

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:	)	
	)	ADMINISTRATIVE
DR. STANLEY SCHEIDLER	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
VANCEBURG, KENTUCKY	)	
	)	
RESPONDENT	)	Docket No.: CWA-04-2019-9963(b)
_____	)	

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding under Section 309(g)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (Part 22).

2. The authority to take action under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), is vested in the Administrator of the United States Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 4, who in turn has delegated this authority to and through the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 4, to the Chief of the Water Enforcement Branch of the EPA, Region 4 (Complainant).

**II. Statutory and Regulatory Background**

3. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), states “[w]henever, on the basis of any information available - the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)].”

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states “[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful.” Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines a “person” to include any “individual [and] corporation.”

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a “discharge of pollutants” as “[a]ny addition of any pollutant to navigable waters from any point source....”

7. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

9. Federal regulations at 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands,” including those that are adjacent to interstate waters.

10. Federal regulations at 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

### **III. Factual and Jurisdictional Allegations**

11. Dr. Stanley Scheidler (Respondent) was the owner of the Site at all times relevant to this Consent Agreement and Final Order (CAFO).

12. Dr. Stanley Scheidler is a person within the definition set forth by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The term “Discharge Area” means the jurisdictional waters that have been impacted through the discharge of dredged and/or fill material as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is approximately 1,000 linear feet of a tributary impacted by Respondent.

14. The 1,000 linear feet of the tributary in the Discharge Area is a water of the United States subject to the jurisdiction of the CWA because it is an unnamed perennial tributary of Quicks Run, a tributary of the Ohio River, which is a navigable water of the United States.

15. The term “Site” means the parcel or parcels of land on which the Discharge Area is located. The Site is located near Vanceburg, Lewis County, Kentucky, at approximately latitude 38.613474° N and longitude -83.475534° W (*See* Exhibits A and B, attached hereto).

16. Commencing in approximately the years 2008 or 2009, and continuing through the year 2014, Respondent discharged dredged and/or fill material into jurisdictional waters on the Site using earth moving machinery during activities associated with the construction of a recreational pond. To date, the unauthorized dredge and/or fill material remains in waters of the United States.

17. The parties have signed four Tolling Agreements, effective November 5, 2018, April 5, 2019, February 15, 2020, and August 15, 2020, resulting in a combined tolling of the limitations period of twenty-one (21) months.

18. The discharged dredged and/or fill material, including earthen material, deposited at the Discharge Area are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. The earth moving machinery employed by Respondent to deposit the dredged and/or fill material at the Discharge Area is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. Respondent’s placement of the dredged and/or fill material at the Discharge Area constitutes a “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

21. At no time during the discharge of dredged and/or fill material at the Discharge Area did Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities he performed.

22. Each discharge by Respondent of pollutants into navigable waters without the required permit issued by Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. Each day the material discharged by Respondent remains in waters of the United States without the required permit by Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

#### **IV. Stipulations and Findings**

24. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. Part 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without gathering any evidence or testimony, making of any argument, or adjudicating any issue in this matter, and in accordance with 40 C.F.R. Part 22.13(b), this CAFO will simultaneously commence and conclude this matter.

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations set out above.

26. Respondent hereby waives his right to contest the allegations set out above and his right to appeal the Final Order accompanying this Consent Agreement.

27. For the purpose of this proceeding, Respondent:

A. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

B. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

C. waives any rights he may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with this CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

D. waives any right he may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO.

28. Respondent consents to the assessment of and agrees to pay the administrative penalty and the other conditions set forth in this CAFO.

29. By signing this CAFO, Respondent certifies that the information he has supplied concerning this matter was at the time of submission, and continues to be, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

30. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

31. Complainant and Respondent agrees to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CWA.

## V. Payment

32. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the violations, the proposed Supplemental Environmental Project (SEP) set forth in Section VI, and other relevant factors, the EPA has determined that **fourteen thousand and five hundred dollars (\$14,500)** is an appropriate civil penalty to settle this action. Respondent shall submit this payment within thirty (30) calendar days after the Effective Date of this CAFO.

33. Respondent shall make the payment specified in the preceding paragraph by cashier's check, certified check, by Electronic Funds Transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Site name (Dr. Stanley Scheidler, Vanceburg, Kentucky) and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

34. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[R4\\_Regional\\_Hearing\\_Clerk@epa.gov](mailto:R4_Regional_Hearing_Clerk@epa.gov)

and

Mr. Joel Strange  
Water Protection Branch  
Surface Water and Groundwater Section  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
Strange.Joel@epa.gov

35. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

36. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may request the Attorney General to bring a civil action in an appropriate district court to recover: (a) the amount assessed; (b) interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); (c) the United States' attorneys' fees and enforcement expenses; and (d) a 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

37. In addition to the terms of the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

A. refer the debt to a credit reporting agency or a collection agency, pursuant to 40 C.F.R. §§ 13.13, 13.14;

B. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, pursuant to 40 C.F.R. Part 13, Subparts C and H;

C. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17; and/or

D. refer the debt to the Department of Justice after having taken aggressive collection action, pursuant to 40 C.F.R. § 13.33.

## **VI. Supplemental Environmental Project**

38. Respondent has proposed a SEP which entails the restoration of approximately 3,027 linear feet of an unnamed tributary of Quicks Run. The restoration will include bank stabilization, buffer enhancement, and cattle exclusion that will significantly reduce the sediment and nutrient runoff from the Site to the Ohio River. The proposed SEP is attached hereto as Exhibit C and incorporated by reference.

With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

A. that all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$74,700;

B. that, as of the date of executing this Decree, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

C. that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

D. that Respondent has not received and will not receive credit for the SEP in any other enforcement action;

E. that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; and

F. that for federal income tax purposes, Respondent agrees that he will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

39. Respondent shall undertake and complete the SEP described in Exhibit C within one (1) year of the Effective Date of this CAFO. In the event that the SEP cannot be completed within this timeframe, Respondent may request an extension from the EPA. Any extension request must be made in writing to the EPA and the decision whether to grant such request shall be in the sole discretion of the EPA.

40. Any public statement, oral or written, in print, film, or other media, made by Respondent referring to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action by the U.S. Environmental Protection Agency to enforce federal laws."

41. Respondent agrees that in order to receive credit for the SEP, he must fully and timely complete the SEP in accordance with Exhibit C. If Respondent does not fully and timely complete the SEP in accordance with Exhibit C within the timeframe provided in Paragraph 38 (provided an extension is not granted), Respondent shall be required to pay the following stipulated penalties, if assessed by the EPA:

Penalty Per Calendar Day	Period of Noncompliance
\$100	1st through 15th day
\$250	16th through 30th day
\$500	31st day and beyond

42. Respondent's first annual monitoring report shall serve as his final SEP completion report (SEP Completion Report). The SEP Completion Report shall be certified by Respondent and submitted to the EPA by December 30 of the calendar year following the Effective Date of this CAFO. The SEP Completion Report shall contain the following information and any additional information required by Exhibit C:

A. a detailed description of the SEP as implemented including photographs of the newly constructed water control features;

B. a description of any implementation problems encountered and the solutions thereto;

C. itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the



individual costs associated with the SEP;

D. a certification that the SEP has been fully completed;

E. a description of the environmental and public health benefits resulting from the implementation of the SEP and an explanation of how such benefits were measured or estimated;

F. a statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEP; and

G. the following statement, signed by Respondent, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

43. The EPA will notify Respondent in writing of receipt of the SEP Completion Report and, after review of the SEP Completion Report, notify Respondent of the following determinations:

A. the SEP Completion Report is acceptable, and the EPA has determined that Respondent has timely and fully completed the SEP in accordance with the Consent Agreement; or

B. the SEP Completion Report is deficient. The EPA will provide a written description of the deficiencies in the Report and will inform Respondent that the EPA is unable to determine if Respondent has timely and fully completed the SEP in accordance with the CAFO. Respondent will have thirty (30) calendar days from receipt of the EPA's written description to correct any deficiencies and send a revised SEP Completion Report to the EPA.

44. If a revised SEP Completion Report is necessary, the EPA will review the revised SEP Completion Report within thirty (30) calendar days of receipt and notify Respondent of the determination that the EPA has made as described in Paragraphs 42(a) or (b). If the EPA determines that the revised SEP Completion Report is not acceptable and, therefore, Respondent has not timely and fully completed the SEP, Respondent shall be required to pay the penalty set forth in Paragraph 40 until Respondent completes the SEP and obtains the EPA's approval of a new SEP Completion Report. The EPA shall review any such new SEP Completion Report under this Paragraph within thirty (30) calendar days of receipt.

45. If Respondent fails to timely submit the SEP Completion Report to the EPA, as required by Paragraph 42, or to submit a revised SEP Completion Report if required by Paragraphs 44, Respondent shall pay to the United States a stipulated penalty of One Hundred Dollars (\$100) a day until the SEP Completion Report is submitted to the EPA.

46. Respondent shall submit all other reports required by Exhibit C, including a second annual monitoring report, to the EPA in accordance with the timeframes set forth in Exhibit C, and the EPA will notify Respondent electronically of receipt of such reports. If Respondent fails to submit any such reports to the EPA in accordance with the timeframes set forth in Exhibit C, Respondent shall be required to pay stipulated penalties of One Hundred Dollars (\$100) per day until the EPA receives each report.

47. Respondent shall pay any stipulated penalties required under this Section within thirty (30) calendar days after receipt of a written demand for such penalties from the EPA. The method of payment shall be in accordance with Section V (Payment of Civil Penalty).

48. The determination as to whether Respondent has timely and fully completed the SEP and timely and fully submitted the SEP Completion Report shall be in the sole discretion of the EPA, but such determination shall not be unreasonably delayed or withheld.

49. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

50. The EPA may, in the unreviewable exercise of its discretion, give Respondent an extension of time to submit the SEP Completion Report and any other reports required by Exhibit C.

## **VII. General Provisions**

51. Full payment of the civil penalty, as provided in Section V above, shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. As stated in 40 C.F.R. § 22.18(c), full compliance with this CAFO, as provided in Section V above, shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged above.

52. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CWA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

53. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

54. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

55. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

56. By signing this Consent Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

57. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

58. This CAFO applies to and is binding upon Respondent and his agents, trustees, servants, authorized representatives, successors, and assigns.

59. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Site, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

60. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

61. In accordance with 40 C.F.R. Part 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means at the following valid email addresses: Strange.Joel@epa.gov for the EPA and [sscheid11@yahoo.com](mailto:sscheid11@yahoo.com) for the Respondent.

62. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

63. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to with Complainant regarding this matter.

64. This CAFO in no way affects the rights of the Complainant as against any person or entity not a party to this CAFO.

65. Effective upon signature of this CAFO by Respondent, Respondent agrees that the time period commencing on the date of his signature and ending on the date the EPA receives from Respondent the payment required by this CAFO shall not be included in computing the

running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CAFO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CAFO effective, the statute of limitations shall begin to run again commencing ninety (90) calendar days after the date such notice is sent by the EPA.

66. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of this CAFO shall remain in force and shall not be affected thereby.

### **VIII. Release by Respondent**

67. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CAFO, including but not limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondent's property without compensation.

**IX. Effective Date**

68. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

For RESPONDENT:

  
\_\_\_\_\_  
Dr. Stanley Scheidler

Date: 8/10/20

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
Mary Jo Bragan, Chief  
Water Protection Branch  
Enforcement and Compliance Assistance Division  
U.S. EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 ) ADMINISTRATIVE  
DR. STANLEY SCHEIDLER ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
VANCEBURG, KENTUCKY )  
 )  
RESPONDENT ) Docket No.: CWA-04-2019-9963(b)  
 )  
\_\_\_\_\_ )

**FINAL ORDER**

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §22.4(b) and §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

\_\_\_\_\_  
Robin B. Allen  
Regional Judicial Officer

## **CERTIFICATE OF SERVICE**

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Stanley Scheidler, Docket No. CWA-04-2019-9963(b), were filed and copies of the same were emailed to the parties as indicated below.

### **Via email to all parties:**

To Respondent:

Mr. Stanley Scheidler  
5679 Kyles Lane  
Liberty Township, Ohio 45044  
sscheidl1@yahoo.com

To EPA:

Mr. Joel Strange  
Surface Water and Groundwater Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9455  
[Strange.Joel@epa.gov](mailto:Strange.Joel@epa.gov)

Mr. Stephen P. Smith  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9554  
[Smith.Stephen@epa.gov](mailto:Smith.Stephen@epa.gov)

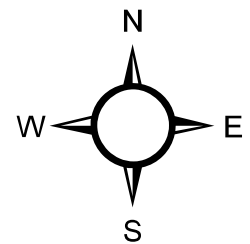
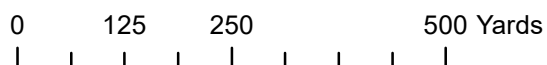
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Patricia A. Bullock, Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

# Exhibit A



## Stanley Scheidler Property Lewis County, Kentucky

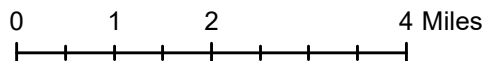




# Exhibit B



**Stanley Scheidler**  
**Lewis County, Kentucky**



SUPPLEMENTAL ENVIRONMENTAL PROJECT – FINAL

Dr. Stan Scheidler  
Liberty TWP, Ohio

Lazy Bee Farm  
Vanceburg, Lewis County, Kentucky

July 2020



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## INTRODUCTION

O'Brien & Gere, part of Ramboll (OBG) was contracted by Dr. Stan Scheidler to provide environmental consulting services related to a Supplemental Environmental Project located on the Lazy Bee Farm located in Vanceburg, Lewis County, Kentucky (i.e., the Site; see [Figure 1](#)). The project Site limits consist of a riparian corridor (approximately 2.3-acres) located within an undeveloped wooded and agricultural property. The overall property is used mostly for recreation and to graze livestock. The Site is situated within the Quicks Run-Ohio River watershed (HUC 050902010210).

The report is pursuant to U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers – Louisville District (Corps) authorization of a stream restoration plan to be considered as a Supplemental Environmental Project (SEP); the SEP is a means for penalty mitigation. Dr. Stan Scheidler is the property owner. OBG is the authorized agent for this SEP.

Two ponds were constructed south of the Site that previously contained a jurisdictional stream. The estimated stream length impacted by the construction of the two ponds totals approximately 1,000 linear feet (LF). The pond construction work took place several years ago (approximately 2010). Since that time the above regulatory agencies have visited the Site and/or provided correspondence regarding this matter. OBG was informed that U.S. EPA is the lead regulatory agency. In a preliminary Site visit conducted by OBG in November 2017, the downstream segment of the onsite stream was assessed. OBG noted significant opportunities for stream restoration, specifically, stream bank erosion, active cattle crossings and other access to the stream bed, log/debris jams, and poor quality riparian buffer habitat.

OBG contacted the U.S. EPA project manager, Mr. Joel Strange, in December 2017 and clarified U.S. EPA's understanding and expectations with regard to this project and after-the-fact mitigation requirements. It was agreed by the U.S. EPA project manager that suitable stream restoration and riparian buffer enhancement opportunities are available onsite, downstream of the constructed ponds and could potentially be utilized to provide permittee-responsible mitigation credit for this project. Based upon this understanding, the U.S. EPA requested a restoration plan outlining the activities to be completed to offset the impacts at the Site.

In preparation for stream restoration design planning for impact offset through permittee-responsible mitigation, OBG completed a follow-up field reconnaissance on March 15, 2018 to document existing habitat conditions of the stream and collect pertinent data regarding potential restoration opportunities. An additional Site visit was completed on July 11, 2020. The proposed project area consists of the onsite, unnamed, intermittent/perennial tributary stream (Stream 1) which flows from the outlet of the constructed ponds ("Impact Area" depicted on [Figure 2](#)) to the confluence of Quicks Run near the entrance of the Site. OBG completed a Nationwide Permit 32 (Completed Enforcement Actions) Pre-Construction Notification for 2,982 LF of Stream 1 meant to offset previously incurred impacts of 1,000 LF; the pending NWP 32 area is depicted on [Figure 2](#).

The EPA suggested that the additional section of Stream 1 (to the north of the NWP 32 area), which OBG also observed had potential for stream restoration and buffer enhancement, be considered for a SEP to mitigate the additional penalty incurred by the original impacts for pond construction. The additional linear footage to the north of the pending NWP 32 area which totals 3,027 LF is being presented as a SEP for the purposes of this report.

The following plan section and attachments were prepared by OBG in accordance with U.S. EPA Supplemental Environmental Projects Policy 2015 Update.

## 1. GOALS AND OBJECTIVES

The intent of the SEP is to utilize a combination of restoration strategies to uplift the existing stream habitat and quality which will reduce pollution and enhance the condition of the ecosystem within the immediate vicinity of the impact violation. The proposed SEP furthers the EPA's mission to protect public health and the environment by promoting pollution prevention which would have not be otherwise done through enforcement action.

Pollution prevention is mainly accomplished through addressing sediment loading from local, highly-erodible soils by targeted bank stabilization and cattle exclusion efforts. The cattle on the farm, which encompasses the full lineal footage of Stream 1, currently have full access to the stream and riparian corridor. During OBG's Site visits, cattle were observed in the stream channel, within riparian areas, and crossing the stream at multiple locations; due to this access, excessive amounts of manure was observed routinely in, and adjacent to, the stream channel.

Stream 1 resides within the Quicks Run-Ohio River watershed; Stream 1 flows directly into Quicks Run at the northern extent of the Site. Quicks Run, according to the USEPA Waters GeoViewer (USEPA 2019) has a watershed size of 29,754 AC. No readily-available watershed reports for the Quicks Run drainage basin, that discuss watershed impacts, impairments, or action priorities, were identified at the time of this writing. The adjacent watershed, Salt Lick Creek, which is in the same Ohio River watershed (HUC 05090201), is of a similar size (35,661 AC) and land use: low intensity residential, commercial, forested, and agricultural. Given that Quicks Run has no readily-available watershed data, OBG utilized the watershed information from the Salt Lick Creek watershed to make recommendations for the potential impacts and impairments to the Quicks Run watershed.

The watershed adjacent to Quicks Run with similar size and land use, Salt Lick Creek is listed within the 2016 Integrated Report to Congress on the Condition of Water Resources in Kentucky as a Vision Priority for total maximum daily load (TMDL) for *Escherichia coli* (*E. coli*) bacteria (Kentucky Energy and Environment Cabinet 2018). OBG inferred that the impairments within Quicks Run may be similar to the issues documented within Salt Lick Creek and based some of the SEP strategy on these potential reduction targets.

The SEP restoration strategy will specifically target for *E. coli* through cattle exclusion fencing to keep livestock fecal matter from reaching the streambed, therefore aiding in the reduction of *E.coli* in the local watershed and improving overall water quality for Stream 1 and its receiving waters.

The proposed stream restoration project satisfies the criteria for two of the eight categories of SEPs: pollution reduction and environmental enhancement and protection. To address those two objectives, the following restoration approach is planned:

- » Stream restoration (rehabilitation) – 370 LF
  - › bank stabilization
    - excess aggregate deposition removal, as applicable
    - erosion control fabric and native seed on bank stabilization reaches
    - log jam/debris removal
- » Stream buffer enhancement – 3,027 LF
  - › invasive species removal
  - › supplemental native tree and shrub plantings within riparian buffer area (both banks)
  - › cattle exclusion fencing.

## 2. SITE DESCRIPTION

As previously mentioned, it was agreed by the U.S. EPA project manager that suitable stream restoration and riparian buffer enhancement opportunities are available onsite, specifically Stream 1, downstream of the constructed ponds and could potentially be utilized as a SEP.

Additionally, as part of the pending NWP 32 application, cultural resources and threatened and endangered species evaluations were completed for the Site and vicinity. No effects to cultural sites are expected due to proposed activities for this project being limited to in-stream work to repair erodible banks, supplemental plantings, and cattle exclusion fencing. No structures or other potential cultural resources are present in the project area. The project is not expected to impact any potential cultural resources. There are no anticipated effects to habitat for federal or state-listed, threatened and endangered species due to lack of habitat for listed species known to occur in Lewis County, Kentucky.

The project limits are generally linear (25 feet (ft) on either side of Stream 1, where available) totaling 2.3-acres, and includes forested hillside and open-field/pasture livestock areas. Some of the buffer areas adjacent to Stream 1 are limited due to the presence of an unimproved farm road; the road limits the buffer width available in some areas. The elevation ranges between 710 ft and 605 ft mean sea level. Site drainage is to the north toward Quicks Run. The Site is accessed from Quicks Run Road to the north.

The Site is located within Shaw Hollow according to the U.S. Geographic Service (USGS) topographic map and is bounded by wooded areas on the east, south, and west. Quicks Run Road is located to the north of the Site which runs parallel to the Quicks Run, a perennial tributary. Rural residences are located along Quicks Run Road (see [Figure 2](#)). According to the Federal Emergency Management Agency (FEMA) Flood Rate Insurance Map (FIRM) a floodplain of Quicks Run is located near the entrance of the Site adjacent to Quicks Run Road; the FEMA FIRM map is included as [Appendix A](#).

The Site consists of forested and open-pasture areas. The forested community is dominated by trees and shrubs of the following species: honeylocust (*Gleditsia triacanthos*), American beech (*Fagus grandifolia*), American hophornbeam (*Ostrya virginiana*), flowering dogwood (*Cornus florida*), American sycamore (*Platanus occidentalis*), black walnut (*Juglans nigra*), common hackberry (*Celtis occidentalis*), black cherry (*Prunus serotina*), yellow buckeye (*Aesculus flava*), eastern red cedar (*Juniperus virginiana*), and multiflora rose (*Rosa multiflora*).

The open-pasture areas were dominated by tall fescue (*Festuca arundinacea*).

A desktop assessment of the Site showed no National Wetland Inventory (NWI) mapped wetlands on the Site. No wetlands were identified on the Site upon field investigation by OBG on March 15, 2018.

OBG evaluated the Site for other potential waters of the U.S. (WOTUS) including streams, ditches, and ponds. Stream 1 was identified and surveyed onsite and totaled 3,027 LF. OBG used the U.S. EPA Rapid Bioassessment Protocol of Use in Streams and Wadable Rivers methodology (RBP; Barbour, et. al. 1999) to score the habitat quality of Stream 1. The Site is located within the Mountain Bioregion and the Knobs-Lower Scioto Dissected Plateau (70d) Ecoregion (Environmental and Public Protection Cabinet 2008). Within the Mountain Bioregion Use Support scoring ranges are as follows:

- Fully-Supporting:  $\geq 160$
- Partial-Supporting: 117-159
- Non-Supporting:  $\leq 116$

Table 1 below includes pertinent stream data with RBP scoring for Stream 1:

**Table 1 – Summary of Stream Resources**

Stream ID	Onsite Stream Length (LF)	Corps Hydrologic Classification	Stream Quality	Jurisdictional Classification
1	3,027	Intermittent/Perennial	71 (Non-supporting, Poor Quality)	RPW
<b>Total</b>	<b>3,027</b>			<i>Source: OBG</i>

Note:

Non-RPW – Non-Relatively Permanent Waters

RPW – Relatively Permanent Waters

U.S. EPA RBP scoring forms for Stream 1 are included as [Appendix B](#). Representative Site photographs of Stream 1 are included as [Appendix C](#).

### 3. SEP WORK PLAN

The SEP will consist of the following approach for 3, 027 LF of Stream 1:

- » Stream restoration (rehabilitation) – 370 LF (Reaches 20 – 23)
  - › bank stabilization
    - excess aggregate deposition removal, as applicable
    - erosion control fabric and native seed on bank stabilization reaches
    - log jam/debris removal
- » Stream buffer enhancement – applies to the entire 3,027 LF corridor
  - › invasive species removal
  - › supplemental native tree and shrub plantings within riparian buffer area (both banks)
  - › cattle exclusion fencing

Details concerning the selected restoration and enhancement approaches are presented below:

#### Stream Restoration Approach

Stream restoration activities were selected along a 3,027-foot segment of Stream 1 (see [Figure 3](#)). OBG identified a total of four restoration reaches, of varying length, requiring different restoration activities dependent on existing conditions. Site photographs of existing conditions and representative restoration reaches are included as [Appendix C](#). Restoration activities are detailed for each restoration reach within the provided [Table 2](#) and are summarized generally in the following sections.

#### Bank Stabilization

According to the U.S. Department of Agriculture (USDS)/National Resource Conservation Service (NRCS) web soil survey, two of the soils along Stream 1 are classified as eroded or highly eroded soils (Beasley silt loam and Shrouths silty clay loam; USDA/NRCS 2017) which is demonstrated by the highly eroded, sheer cut banks. In areas exhibiting extensive bank erosion, bank stabilization techniques will be used to reduce bank slope to a more gradual 3:1 slope. The channel at these locations will generally remain unchanged in shape and composition and grading activities will occur on the banks only. Bank stabilization will require grading (peel-back) of the incised slopes and soil preparation for seeding (rough grading). To assure proper seed-soil contact for germination, large composite clumps of soil will be mechanically broken down to allow for a smooth planting surface.

Some areas of Stream 1 exhibited excessive aggregate (mostly gravel size) deposition due to upstream erosion. The aggregate deposition contributes to bank erosion by limiting the channel width and forcing the stream thalweg (the natural direction of watercourse) to the outer bank, therefore causing undercutting and bank



erosion. Areas of excess gravel aggregate will be excavated and removed from the channel, as part of bank stabilization to restore normal channel shape and flow conditions (thalweg shift away from the toe-of-slope), and to prevent further bank erosion.

Where identified (see [Figure 3](#)), the three log-jam/debris obstructions will be removed and any bank stabilization issues corrected as detailed above.

Along the stream bed, black willow (*Salix nigra*) and dogwood (*Cornus* spp.) live stakes will be planted along the outer, more erodible banks, of the stream channel. On average, the live stakes, where planted, will be installed using 10-foot interval spacing. [Appendix D](#) provides a stream profile depicting existing vs. proposed bank stabilization with details regarding proposed bank slope and live stake plantings.

Newly graded stream banks will be seeded with appropriate species and seed mixes suitable for a mesic stream buffer habitat setting. Refer to [Appendix D](#) for seed mix information, individual species quantities, habitat indicator status, and seeding rate instructions (pounds per acre). In general, the Riparian Buffer Mix (ERNMX-178) should be applied along the riparian areas.

Upon completion of seeding, a biodegradable erosion control blanket (C125BN; Tensar North American Green USA) should be applied, where necessary along active floodplain areas, and secured in-place using biodegradable wood stakes to prevent erosion prior to seed germination. Areas that have high tree trunk density should be straw mulched to promote seed germination and deter displacement.

Each of the stream restoration reaches will also include the stream buffer enhancement activities discussed below.

### Stream Buffer Enhancement

Areas of Stream 1 that were documented as having stable banks will undergo stream buffer enhancement activities. Buffer enhancement areas are shown on [Figure 3](#).

Invasive species control and removal will be performed where applicable. The predominant invasive species present within the riparian corridor is multiflora rose (*Rosa multiflora*). Two methods can be used to effectively remove multiflora rose plants present within the Stream 1 buffer limits: 1) mechanical removal or 2) mechanical/chemical (cut/spray). Mechanical removal involves the use of heavy equipment to physically remove the multiflora rose and the root ball. It is important to remove the root ball in order to avoid possible re-sprouting. This is an efficient method to remove areas containing a dense population of multiflora rose stems. The disturbed areas can create conditions suitable for invasive species re-growth (seed germination); therefore, replanting these disturbed areas using native species ([Appendix D](#)) is necessary. Additionally, care must be taken to avoid damaging desirable tree and shrub species also present in the area.

An alternate approach consists of mechanical/chemical treatment. This method typically involves the use of hand tools and/or chain saws to cut the multiflora rose near the ground surface. A solution of glyphosate (Roundup or Rodeo) is then applied to the stump either by spray or wipe application. Glyphosate is a nonselective herbicide and care should be taken to avoid contacting desirable plants that may also be present in the same area. Roundup is generally used in non-wetland treatment areas. Rodeo should be used in wetlands or areas near open water. Herbicide application to the cut stumps should be done immediately after cutting for best results.

Upon completion of the required invasive species treatment and/or removal along the stream buffer, areas where multiflora root balls have been excavated and removed should be planted and re-seeded with appropriate species and seed mixes suitable for a mesic stream buffer habitat setting. Refer to [Appendix D](#) for specific seed mix information, individual species quantities, habitat indicator status, and seeding rate instructions (pounds per acre). In general, the Riparian Buffer Mix (ERNMX-178) should be applied along the riparian areas.

Supplemental plantings will be completed using a variety of native tree and shrub species. A tree and shrub species list provided in [Appendix D](#), subject to change upon nursery availability. Containerized plant stock will

be used, comprised of a mix of bare-root seedlings and 2 to 3-gallon container trees that will generally range in height between 6 to 8 ft. The trees will be planted in a random pattern at an estimated density of 60 stems per acre. Spacing will vary subject to conditions. Shrubs will be planted on 20 ft intervals in a random pattern; shrubs will be planted in groups of 3 at each location.

### **Cattle Exclusion Fencing**

Additionally, the riparian buffer enhancement area (approximately 25 ft from top of bank, where available) will be enclosed in order to prevent livestock entry into the buffer enhancement area, and accessing the stream channel. Some of the buffer areas west of Stream 1 are limited due to the presence of an unimproved farm road; due to this limitation the buffer on the west site of Stream 1 will be less than 25 ft in some areas.

### **Erosion and Sediment Control**

Stream restoration and buffer enhancement activities should be performed by a qualified environmental contractor with stream restoration experience. At this time, it is assumed bank restoration disturbance will be less than 1 acre. Best management practices will be utilized for this project to address mechanized equipment usage during stream restoration, invasive species removal, and log/debris jam removal and associated ground disturbance. Equipment may also be used during tree and shrub planting. Necessary stream crossing will be done only during low flow conditions and the existing road/tractor crossings will be utilized for stream crossing of equipment prior to removal. Best management work practice objectives will be to:

- Prevent loss of soil from the Site during stream buffer rehabilitation work
- Comply with local, state, and federal water quality requirements pertaining to sediment/turbidity management
- Prevent turbidity impacts to aquatic resources.

### **Timeframe and Schedule**

All stream restoration activities will be completed within one year of the EPA's approval of this SEP, commensurate with the approval timing of the adjacent NWP 32 by the USACE, once both projects are approved, the stream restoration activities will commence and be completed in one year from the last report approval date. A project cost estimate and work schedule are presented in [Table 3](#).

## **4. MAINTENANCE PLAN**

For a period of 2 years after construction is completed, maintenance will be performed by the owner. Maintenance needs will be determined through periodic site visits and annual monitoring required by the USACE for the adjacent NWP 32 project area. Examples of possible maintenance activities include repair of streambank erosion, control of invasive plant species, revegetation of planted species if survivability values are not met, and repair of cattle exclusion fencing. Such activities will be performed after needs are identified on a seasonally appropriate schedule.

## **5. PERFORMANCE STANDARDS**

Due to the stream bank stabilization and buffer enhancement activities proposed, measurable performance goals were developed to document that project objectives were met at the end of the monitoring period. Typically, mitigation sites are monitored at least annually after construction is completed. The following restoration performance goals will be utilized for this project to document project success:

- The project area will be assessed annually for 2 years to document that the bank restoration areas remain stable and vegetated.
- Six permanent photo stations will be established along the project area. Photos will be collected from the same location and direction for 2 years after construction to document habitat improvement
- Survivability of containerized trees and shrubs will be 70% or greater, as measured at four permanent vegetation plots to be established at the Site, following restoration and re-planting activities

- Re-seeded areas will contain a minimum of 90% ground coverage after the second growing season
- A buffer width of approximately 25 ft will be established for this project, where available. The unimproved road to the west of Stream 1 does not permit a full 25 ft buffer in some areas and will be less than 25 ft where applicable. This area will be protected and maintained as a naturalized area. Furthermore, cattle exclusion fencing will be installed around the perimeter of the stream buffer zone to prevent live-stock access to the riparian buffer habitat and stream (see [Figures 3](#))
- A deed restriction or conservation easement will be established to permanently protect the project area as a naturalized area
- Invasive species cover within the project area (25 ft buffers, where available) will remain less than 10% during the monitoring period.

## 6. MONITORING REQUIREMENTS

Stream restoration and buffer enhancement areas will be monitored for a period of 2 years (post-construction). Monitoring field methods and measurements will be collected in accordance with the performance goals described in the subsection above. Site observation will be made once a year during the late spring/early summer months. An annual report will be prepared for each monitoring year, totaling 2 annual reports.

Field methodologies will be used to monitor and document that the stream buffer rehabilitation performance goals will be met by the end of the monitoring period. This will include the following:

- Establishment of six permanent photographic stations to provide visual documentation of rehabilitation success for a 2-yr monitoring period.
- Four permanent monitoring stations will be established in the stream buffer area to record planted species survival, density and diversity goals. These locations will also be used to document re-establishment of invasive species, if any. Vegetation will be assessed with the use of 10 x 10 meter fixed plots.
- Collection of in-stream water quality parameters, pre-SEP implementation and at each subsequent monitoring event (2-yr period), including: temperature (°C), specific conductance, dissolved oxygen, pH, turbidity, and bacteria. The collection of in-stream water quality parameters will show an improvement of water quality over the SEP monitoring period in relation to standards for each parameter.
- Annual monitoring reports will be prepared and submitted to the US EPA by December 30 of each year.

Appropriate adaptive measures will be implemented if any of the above-referenced performance goals are not achieved. Adaptive measures, if required, will be incorporated into the annual monitoring reports to the EPA.

The first-year monitoring report will act as the SEP completion report. The SEP completion and monitoring report will be submitted to the EPA, upon completion of the SEP construction activities. At minimum the SEP completion portion of the report will provide the following content:

- Evidence of SEP completion (e.g., photos, vendor invoices or receipts, correspondence, etc.)
- Documentation of all SEP expenditures
- Quantification of the benefits associated with the project
- Explanation of how benefits were measured or estimated
- Detail of any further work required to be done (e.g., maintenance needed)

## 7. LONG TERM MANAGEMENT PLAN

After the maintenance period is complete, the project is designed to be self-sustaining and no long-term management of natural features is anticipated, however, periodic inspection of the cattle exclusion fencing will be conducted and repairs made, as needed. A conservation easement, placed by the land owner, which includes the NWP 32 area to south, will restrict the use and development of the SEP area along with the NWP 32 area.

Dr. Stan Scheidler is the only owner of the Site. The stream restoration and buffer enhancement areas will have long-term protection provided by a conservation easement or deed restriction, which will be placed within sixty (60) days of the Effective Date of Administrative Compliance Order on Consent with the US EPA. An example conservation easement to be used for this project is included as [Appendix E](#).

## 8. ADAPTIVE MANAGEMENT

If monitoring results indicate a significant failure (i.e., unstable or unvegetated banks, less than 70% survivability of trees and shrubs, less than 90% cover in reseeded areas, or buffer encroachment) to meet performance goals by the end Year 1 (i.e., beyond anticipated minor maintenance), the EPA will be notified and consulted within thirty (30) days of such monitoring results as to whether remedial tasks addressing compliance failure should be implemented. These tasks could include, but are not limited to, supplemental plantings and seeding or applied methods of invasive species control. A remedial plan including such tasks will be submitted to the EPA for approval within sixty (60) days of the monitoring results described above and will be implemented upon receiving the EPA's approval.

## 9. REFERENCES

- Barbour, M.T., J. Gerritsen, B.D. Snyder, and J.B. Stribling. 1999. Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates and Fish, Second Edition. EPA 841-B-99-002. U.S. Environmental Protection Agency; Office of Water; Washington, D.C.
- Kentucky Department of Environmental Protection. 2008. Standard Methods for Assessing Biological Integrity of Surface Waters in Kentucky. Revision 3. Commonwealth of Kentucky; Department of Environmental Protection; Division of Water; Frankfort, KY.
- Kentucky Energy and Environment Cabinet. 2018. Integrated Report to Congress on the Condition of Water Resources in Kentucky, 2016: Assessment Results with Emphasis on the Big Sandy, Little Sandy, Tygarts River and Kentucky River Basin Management Units and a Statewide Update. Department for Environmental Protection; Division of Water; Water Quality Branch; Frankfort, KY.
- USDA/NRCS. 2017. National Cooperative Soil Survey, Web Soil Survey Mapper. Available online at: <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- USEPA. 2019. Waters GeoViewer. Available online at: <https://www.epa.gov/waterdata/waters-geoviewer>

Table 2 – Existing Conditions at Stream 1 and Restoration Reach Details

Restoration Reach Name	Measurements collected from:		Bank Height (feet)	Ordinary High Water Mark (OHWM; feet)	Wetted Width (feet)	Water Depth (inches)	Reach and Bank Details
	RB	LB					
Reach 20		✓	7 (R); 7 (G)	11 (R); 10 (G)	7 (R); 5 (G)	3 (R); 11 (G)	Riffle/glide RB: excavation of aggregate accumulation to allow thalweg to move away from bank, buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence LB: bank stabilization; buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence
Reach 21		✓	5 – 7	10 (R); 9 (P)	5 (R); 4 (P)	8 (R); 3 (P)	Riffle/pool/riffle RB: excavation of aggregate accumulation to allow thalweg to move away from bank, buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence LB: bank stabilization; buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence
Reach 22	✓		3 (R); 4 (P)	10 (R); 11 (P)	8 (R); 10 (P)	3 (R); 13 (P)	Riffle/pool RB: bank stabilization; buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence LB: excavation of aggregate accumulation to allow thalweg to move away from bank, buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence
Reach 23	✓		4 – 6 (G)	12 (R)	7 (R); 5 (G)	1 (R)'; 12 (G)	Riffle/Glide RB: bank stabilization; buffer enhancement plantings, invasive species removal; 25' cattle exclusion fence LB: gravel bar excavation/channel enhancement; buffer planting; 25' cattle exclusion fence

\* Right descending bank = (RB); left descending bank = (LB)

**Table 3 - Lazy Bee Supplemental Environmental Project Cost Estimate and Schedule - Update July 2020**

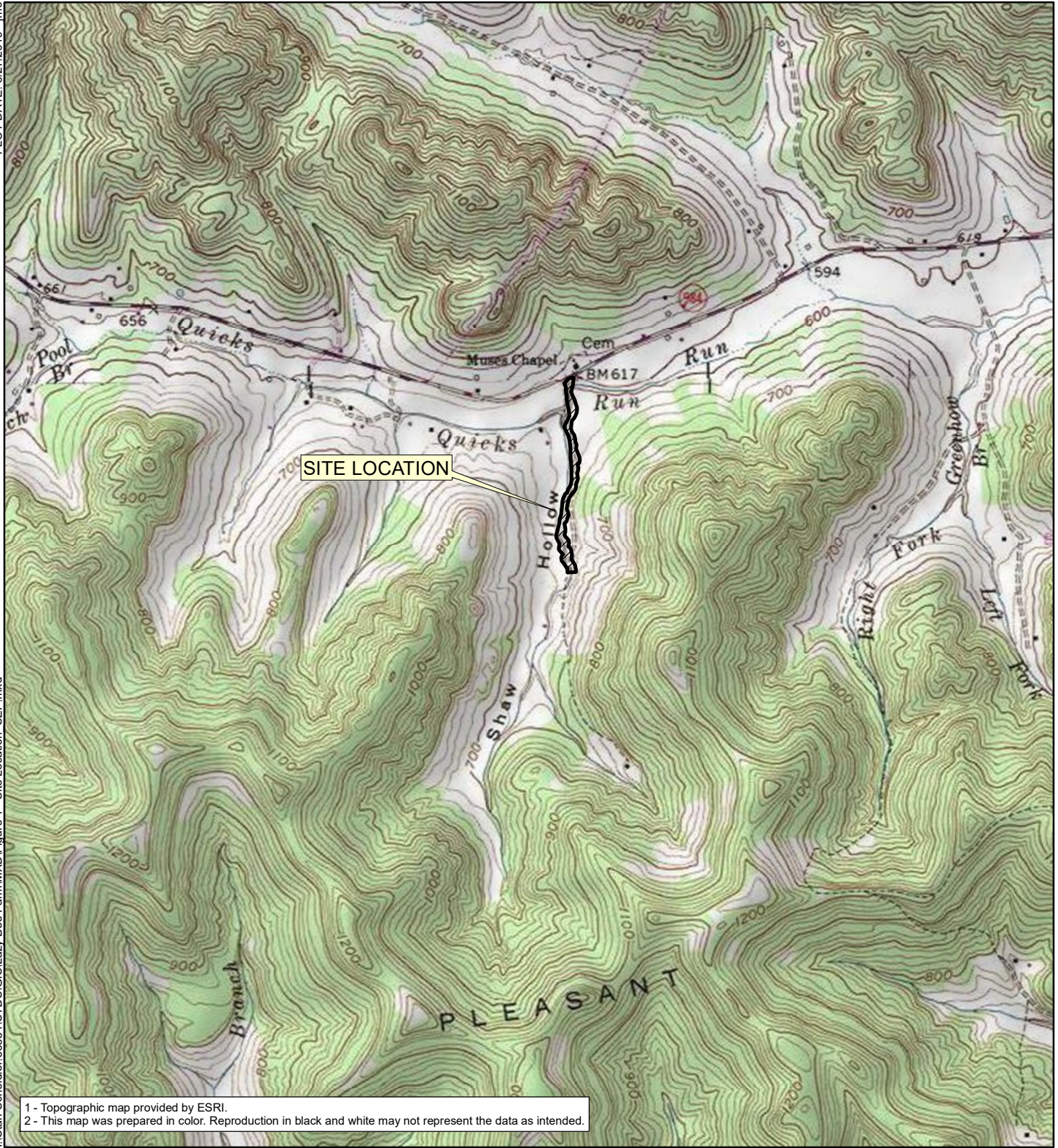
<b>Task</b>	<b>Cost</b>	<b>Time Frame</b>	<b>Total for Each Task</b>
<b>Task 1 - Assessment and Permitting</b>		4 months	<b>\$6,400.00</b>
a. Pre-SEP Assessment (E.coli, photos)	2300.00		
b. NWP 13 Prep (Bank Stabilization)	3100.00		
c. Corps Review and Comments	1000.00		
<b>Task 2 - Bank Stabilization and Buffer Enhancement</b>		1 year	<b>\$55,800.00</b>
a. Bank restoration + buffer enhancement	32500.00		
a. Inv species mgt cut/spray	3300.00		
a. Procure and install cattle fencing (6,000 LF)	13400.00		
<b>Task 3 - Annual Monitoring (2 years)</b>		2 years	<b>\$12,500.00</b>
a. Post-SEP Site Assessment (photos as-built for SEP)	2500.00		
b. Field work for annual monitoring	5000.00		
b. Monitoring report drafting (include SEP Competition metrics)	4000.00		
C. EPA Review and Comments	1000.00		
<b>TOTAL</b>			<b>\$74,700.00</b>



**Figures**

PLOT DATE: 3/27/2019 - jmo

I:\Stan-Scheidler.33384\STD\GIS\Lazy Bee Farm\MXD\Figure 1 - Site Location\_SEP.mxd



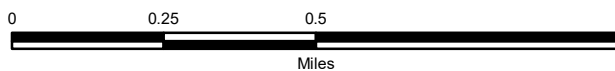
1 - Topographic map provided by ESRI.  
 2 - This map was prepared in color. Reproduction in black and white may not represent the data as intended.



MAP LOCATION

LAZY BEE FARM  
 QUICKS RUN ROAD  
 LEWIS COUNTY, KENTUCKY

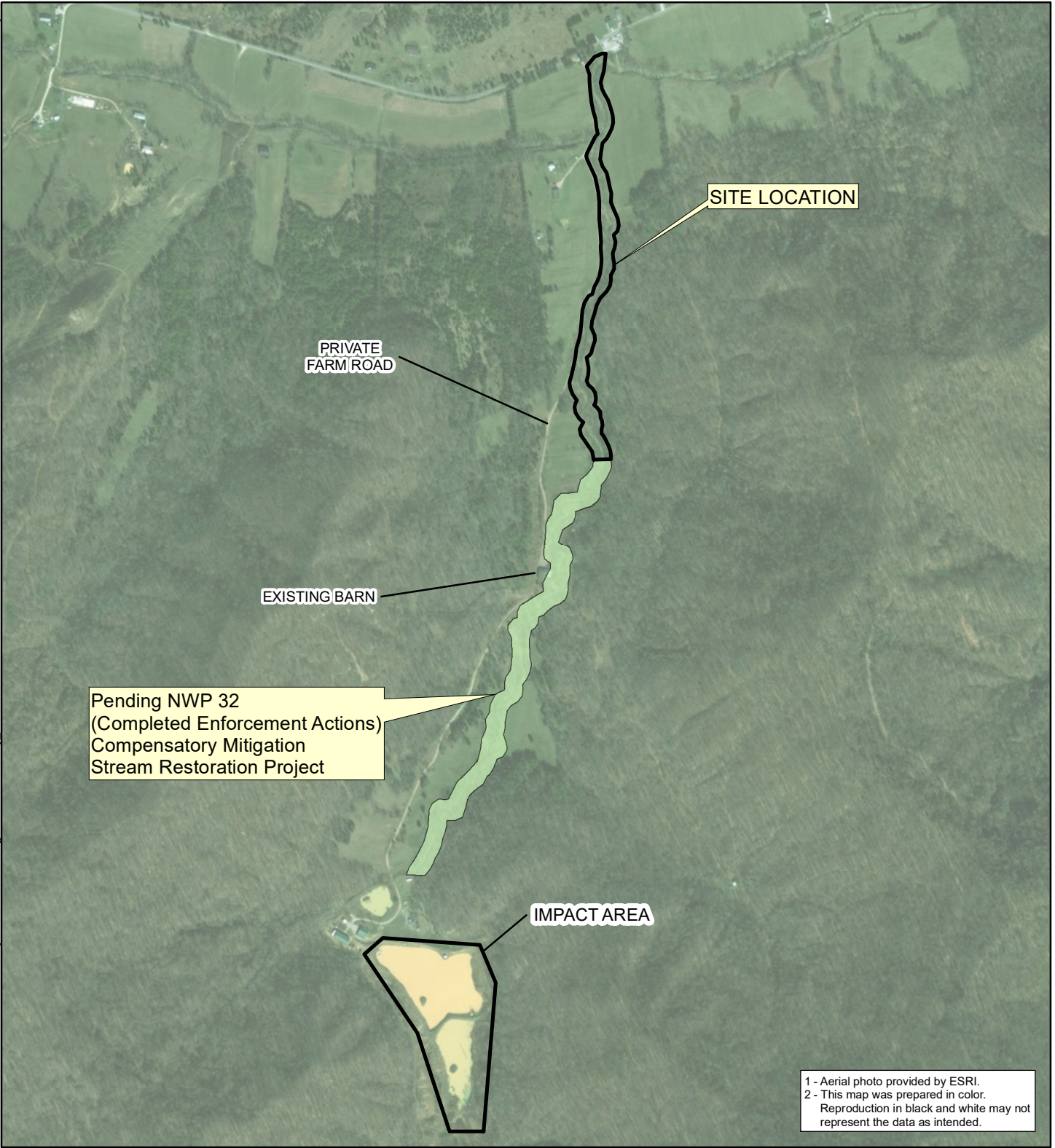
**SITE LOCATION**





PLOT DATE: 3/27/2019 - jmo

I:\Stan-Scheidler.333841\STD\S\GIS\Lazy Bee Farm\MXD\Figure 2 - Site Vicinity\_SEP.mxd



LAZY BEE FARM  
 QUICKS RUN ROAD  
 LEWIS COUNTY, KENTUCKY

**SITE VICINITY**

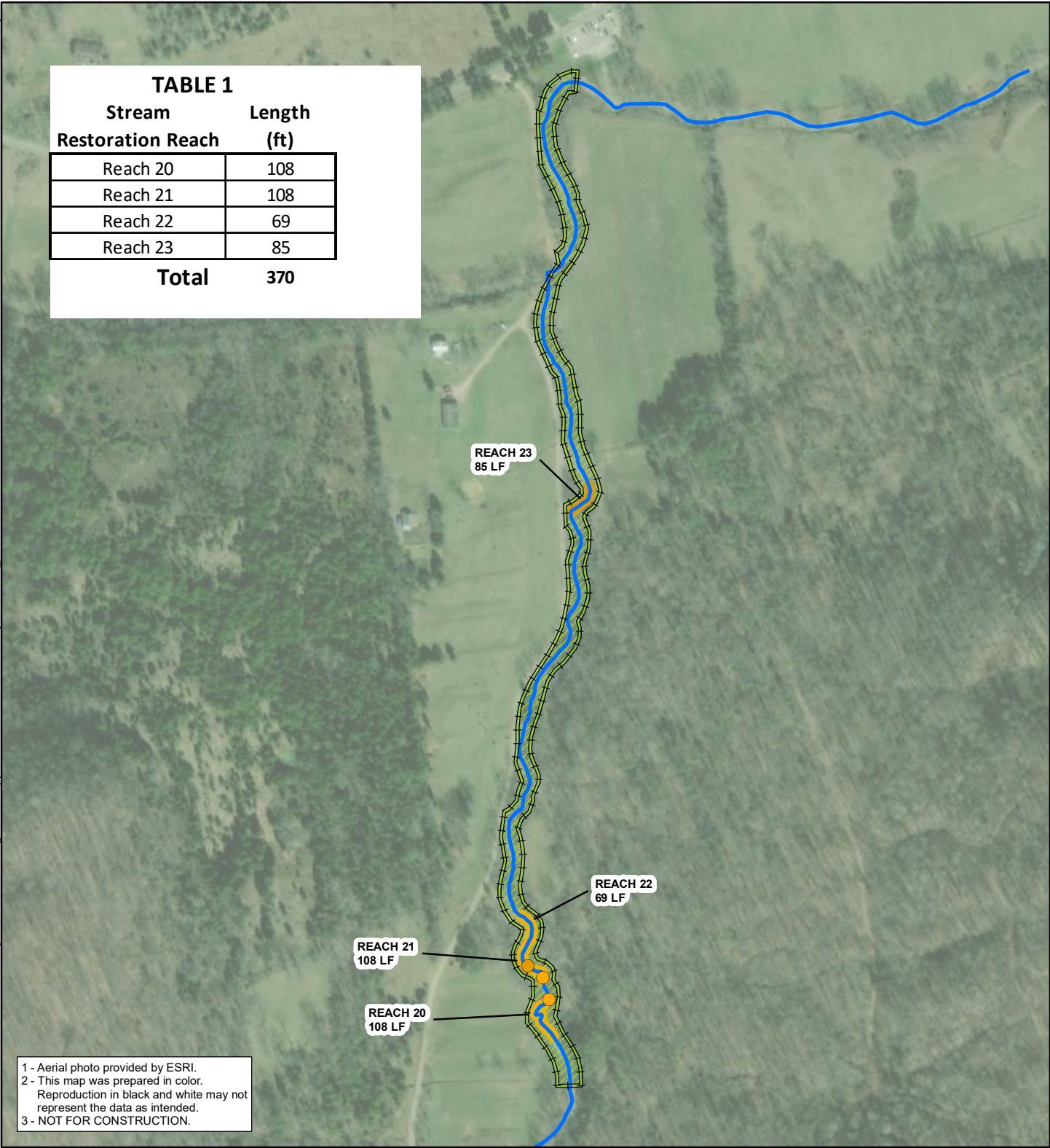


PLOT DATE: 7/16/2020 - jmo


I:\Stan-Scheidler.33384\STDS\GIS\Lazy Bee Farm\MXD\Figure 3 - Supplemental Environmental Project revision. 07-16-20.mxd

**TABLE 1**

Stream Restoration Reach	Length (ft)
Reach 20	108
Reach 21	108
Reach 22	69
Reach 23	85
<b>Total</b>	<b>370</b>

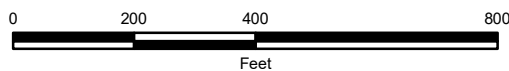


**LEGEND**

-  Stream (3,027 LF in project area)
-  Approximate Bank Restoration Location (See Table 1 for Details)
-  Buffer Enhancement - 25 ft from Each Bank (+/- 2.3 ac.) (Supplemental Plantings & Invasive Species Removal)
-  Log Jam Removal Area
-  Cattle Exclusion Fence

LAZY BEE FARM  
QUICKS RUN ROAD  
LEWIS COUNTY, KENTUCKY

**SUPPLEMENTAL ENVIRONMENTAL PROJECT:  
STREAM RESTORATION**



July 2020




O'BRIEN & GERE ENGINEERS, INC.





**Appendix A**  
**FEMA FIRM Map**





**Appendix B**  
**U.S. EPA Rapid**  
**Assessment Protocol**  
**Forms**

**PHYSICAL CHARACTERIZATION/WATER QUALITY FIELD DATA SHEET  
(FRONT)**

STREAM NAME <u>Restoration 7</u>	LOCATION <u>Vanceburg, Lewis County, KY</u>	
STATION # _____ RIVERMILE _____	STREAM CLASS <u>perennial / intermittent</u>	
LAT _____ LONG _____	RIVER BASIN _____	
STORET # _____	AGENCY _____	
INVESTIGATORS <u>M. Waligura, T. Stungill</u>		
FORM COMPLETED BY <u>T. Stungill</u>	DATE <u>3-15-18</u> TIME <u>11:33</u> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	REASON FOR SURVEY <u>Baseline</u>

<b>WEATHER CONDITIONS</b>	<p>Now</p> <input type="checkbox"/> storm (heavy rain) <input type="checkbox"/> rain (steady rain) <input type="checkbox"/> showers (intermittent) <input type="checkbox"/> %cloud cover <input checked="" type="checkbox"/> clear/sunny	<p>Past 24 hours</p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> % <input type="checkbox"/>	<p>Has there been a heavy rain in the last 7 days?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Air Temperature <u>45</u> °C</p> <p>Other _____</p>
<b>SITE LOCATION/MAP</b>	<p>Draw a map of the site and indicate the areas sampled (or attach a photograph)</p>		
<b>STREAM CHARACTERIZATION</b>	<p>Stream Subsystem  <input checked="" type="checkbox"/> Perennial <input checked="" type="checkbox"/> Intermittent <input type="checkbox"/> Tidal</p> <p>Stream Type  <input type="checkbox"/> Coldwater <input checked="" type="checkbox"/> Warmwater</p> <p>Stream Origin  <input type="checkbox"/> Glacial <input type="checkbox"/> Spring-fed  <input type="checkbox"/> Non-glacial montane <input type="checkbox"/> Mixture of origins  <input type="checkbox"/> Swamp and bog <input type="checkbox"/> Other _____</p> <p>Catchment Area _____ km<sup>2</sup></p>		

## PHYSICAL CHARACTERIZATION/WATER QUALITY FIELD DATA SHEET (BACK)

<b>WATERSHED FEATURES</b>	<b>Predominant Surrounding Landuse</b> <input type="checkbox"/> Forest <input type="checkbox"/> Commercial <input type="checkbox"/> Field/Pasture <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Agricultural <input type="checkbox"/> Other _____ <input type="checkbox"/> Residential	<b>Local Watershed NPS Pollution</b> <input type="checkbox"/> No evidence <input type="checkbox"/> Some potential sources <input type="checkbox"/> Obvious sources  <b>Local Watershed Erosion</b> <input type="checkbox"/> None <input type="checkbox"/> Moderate <input type="checkbox"/> Heavy
<b>RIPARIAN VEGETATION (18 meter buffer)</b>	<b>Indicate the dominant type and record the dominant species present</b> <input type="checkbox"/> Trees <input type="checkbox"/> Shrubs <input checked="" type="checkbox"/> Grasses <input type="checkbox"/> Herbaceous <b>dominant species present</b> <u>hackberry, bl. cherry, sycamore</u>	
<b>INSTREAM FEATURES</b>	<b>Estimated Reach Length</b> <u>100 ft</u> <b>Canopy Cover</b> <input checked="" type="checkbox"/> Partly open <input type="checkbox"/> Partly shaded <input type="checkbox"/> Shaded <b>Estimated Stream Width</b> <u>5 ft</u> <b>Sampling Reach Area</b> _____ m <sup>2</sup> <b>High Water Mark</b> _____ m <b>Area in km<sup>2</sup> (m<sup>2</sup>x1000)</b> _____ km <sup>2</sup> <b>Proportion of Reach Represented by Stream Morphology Types</b> <input checked="" type="checkbox"/> Riffle <u>25</u> % <input checked="" type="checkbox"/> Run <u>70</u> % <input checked="" type="checkbox"/> Pool <u>10</u> % <b>Estimated Stream Depth</b> <u>3 in</u> <b>Surface Velocity (at thalweg)</b> _____ m/sec <b>Channelized</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>Dam Present</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>LARGE WOODY DEBRIS</b>	<b>LWD</b> _____ m <sup>2</sup> <b>Density of LWD</b> _____ m <sup>2</sup> /km <sup>2</sup> (LWD/ reach area)	
<b>AQUATIC VEGETATION</b>	<b>Indicate the dominant type and record the dominant species present</b> <input type="checkbox"/> Rooted emergent <input type="checkbox"/> Rooted submergent <input type="checkbox"/> Rooted floating <input type="checkbox"/> Free floating <input type="checkbox"/> Floating Algae <input type="checkbox"/> Attached Algae <b>dominant species present</b> _____ <b>Portion of the reach with aquatic vegetation</b> _____ %	
<b>WATER QUALITY</b>	<b>Temperature</b> _____ °C <b>Water Odors</b> <input type="checkbox"/> Normal/None <input type="checkbox"/> Sewage <input type="checkbox"/> Petroleum <input type="checkbox"/> Chemical <input type="checkbox"/> Fishy <input type="checkbox"/> Other _____ <b>Dissolved Oxygen</b> _____ <b>pH</b> _____ <b>Turbidity</b> _____ <b>WQ Instrument Used</b> _____ <b>Water Surface Oils</b> <input type="checkbox"/> Slick <input type="checkbox"/> Sheen <input type="checkbox"/> Globbs <input type="checkbox"/> Flecks <input type="checkbox"/> None <input type="checkbox"/> Other _____ <b>Turbidity (if not measured)</b> <input type="checkbox"/> Clear <input type="checkbox"/> Slightly turbid <input type="checkbox"/> Turbid <input type="checkbox"/> Opaque <input type="checkbox"/> Stained <input type="checkbox"/> Other _____	
<b>SEDIMENT/SUBSTRATE</b>	<b>Odors</b> <input type="checkbox"/> Normal <input type="checkbox"/> Sewage <input type="checkbox"/> Petroleum <input type="checkbox"/> Chemical <input type="checkbox"/> Anaerobic <input type="checkbox"/> None <input type="checkbox"/> Other _____ <b>Deposits</b> <input type="checkbox"/> Sludge <input type="checkbox"/> Sawdust <input type="checkbox"/> Paper fiber <input type="checkbox"/> Sand <input type="checkbox"/> Relict shells <input type="checkbox"/> Other _____ <b>Oils</b> <input type="checkbox"/> Absent <input type="checkbox"/> Slight <input type="checkbox"/> Moderate <input type="checkbox"/> Profuse <b>Looking at stones which are not deeply embedded, are the undersides black in color?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	

INORGANIC SUBSTRATE COMPONENTS (should add up to 100%)			ORGANIC SUBSTRATE COMPONENTS (does not necessarily add up to 100%)		
Substrate Type	Diameter	% Composition in Sampling Reach	Substrate Type	Characteristic	% Composition in Sampling Area
Bedrock			Detritus	sticks, wood, coarse plant materials (CPOM)	<b>2</b>
Boulder	> 256 mm (10")	<b>5</b>			
Cobble	64-256 mm (2.5"-10")	<b>20</b>	Muck-Mud	black, very fine organic (FPOM)	
Gravel	2-64 mm (0.1"-2.5")	<b>60</b>			
Sand	0.06-2mm (gritty)	<b>15</b>	Marl	grey, shell fragments	
Silt	0.004-0.06 mm	<b>trace</b>			
Clay	< 0.004 mm (slick)				

# HABITAT ASSESSMENT FIELD DATA SHEET—HIGH GRADIENT STREAMS (FRONT)

STREAM NAME <u>Restoration 7</u>		LOCATION <u>Vanceburg, Lewis County, KY</u>	
STATION # _____ RIVERMILE _____		STREAM CLASS <u>perennial / intermittent</u>	
LAT _____ LONG _____		RIVER BASIN _____	
STORET # _____		AGENCY _____	
INVESTIGATORS <u>M. Waligura, T. Sturgill</u>			
FORM COMPLETED BY <u>T. Sturgill</u>		DATE <u>3-15-18</u> TIME <u>11:30</u> <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">AM</span> PM	REASON FOR SURVEY <u>Baseline</u>

	Habitat Parameter	Condition Category			
		Optimal	Suboptimal	Marginal	Poor
Parameters to be evaluated in sampling reach	<b>1. Epifaunal Substrate/ Available Cover</b> Greater than 70% of substrate favorable for epifaunal colonization and fish cover; mix of snags, submerged logs, undercut banks, cobble or other stable habitat and at stage to allow full colonization potential (i.e., logs/snags that are <u>not</u> new fall and <u>not</u> transient).	40-70% mix of stable habitat; well-suited for full colonization potential; adequate habitat for maintenance of populations; presence of additional substrate in the form of newfall, but not yet prepared for colonization (may rate at high end of scale).	20-40% mix of stable habitat; habitat availability less than desirable; substrate frequently disturbed or removed.	Less than 20% stable habitat; lack of habitat is obvious; substrate unstable or lacking.	
	<b>SCORE</b>	20 19 18 17 16	15 14 13 12 11	10 9 8 7 6	5 4 <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">3</span> 2 1 0
	<b>2. Embeddedness</b> Gravel, cobble, and boulder particles are 0-25% surrounded by fine sediment. Layering of cobble provides diversity of niche space.	Gravel, cobble, and boulder particles are 25-50% surrounded by fine sediment.	Gravel, cobble, and boulder particles are 50-75% surrounded by fine sediment.	Gravel, cobble, and boulder particles are more than 75% surrounded by fine sediment.	
	<b>SCORE</b>	20 19 18 17 16	15 14 13 12 11	10 9 8 7 <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">6</span>	5 4 3 2 1 0
	<b>3. Velocity/Depth Regime</b> All four velocity/depth regimes present (slow-deep, slow-shallow, fast-deep, fast-shallow). (Slow is < 0.3 m/s, deep is > 0.5 m.)	Only 3 of the 4 regimes present (if fast-shallow is missing, score lower than if missing other regimes).	Only 2 of the 4 habitat regimes present (if fast-shallow or slow-shallow are missing, score low).	Dominated by 1 velocity/depth regime (usually slow-deep).	
<b>SCORE</b>	20 19 18 17 16	15 14 13 12 11	10 9 8 7 6	5 4 <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">3</span> 2 1 0	
<b>4. Sediment Deposition</b> Little or no enlargement of islands or point bars and less than 5% of the bottom affected by sediment deposition.	Some new increase in bar formation, mostly from gravel, sand or fine sediment; 5-30% of the bottom affected; slight deposition in pools.	Moderate deposition of new gravel, sand or fine sediment on old and new bars; 30-50% of the bottom affected; sediment deposits at obstructions, constrictions, and bends; moderate deposition of pools prevalent.	Heavy deposits of fine material, increased bar development; more than 50% of the bottom changing frequently; pools almost absent due to substantial sediment deposition.		
<b>SCORE</b>	20 19 18 17 16	15 14 13 12 <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">11</span>	10 9 8 7 6	5 4 3 2 1 0	
<b>5. Channel Flow Status</b> Water reaches base of both lower banks, and minimal amount of channel substrate is exposed.	Water fills >75% of the available channel; or <25% of channel substrate is exposed.	Water fills 25-75% of the available channel, and/or riffle substrates are mostly exposed.	Very little water in channel and mostly present as standing pools.		
<b>SCORE</b>	20 19 18 17 16	15 14 13 12 11	<span style="border: 1px solid black; border-radius: 50%; padding: 2px;">10</span> 9 8 7 6	5 4 3 2 1 0	

33



**HABITAT ASSESSMENT FIELD DATA SHEET—HIGH GRADIENT STREAMS (BACK)**

Habitat Parameter	Condition Category																				
	Optimal					Suboptimal					Marginal					Poor					
<b>6. Channel Alteration</b>	Channelization or dredging absent or minimal; stream with normal pattern.					Some channelization present, usually in areas of bridge abutments; evidence of past channelization, i.e., dredging, (greater than past 20 yr) may be present, but recent channelization is not present.					Channelization may be extensive; embankments or shoring structures present on both banks; and 40 to 80% of stream reach channelized and disrupted.					Banks shored with gabion or cement; over 80% of the stream reach channelized and disrupted. Instream habitat greatly altered or removed entirely.					
<b>SCORE</b>	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
<b>7. Frequency of Riffles (or bends)</b>	Occurrence of riffles relatively frequent; ratio of distance between riffles divided by width of the stream <7:1 (generally 5 to 7); variety of habitat is key. In streams where riffles are continuous, placement of boulders or other large, natural obstruction is important.					Occurrence of riffles infrequent; distance between riffles divided by the width of the stream is between 7 to 15.					Occasional riffle or bend; bottom contours provide some habitat; distance between riffles divided by the width of the stream is between 15 to 25.					Generally all flat water or shallow riffles; poor habitat; distance between riffles divided by the width of the stream is a ratio of >25.					
<b>SCORE</b>	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
<b>8. Bank Stability (score each bank)</b>	Banks stable; evidence of erosion or bank failure absent or minimal; little potential for future problems. <5% of bank affected.					Moderately stable; infrequent, small areas of erosion mostly healed over. 5-30% of bank in reach has areas of erosion.					Moderately unstable; 30-60% of bank in reach has areas of erosion; high erosion potential during floods.					Unstable; many eroded areas; "raw" areas frequent along straight sections and bends; obvious bank sloughing; 60-100% of bank has erosional scars.					
Note: determine left or right side by facing downstream.																					
<b>SCORE (LB)</b>	Left Bank 10 9					8 7 6					5 4 3					2 1 0					
<b>SCORE (RB)</b>	Right Bank 10 9					8 7 6					5 4 3					2 1 0					
<b>9. Vegetative Protection (score each bank)</b>	More than 90% of the streambank surfaces and immediate riparian zone covered by native vegetation, including trees, understory shrubs, or nonwoody macrophytes; vegetative disruption through grazing or mowing minimal or not evident; almost all plants allowed to grow naturally.					70-90% of the streambank surfaces covered by native vegetation, but one class of plants is not well-represented; disruption evident but not affecting full plant growth potential to any great extent; more than one-half of the potential plant stubble height remaining.					50-70% of the streambank surfaces covered by vegetation; disruption obvious; patches of bare soil or closely cropped vegetation common; less than one-half of the potential plant stubble height remaining.					Less than 50% of the streambank surfaces covered by vegetation; disruption of streambank vegetation is very high; vegetation has been removed to 5 centimeters or less in average stubble height.					
<b>SCORE (LB)</b>	Left Bank 10 9					8 7 6					5 4 3					2 1 0					
<b>SCORE (RB)</b>	Right Bank 10 9					8 7 6					5 4 3					2 1 0					
<b>10. Riparian Vegetative Zone Width (score each bank riparian zone)</b>	Width of riparian zone >18 meters; human activities (i.e., parking lots, roadbeds, clear-cuts, lawns, or crops) have not impacted zone.					Width of riparian zone 12-18 meters; human activities have impacted zone only minimally.					Width of riparian zone 6-12 meters; human activities have impacted zone a great deal.					Width of riparian zone <6 meters; little or no riparian vegetation due to human activities.					
<b>SCORE (LB)</b>	Left Bank 10 9					8 7 6					5 4 3					2 1 0					
<b>SCORE (RB)</b>	Right Bank 10 9					8 7 6					5 4 3					2 1 0					

Parameters to be evaluated broader than sampling reach

Total Score 71


**38**




**Appendix C**  
**Photographic Log**


## APPENDIX C – PHOTOGRAPHIC LOG


<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 1	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> View of existing pasture/open-field area adjacent to Stream 1 that will be part of the buffer enhancement (25-foot) activities and cattle exclusion area. Photo taken facing south.			


<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 2	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> View of livestock pasture adjacent to Stream 1. Note tree lined corridor in background of photo which is Stream 1 channel. Photo taken facing east.			


<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 3	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> Another example, further downstream (Reach 20) of bank erosion caused by thalweg displacement due to excess deposition in gravel point bar. Photo taken facing south.			


<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 4	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> View of log jam/debris removal area near Reach 20. Photo taken facing east.			

<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 5	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> Alternate view of Reach 20 facing upstream. Photo facing south.			

<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 6	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> View of Reach 21 where proposed aggregate removal and bank stabilization is proposed. Photo taken facing south.			

<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 7	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> View of Reach 22 needing bank stabilization and aggregate removal. Photo taken facing north.			

<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 8	<b>DATE:</b> 03/15/18		
<b>DESCRIPTION</b> View of livestock pasture, Stream 1 is located in the background of the photo depicted by the tree line. A portion of this area will include the 25-foot buffer for Stream 1 with the livestock exclusion fencing. Photo taken facing south.			

<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 9	<b>DATE:</b> 07/11/20		
<b>DESCRIPTION</b> View of a log jam downstream of Reach 22 facing northwest.			

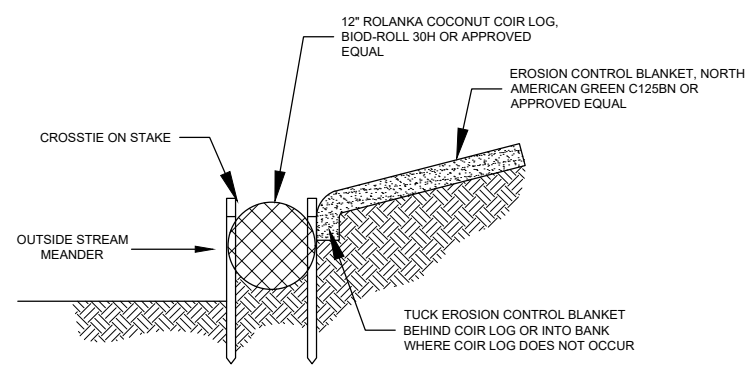
<b>CLIENT NAME:</b> Stan Scheidler		<b>SITE LOCATION:</b> Quicks Run Road, Vanceburg, Lewis County, KY	<b>PROJECT NO.</b> 33384 71796
<b>PHOTO NO.</b> 10	<b>DATE:</b> 07/11/20		
<b>DESCRIPTION</b> View of bank restoration Reach 23. Photo taken facing northeast.			



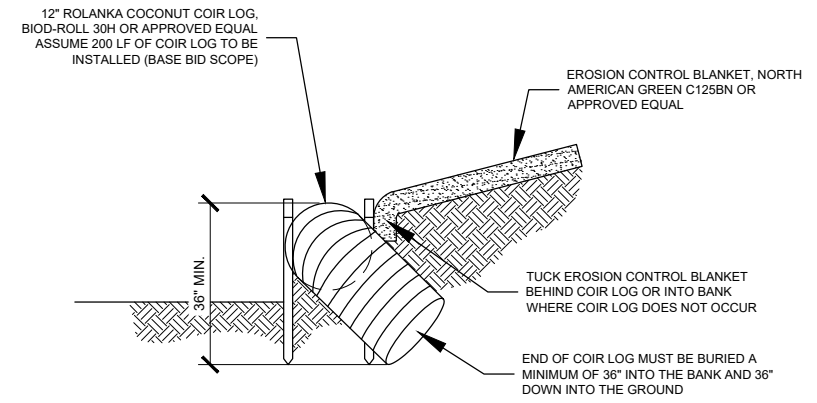
**Appendix D**  
**Stream Restoration and**  
**Construction Details**



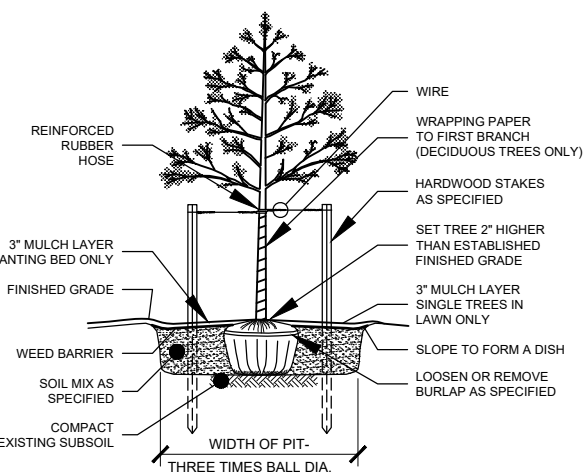
6/11/2019 8:10 AM



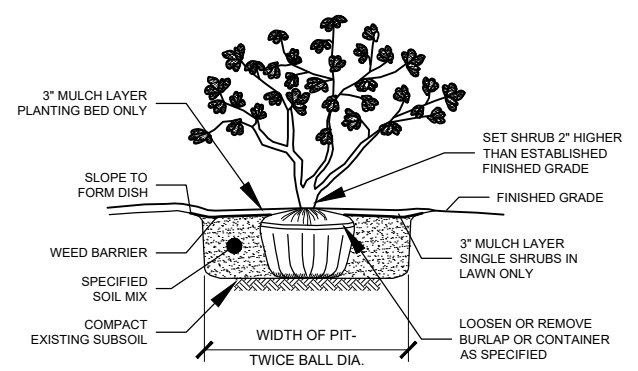
**COIR LOG DETAIL (MIDDLE OF LOG)**  
NOT TO SCALE



**COIR LOG DETAIL (END OF LOG)**  
NOT TO SCALE



**TREE GUYING & STAKING DETAIL**  
NOT TO SCALE



**SHRUB PLANTING DETAIL**  
NOT TO SCALE

**NOTES:**

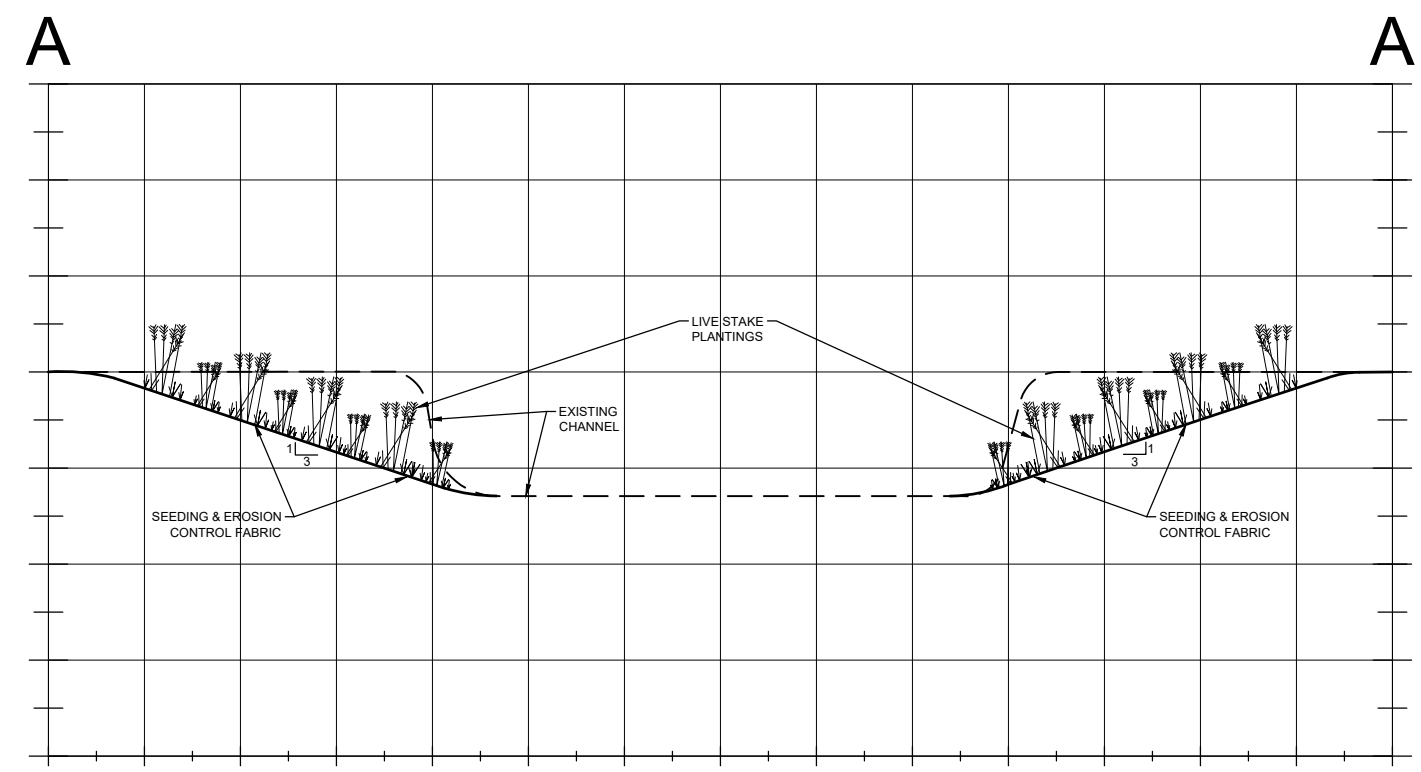
1. ASSUME REPLANTING ZONE TO BE APPROXIMATELY 25 FT ON EACH SIDE OF STREAM CHANNEL (WHERE AVAILABLE). RESTORATION CORRIDOR IS APPROXIMATELY 2.3 AC
2. TREE SIZES WILL CONSIST OF BARE-ROOT SEEDLINGS & 2- TO 3-GALLON CONTAINERS.
3. SHRUB PLANTING DENSITY WILL BE ON 20 FT INTERVALS IN RANDOM PATTERN. SHRUBS TO BE PLANTED IN GROUPS OF 3 AT EACH LOCATION.
4. LIVE STAKES WILL BE BLACK WILLOW (*Salix nigra*) & DOGWOOD SPECIES USING 10 FT INTERVAL SPACING.

**Riparian Buffer Mix (ERNMX-178) @ 20 lbs per acre**

Scientific Name	Common Name	Indicator Status	% By Weight
<i>Elmus virginicus</i>	Virginia Wildrye	FACW	20
<i>Sorghastrum nutans</i>	Indiangrass	FACU	15
<i>Andropogon gerardii</i>	Big Bluestem	FAC	15
<i>Panicum clandestinum</i>	Deertounge	FACU	10
<i>Panicum virgatum</i>	Switchgrass	FAC	9
<i>Chamaecrista fasciculata</i>	Partridge Pea	FACU	6
<i>Agrostis perennans</i>	Autumn Bentgrass	FACU	4
<i>Verbena hatata</i>	Blue Vervain	FACW	4
<i>Helopsis helianthoides</i>	Oxeye Sunflower	FAC	3
<i>Rudbeckia hirta</i>	Blackeyed Susan	FACU	3
<i>Eupatorium perfoliatum</i>	Boneset	FACW	2
<i>Vernonia gigantea</i>	Giant Ironweed	FAC	2
<i>Juncus effusus</i>	Soft Rush	OBL	2
<i>Helenium autumnale</i>	Common Sneezeweed	FACW	1.5
<i>Baptisia australis</i>	Blue False Indigo	FACU	1
<i>Eupatorium fistulosum</i>	Joe Pye Weed	UPL	1
<i>Lobelia siphilitica</i>	Great Blue Lobelia	FACW	1
<i>Monarda fistulosa</i>	Wild Bergamot	UPL	0.5

**TREE AND SHRUB PLANT LIST**

Scientific Name	Common Name	Indicator Status	Size
<i>Acer saccharinum</i>	Silver Maple	FACW	2-gallon container and bare root
<i>Populus deltoides</i>	Eastern Cottonwood	FACU	
<i>Quercus bicolor</i>	Swamp White Oak	FAC	
<i>Quercus palustris</i>	Pin Oak	FACU	
<i>Platanus occidentalis</i>	American Sycamore	FAC	
<i>Carya ovata</i>	Shagbark Hickory	FACU	2-gal container
<i>Jugulans nigra</i>	Black Walnut	FACU	
<i>Cephalanthus occidentalis</i>	Buttonbush	FAC	
<i>Cornus amomum</i>	Silky Dogwood	FACU	
<i>Amelanchier canadensis</i>	Serviceberry	FACW	
<i>Viburnum dentatum</i>	Arrowwood Viburnum	FAC	2-gal container
<i>Lindera benzoin</i>	Spicebush	OBL	



**EXISTING vs PROPOSED BANK STABILIZATION PROFILE @ STATION TBD**  
NOT TO SCALE

LAZY BEE FARM  
VANCEBURG, KY

**STREAM RESTORATION & CONSTRUCTION DETAILS**

FILE NO. 33384.69113-002  
JUNE 2019



O'BRIEN & GERE ENGINEERS, INC.

\\server22-01\projects\Stan-Scheidler.33384\69113.Lazy-Bee-Farm\Docs\DWG\Figures\69113-002.dwg



## Appendix E

### Conservation Easement

## DISCLAIMER

The template deed restrictions you are about to access are sample documents that were developed by the US Army Corps of Engineers (Corps) and the Kentucky Energy and Environment Cabinet, Department of Environmental Protection, Division of Water (Cabinet). The terms and conditions contained within these documents provide the baseline terms and conditions for acceptance by the Corps and Cabinet when used in conjunction with an application for a Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act (33 U.S.C. §403) and/or Section 404 of the Clean Water Act (33 U.S.C. §1344) and for a Water Quality Certification (Certification) issued by the Cabinet, in accordance with Section 401 of the Clean Water Act (33 U.S.C. §1341) and Section 224.16-050 of the Kentucky Revised Statutes. It may or may not serve the needs of any particular applicant for a DA permit and Certification in Kentucky and does not constitute legal, accounting, or tax advice. Formally completed conservation instruments are intended to be recorded, enforceable legal instruments. All persons considering using this instrument are encouraged to obtain the services of an attorney licensed to practice law in the Commonwealth of Kentucky.

## INSTRUCTIONS

If you select to use this template, the template should be filled out as described below and submitted as a draft instrument with the necessary exhibits to the US Army Corps of Engineers and Kentucky Energy and Environment Cabinet, Department of Environmental Protection, Division of Water for review and approval as part of the application process for a Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act (33 U.S.C. §403) and/or Section 404 of the Clean Water Act (33 U.S.C. §1344) and for a Water Quality Certification (Certification) issued by the Cabinet, in accordance with Section 401 of the Clean Water Act (33 U.S.C. §1341) and Section 224.16-050 of the Kentucky Revised Statutes.

The following notes provide directions for filling in specific information contained in the template. As you go through the template you will find fields where text needs to be inserted or selected. These fields are in grey font and provide basic directions on what needs to be done. If when you click on the field the field title says “See Instructions Note #,” refer back to these instructions for directions on how to fill that field in. The tab key may be used to move from one field to the next.

Note 1 – Date of Declaration: There are three fields in the template associated with the date. The first field is for the day, the second is for the month, and the third is for the year. If you know what date the Declaration will be executed on when the document is printed for signature you may select the day and month from the drop down list and insert the year. If you are uncertain of the date the Declaration will be executed when you print the document for signature select the blank option (\_\_\_\_) for the day, month and year from the drop down menu. The date may then be filled in at the time of execution. These fields do not have to be filled in at the time the document is submitted to the Corps and Cabinet for review.

Note 2 – County Name: There are multiple locations in the document where the name of the County in which the property is located needs to be entered. In all locations enter only the name of the County. For example if the property were located in Jefferson County, KY, the word Jefferson should be entered in the text field.

Note 3 – Insert one or more of the following in the text box: platted survey, approved permit drawings, or site plan.

Note 4 – Insert the permit number assigned by the U.S. Army Corps of Engineers’ District (i.e. LRL-0000-00000) to the project the Declaration of Restrictive Covenants is associated with.

Note 5 – Insert the Water Quality Certification number (i.e. 00-00-0) assigned by the Kentucky Energy and Environment Cabinet, Department of Environmental Protection, Division of Water to the project the Declaration of Restrictive Covenants is associated with.

Note 6 – There are two text boxes associated with this note. In the first text box insert one or more of the following: restore, create, rehabilitate, establish, re-establish, enhance, or preserve. In the second text box insert one or more of the following: aquatic habitats, riparian areas, buffers, and uplands. The information inserted should be consistent with the type of mitigation described in the mitigation plan associated with the Department of Army Permit and Water Quality Certification.

Note 7 – Enter the type of document that will be used to show the natural condition of the Property. The document needs to show all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States. There are four options which are commonly used that may be selected from the drop down menu—1) platted survey, 2) permit drawing, 3) site plan, or 4) permit drawing and site plan. If you want to use a type of document that is not listed, you may click on the field and type in the type of document.

Note 8 – In order to fill in this field, the liens, loans, claims, restrictions, easements and encumbrances that are on the property and the other interests in the property will need to be identified. Once identified, there are two paragraphs in a drop down box to select from.

**A.** The Declarant is the sole owner of the Property and holds fee simple title which is free and clear of any and all liens, loans, claims, restrictions, easements and encumbrances, except as otherwise identified in Exhibit E hereto;

**A.** To the extent that other interests in the Property exist, the holders of such interests have agreed to subordinate their interests in the Property to this Declaration, pursuant to the subordination agreement(s) attached hereto as Exhibit E;

Select the first paragraph if the only encumbrances are utility easements. Select the second paragraph if there are interests other than utility easements.

Note 9 – The address listed for the Corps should be the address for the District Office responsible for the Department of the Army permit. Insert the appropriate Corps address from the following list:

Louisville District – South Section:

U.S. Army Corps of Engineers  
OP-FS, Room 752  
P.O. Box 59  
Louisville, KY 40201-0059

Louisville District – West Section

U.S. Army Corps of Engineers  
Newburgh Regulatory Office  
6855 State Road 66  
Newburgh, IN 47630-9794

Memphis District

U.S. Army Corps of Engineers, Memphis District  
ATTN: Regulatory Office  
167 N. Main Street, Room B-202  
Memphis, TN 38103-1894

Nashville District

US Army Corps of Engineers  
Regulatory Branch  
3701 Bell Road  
Nashville, TN 37214

Note 10 – If the Declaration is being made by a business entity enter the name of the individual signing the Declaration on behalf of the Declarant in the first field and the title of that individual in the second field. If the Declaration is being made by an individual enter the name of the Declarant in the first field and enter a space in the second field to leave the field blank.

## DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

**THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION** is made this [Select the day of the month.](#) day of [Select the month.](#), [Click here to enter the year or select the blank.](#), by [Click here to enter Declarant's name and address.](#) ("Declarant").

### RECITALS

WHEREAS, Declarant is the sole owner in fee simple of certain real property located in [Click here to enter County name.](#) County, Kentucky, as described in Deed Book [Click here to enter deed book number.](#), Page [Click here to enter page number.](#), in the Office of the [Click here to enter County Name.](#) County Clerk, and as more particularly described in legal description attached hereto as Exhibit A and shown on the [See Instructions Note 3](#) and then [click here to enter text.](#) attached hereto as Exhibit B, both of which are incorporated herein by reference ("Property");

WHEREAS, the discharge of dredged and/or fill material into jurisdictional waters of the United States, including wetlands and streams, pursuant to Sections 401 and 404 of the Clean Water Act, requires compensatory mitigation; and

WHEREAS, as compensatory mitigation under Federal and State law for and in consideration of Department of the Army Permit No. [Click here to enter DA Permit number.](#) ("Permit") issued by the U.S. Army Corps of Engineers, [Select the appropriate Corps District.](#) District ("Corps") pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. §403), and Water Quality Certification No. [Click here to enter Certification number.](#) ("Certification") issued by the Kentucky Energy and Environment Cabinet, Department of Environmental Protection, Division of Water ("Cabinet"), in accordance with Section 401 of the Clean Water Act (33 U.S.C. §1341) and Section 224.16-050 of the Kentucky Revised Statutes and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and other conservation values, Declarant has agreed to [See Note 6 and then click here to enter text.](#) [See Note 6 and then click here to enter text.](#) and place certain restrictive covenants on the portion of the Property depicted on the [See Instructions Note 3 and then click here to enter text.](#) attached hereto as Exhibit C and incorporated herein by reference ("Mitigation Property"), in order that the Mitigation Property shall remain substantially in its natural condition forever, and to grant a right of access and entry to the Property;

NOW THEREFORE, in consideration of the benefits to be derived by the Declarant and each and every subsequent owner and occupant of the Mitigation Property, and as required mitigation for the discharge of dredged and/or fill material into waters of the United States, as authorized by the Permit and Certification, Declarant hereby makes this Declaration on the terms and conditions stated below.

1. **Purpose.** The purpose of this Declaration of Restrictive Covenants is to restrict the current and future use of the Mitigation Property in perpetuity in order to protect aquatic

resource functions and values, scenic, resource, environmental, and other conservation values, and conservation functions and ecological services; to establish the Mitigation Property as open, common, and undeveloped conservation area; and to preserve the natural condition of the Mitigation Property in perpetuity.

2. **Covenant Running with the Land.** Declarant hereby declares that the Property shall be bound by, held, transferred, sold, conveyed, leased, improved, hypothecated, occupied or otherwise disposed of and used subject to the rights of access and entry provision and property transfer provision of the following restrictive covenants, which shall be perpetual and run with the land and be binding on all the Declarant's heirs, executors, administrators, successors, assigns, lessees, or other persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title, or interest in said Property or any part thereof; and that the Mitigation Property shall be held, transferred, sold, conveyed, leased, improved, hypothecated, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all the Declarant's heirs, executors, administrators, successors, assigns (which are included in the term "Declarant" below), lessees, or other occupiers and users. The terms and conditions of the following restrictive covenants shall be both explicitly and implicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or part of the Property. Any such transfer, conveyance or encumbrance shall set forth the terms and conditions of this document by reference to this document and its recorded location in accordance with paragraph 9 of this Declaration.

3. **Definitions.**

3.1 Natural Condition. The term "natural condition" shall mean the condition of the Mitigation Property at the time of the declaration and as restored, created, enhanced, and preserved pursuant to the Mitigation Plan. The natural condition shall be evidenced in part by See Note 7 and then choose an item or type in text. all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States and is attached hereto as Exhibit D. The natural condition of the Mitigation Property may also be evidenced by:

- (a) A current aerial photograph of the Mitigation Property at an appropriate scale taken as close as possible to the date the declaration is made; and
- (b) On-site photographs taken at appropriate locations on the Mitigation Property, including major natural features.

3.2 Mitigation Plan. The term "Mitigation Plan" shall mean the plan approved by the Permit and Certification.

4. **Restrictions/Prohibitions.** Any activity on, or use of, the Mitigation Property, which is or may become inconsistent with the purposes of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited except as provided for in the Declarant's Reserved Rights:

4.1 General/Topography. There shall be no filling, flooding, cultivating, excavating, earthmoving, grading, mining or drilling; no removal of natural materials; no dumping of materials; and no alteration of topography in any manner.

4.2 Waters and Wetlands. There shall be no draining, ditching, diking, dredging, channelizing, damming, pumping, or impounding; no changing the grade or elevation, impairing or diverting the flow or circulation of waters, or reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.

4.3 Trees/Vegetation. There shall be no clearing, burning, cutting, mowing or destroying of trees or vegetation.

4.4 Non-Native/Exotic Species. There shall be no introduction of non-native or exotic species to the Mitigation Property.

4.5 Uses. There shall be no agricultural, commercial, or industrial activity undertaken or allowed on the Mitigation Property, including but not limited to grazing and mining. There shall be no horseback riding, whether on or off an established trail.

4.6 Structures. There shall be no construction, erection, or placement of buildings, billboards, signs, or any other temporary or permanent structure, nor any additions to existing structures.

4.7 Roads. There shall be no construction or building of new roads, trails, or other rights of way without the prior written approval by the Corps and Cabinet.

4.8 Off Road Vehicles. There shall be no use of off road vehicles, 4-wheel drive vehicles, all terrain vehicles, snowmobiles, or other types of motorized recreational vehicles except on existing roads and except as necessary to manage the Mitigation Property.

4.9 Utilities. There shall be no construction or placement of utilities or related facilities without the prior written approval of the Corps and Cabinet.

4.10 Waste. There shall be no placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste on the Mitigation Property.

4.11 Pest Control. There shall be no application of pesticides or biological controls, including but not limited to insecticides, fungicides, rodenticides and herbicides, without prior written approval from the Corps and Cabinet.

**5. Reserved Rights.** Notwithstanding the foregoing Restrictions, the Declarant reserves for itself, its heirs, executors, administrators, successors and assigns the right to use the Mitigation Property for all purposes not inconsistent with the purposes of these restrictive covenants.



Further, the Declarant expressly reserves for itself, its heirs, executors, administrators, successors, and assigns the following rights, which may be exercised upon providing 30 days prior written notice to the Corps and Cabinet, except where expressly provided otherwise:

5.1 Wildlife and Forestry Management. Declarant reserves the right to naturally manage the Mitigation Property to preserve and improve the existing forest and wildlife resources. Declarant reserves the right to remove or trim vegetation hazardous to persons or property, and harvest and manage timber downed or damaged due to natural forces, such as fire, storms, insects, or infectious organisms, to the extent necessary to protect the environment. Such management activities shall be carried out only after approval by the Corps and Cabinet and in accordance with Best Management Practices as set out by the U.S. Forest Service or the Kentucky Division of Forestry.

5.2 Landscape Management. Declarant reserves the right to undertake landscaping necessary to prevent severe erosion or damage to the Mitigation Property or portions thereof, or significant detriment to existing or permitted uses, to the extent such landscaping is consistent with preserving the natural condition of the Mitigation Property. Such management activities shall be carried out only after approval by the Cabinet.

5.3 Recreation. Declarant reserves the right to engage in outdoor, non-commercial recreational activities, including hunting, fishing, and similar recreational or educational activities, consistent with cumulatively very small impacts and with the continuing natural condition of the Mitigation Property, but excluding planting and burning. No prior written notice to the Corps and Cabinet is required.

5.4 Road Maintenance. Declarant reserves the right to maintain existing roads, trails, or other rights of way. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and maintenance of roadside ditches.

5.5 Signs. Signage, such as that directed by the U.S. Army Corps of Engineers' permit and the Kentucky Division of Water's Water Quality Certification, shall be erected and remain on site in legible condition. Signage may include boundary markers identifying the area as a Mitigation Property and a protected area. Signage may convey information on restricted use of the Mitigation Property, including "no trespassing" signs, "no mowing" signs, temporary signs indicating the Property is for sale, educational signs identifying the trees, vegetation, wetlands or conservation ecological services of the Mitigation Property, and signs identifying the owner.

5.6 Mitigation Measures. Declarant reserves the right to undertake restoration and mitigation measures required under the Mitigation Plan or otherwise required under law.

**6. Rights of Access and Entry.** The Declarant grants the Corps, Cabinet and their authorized agents an irrevocable and assignable right to enter in, on, over and across the Mitigation Property to inspect and monitor the Mitigation Property; to implement the Mitigation

Plan or take corrective measures under the Mitigation Plan; to take any actions necessary to maintain or restore the natural condition of the Mitigation Property; or to take any actions necessary to verify compliance with these restrictive covenants. The Declarant also grants the Corps, Cabinet, and authorized agents an irrevocable and assignable right to enter and exit over and across the Property as necessary to access the Mitigation Property for the purposes listed above. No rights of access or entry to or use of any portion of the Mitigation Property or Property is granted or conveyed to members of the general public by these restrictive covenants.

**7. Enforcement.** The Declarant grants the Corps and the Cabinet, as third party beneficiaries hereof, a discretionary right to enforce these restrictive covenants in a judicial action against any person or other entity violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in forfeiture or reversion of title. In any enforcement action for violations of this Declaration, an enforcing agency shall be entitled to complete restoration of the Mitigation Property for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties. No omission or delay in acting by the Corps and/or Cabinet shall bar subsequent enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit. Nothing herein shall be construed to authorize the Corps or Cabinet to institute proceedings against the Declarant for changes to the Mitigation Property due to acts of God, natural disasters, or unauthorized acts of third parties outside the control of the Declarant, so long as the compensatory mitigation is completed and determined by the Corps and Cabinet to be successful in accordance with the Mitigation Plan.

**8. Notice to Government.**

**8.1** Any permit application, or request for certification or modification, which may affect the Mitigation Property, made to any government entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

**8.2** The Declarant shall provide the Corps and Cabinet with written notice of any legal action affecting this Declaration, including but not limited to foreclosure proceedings, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation proceedings, and the exercise of the power of eminent domain. For any action that might result in this Declaration being voided or modified, such notice shall be provided at least sixty (60) days before such action would be taken.

**9. Property Transfers.** The Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property and/or Mitigation Property:

NOTICE: This Property is subject to a Declaration of Restrictive Covenants for Conservation dated \_\_\_\_\_, recorded in the [Click here to enter County name](#). County

Clerk's Office on \_\_\_\_\_ in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ and enforceable by the U.S. Army Corps of Engineers and Kentucky Energy and Environment Cabinet, Department of Environmental Protection, Division of Water.

The Declarant shall provide the Corps and Cabinet with written notice of any such grant, transfer or conveyance of any interest in any or all of the Property at least sixty (60) days prior to the grant, transfer or conveyance. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Property and/or Mitigation Property being transferred. Failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants.

**10. Warranties.**

**10.1** The Declarant represents and warrants that:

- A.** Choose an item.
- B.** The Declarant has identified all other parties that hold any interest (e.g. encumbrances) in the Mitigation Property and has notified such parties of the Declarant's intent to grant this Declaration;
- C.** This Declaration will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which the Declarant is a party, or by which the Declarant may be bound or affected;
- D.** This Declaration will not materially violate or contravene any zoning law or other law regulating use of the Mitigation Property; and
- E.** This Declaration does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Declaration.

**10.2** The Declarant represents and warrants that, to the best of its knowledge:

- A.** No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Mitigation Property;
- B.** There are no underground storage tanks located on the Mitigation Property whether presently in service or closed, abandoned, or decommissioned;
- C.** The Mitigation Property is in compliance with all federal, state, and local laws, regulations, and permits and there is no pending or threatening litigation in any way affecting, involving, or relating to the Mitigation Property and its use; and

**D.** The Mitigation Property is not land-locked and there is access to the Mitigation Property by road, dedication of pathway or by an access easement.

**11. Notification.** Any notice, request for approval, or other communication require by these restrictive covenants shall be sent by registered mail, pre-paid postage, to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this paragraph):

To Declarant: [Click here to enter address block.](#)

To Corps: [Click here to enter the address of the appropriate Corps' District.](#)

To Cabinet: 200 Fair Oaks Lane, Fourth Floor  
Frankfort, KY 40601  
Attn: Water Quality Certification Section Supervisor

**12. Amendment.** After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps, Cabinet, and Declarant. Amendment shall be allowed at the discretion of the Corps and Cabinet, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Any amendment must be consistent with the requirements of Sections 401 and 404 of the Clean Water Act. There shall be no obligation to allow an amendment.

**13. Termination.** This Declaration is intended to be perpetual in nature and run with the land as set forth in paragraph 1 of this Declaration. However, if the Corps and Cabinet determine that the compensatory mitigation undertaken on the Mitigation Property set forth in the Mitigation Plan is not successful and the alternative mitigation identified does not involve the Mitigation Property, then the Declarant, Corps, and Cabinet may terminate this Declaration by written agreement.

**14. Recording.** Declarant shall record this Declaration in the official property records of the Office of the [Click here to enter County name.](#) County Clerk within thirty (30) days of execution of this Declaration by the Declarant, and shall, within thirty (30) days of recording, provide the Corps and the Cabinet with a copy of the recorded Declaration and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

**15. Successors in Interest.** All references to the Corps and the Cabinet shall include successor governmental agencies, departments, or divisions, or any other successor entities prescribed by law.

**16. Severability Provision.** Should any separable part of these restrictive covenants be held contrary to law, unenforceable, or void, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration effective on the date first written above, but actually on the date set forth below.

DECLARANT

By: \_\_\_\_\_

Click here to enter name.

Click here to enter title.

\_\_\_\_\_  
Date

COMMONWEALTH OF KENTUCKY

COUNTY OF Click here to enter County name.

Subscribed and sworn to before me by \_\_\_\_\_ this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_