH A PLASTIC CAP STAMPED B&G & COOKE.
IN EXISTING CHAINING MEASUREMENT (P.818)
CHAINED TO THE SOUTH LINE
CHAINED FROM THE SOUTH LINE
CHAINED FROM THE SOUTH LINE

<p align="center">EXHIBIT A CONSERVATION EASEMENT</p> <p align="center">PLAT OF SURVEY FOR APFX ENVIRONMENTAL, LLC</p> <p align="center">LOCATED IN THE NORTHWEST QUARTER OF SECTION 18, T-13 N, R-4 E VILLAGE OF AMSTERDAM SHERMAN TOWNSHIP, AUTUMN CREEK, OHIO</p> <p align="center">SCALE: 1" = 100' JOHN SABATINO</p>		<p>BAIR, GOODIE AND ASSOCIATES, INC. 121 NORTH BROADWAY NEW PHILADELPHIA, OHIO TELEPHONE (216) 343-3499</p> <p>WE UNDERTAKE, HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT</p> <p align="right">JOHN SABATINO</p>
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