



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Daniel and Marissa Patrone, ) Proceeding Under Section 309(a) of the  
Poland, Ohio ) Clean Water Act, 33 U.S.C. § 1319(a)  
)  
) Docket No. CWA-05-2015-0014  
Respondents. )

**FINDINGS OF VIOLATION AND ADMINISTRATIVE COMPLIANCE ORDER ON  
CONSENT**

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby makes these Findings and issues this Order.

**REGULATORY BASIS**

1. Under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), whenever the Administrator of EPA finds that any person is in violation of Section 301 of the CWA, on the basis of any information available, the Administrator shall issue an order requiring such person to comply with such Section.

2. Under Section 301(a) of the CWA, 33 U.S.C. § 1311(a), except as in compliance with Section 404 of the CWA, 33 U.S.C. § 1344, the discharge of any pollutant by any person shall be unlawful.

3. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: “The Secretary [of the Army] may issue permits . . . for the discharge of dredged or fill material into the navigable waters at specified disposal sites.”

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”

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

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6) defines a “pollutant” as “dredged spoil, solid waste . . . biological materials . . . rock, sand, cellar dirt . . . and agricultural waste discharged into water.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” in pertinent part as “the waters of the United States.”

8. The term “water of the United States” means “all interstate waters [such as lakes, rivers and streams] . . .” and “[w]etlands adjacent to [interstate] waters . . . .” and includes “all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . . [including] intrastate lakes, rivers, streams (including intermittent streams) . . . wetlands . . . the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters . . . tributaries of [such] waters . . . [and] wetlands adjacent to [all such] waters.” 40 C.F.R. § 230.3(s).

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch,

channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

10. “Wetlands” are defined as “those areas that are inundated or saturated by surface or ground water 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.” 40 C.F.R. § 230.3(t).

### **FINDINGS**

11. The Respondents in this matter are:

Daniel and Marissa Patrone  
6893 Clingan Road  
Poland, Ohio 44514

12. Respondents own, at least in part, in law or in equity, 5 acres of real property located at 6893 Clingan Road, T1N, R1W in Poland, Mahoning County, Ohio 44514 (the “Site”). The Site is also known as Mahoning County Permanent Parcel Numbers: 35-34-110 and 35-34-111.

13. The Site contains approximately three and a half (3.5) acres of wetlands.

14. In or around April 2009 up to October 2011, and at other times known to the Respondents, the Respondents, and/or those acting on Respondents behalf, performed land clearing, ditching and excavation activities on their property using machinery (i.e. bulldozers, graders, dump trucks and excavating equipment) which resulted in the discharge of dredged and fill material (i.e. dirt, clay, topsoil, and sand) into approximately 1.48 acres of the wetlands.

15. The wetlands identified in paragraph 13 are abutting an unnamed tributary to Hines Run, which is a relatively permanent water. Hines Run is a tributary of the Mahoning River, which is a traditional navigable water.

16. Hines Run, its unnamed tributaries, and wetlands abutting these tributaries disturbed by the filling activity referenced in paragraph 14 are “waters of the United States” as defined at 40 C.F.R. § 230.3(s) and thus “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. The Respondents are “persons” within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. The machinery referenced in paragraph 14 constitutes a “point source” within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. The discharged material referenced in paragraph 14 constitutes a “pollutant” within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The placement of the material in the wetlands referenced in paragraph 14 constitutes a “discharge of pollutants” within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

21. Respondents did not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 14.

22. Each discharge of pollutants into navigable waters without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. Each day the discharged material remains in the wetland without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete, continuing violation of Section 301 of the CWA, 33 U.S.C. § 1311.

**ORDER**

**BASED ON THE FOREGOING FINDINGS**, and pursuant to the authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), duly delegated to the undersigned, **IT IS HEREBY ORDERED:**

1. Respondents shall refrain from any activity at the Site which will result in the discharge of dredged or fill material into the wetlands or waterways on the Site, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251-1387.
2. Within ten (10) calendar days of receipt of this Order, the Respondents shall submit to EPA written certification of their intent to comply with this Order.
3. Within thirty (30) calendar days of receipt of this Order, the Respondents shall establish a conservation easement (i.e. a filed real estate instrument protecting the property in perpetuity) on the Site. The property covered by the easement (easement property) shall be the area legally described and surveyed in Exhibit A. At a minimum, and in perpetuity, the easement shall run with the land and bind all of Respondents' assigns and successors in interest; prohibit any division or subdivision of the easement property; prohibit any filling, excavations, or other changes in the general topography of the easement property; prohibit any commercial activity or industrial development on the easement property; prohibit the drilling of new wells for the production of oil, gas, or other related products on the easement property; prohibit the placement

or construction of any man-made modifications such as buildings, structures, fences, roads, and parking lots on the easement property; prohibit any cutting of trees, ground cover or vegetation, or destroying such plant life by means of herbicides, on the easement property, except for the control of invasive plant species; prohibit waste, garbage, and unsightly or offensive materials from accumulating on the easement property; and prohibit dredging, straightening, filling, channelizing, impeding, diverting, or otherwise altering natural water courses and streams and adjacent riparian buffers on the easement property. Reliance upon one Respondent by another to establish the conservation easement according to this paragraph shall not relieve any Respondent of responsibility for failure to establish the conservation easement satisfactorily to EPA.

4. Within seven (7) calendar days after establishing the conservation easement on the Site described in paragraph 3, Respondents shall submit to EPA certified copies of the filed conservation easement. If EPA determines that the conservation easement does not conform to the requirements in paragraph 3, Respondents shall establish a new conservation easement that conforms to the requirements in paragraph 3, correcting the deficiencies identified by EPA, within fourteen (14) calendar days of EPA notifying Respondents of the deficiencies.

5. Within thirty (30) calendar days of receipt of this Order, the Respondent must submit to EPA for approval a plan (Restoration Plan) to restore 0.383 acres of degraded wetland on the Site. The area to be restored is depicted in light grey in the survey at Exhibit B and is bordered on the east and south by the current tree line. Upon approval by EPA, the Restoration Plan shall be incorporated into and become fully enforceable under this Order, and it will remain fully enforceable until EPA has determined that the Respondents have met the performance standard criteria. The Restoration Plan must incorporate the following requirements:

- a. Discontinuing any and all activities which remove or disturb emerging wetland vegetation in order to allow for the re-establishment of native wetland communities on the Site;
- b. Planting native wetland seeding for soil stability during the first year;
- c. Monitoring the wetland for at least five (5) years to achieve certain performance standards, including plant coverage, plant survivability, and the prevention of invasive species. During the monitoring period, Respondents shall submit to EPA an annual monitoring report, with the first report due one year (1) after EPA has approved the Restoration Plan, and subsequent annual monitoring reports submitted on the same month and day as the first report.  
Each of the monitoring reports shall include the following:
  - i. Summary data to substantiate the success of performance standards;
  - ii. Before and after photo documentation (displayed on 8 ½" x 11" paper, dated and clearly labeled with the direction from which the photo was taken) of the wetland area where restoration activities are undertaken;
  - iii. Identification of any problems encountered during restoration.
- d. Performance standards including the following criteria:
  - i. In the initial stock, no one species is more than 50% of planted material, and no plants listed within Ohio Division of Natural Areas & Preserves Invasive Plant Species List;
  - ii. 80% survival of initial planted material (native wetland seeding) by the end of the fifth year;

- iii. Community is dominated by more than 70% facultative (FAC) or wetter status;
- iv. 85% vegetative cover;
- v. No more than 10% invasive species.

6. All submittals provided this Order shall be certified and submitted by the Respondents under authorized signature to the following address:

Kerryann Weaver, Enforcement Officer  
U.S. Environmental Protection Agency (WW-16J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

EPA reserves any rights to use the information requested herein in an administrative, civil, or criminal action.

7. Neither the issuance of this Order by EPA nor the compliance with its terms affects Respondents' ongoing obligation to comply with the CWA or any other federal, state, or local law or regulation, nor does it preclude further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein.

8. Neither the issuance of this Order by EPA, nor compliance with this Order by Respondents, shall be deemed to relieve Respondents of their liability for any penalty, remedy, or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), or (g), for any violation of applicable requirements of the CWA. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each violation specified in this Order.

9. Violation of the terms of this order may result in further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319. The CWA includes provisions for administrative



penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may assess civil administrative penalties of \$16,000 per day of violation, up to a maximum of \$177,500 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$37,500 per day of violation of the CWA under Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under Section 309(c) of the CWA, 33 U.S.C. § 1319(c).

10. The Respondents' completion of this Order resolves any and all claims for injunctive relief on behalf of EPA which arose from the alleged violations of the CWA.

11. The Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondents may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of the Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

12. The terms of this Order bind Respondents, their successors, and assigns.

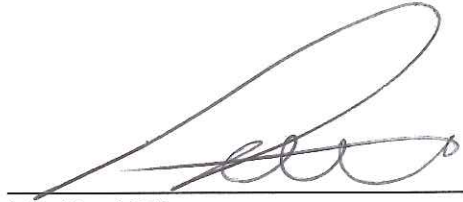
13. Each party agrees to bear its own costs and attorney's fees in this action.

14. Respondents agree to the terms of this Order.

15. This Order shall become effective on the date that it is executed by the Director, Water Division, EPA, Region 5.

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**Daniel and Marissa Patrone**  
**Docket No. CWA-05-2015-0014**

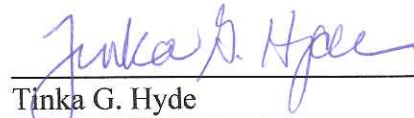
Date: 4-12-15

  
Mr. Daniel Patrone

Date: 4-12-15

  
Mrs. Marissa Patrone

Date: 4-23-15

  
Tinka G. Hyde  
Director, Water Division  
United States Environmental Protection Agency  
Region 5

**In the Matter of:**  
**Daniel and Marissa Patrone**  
**Docket No. CWA-05-2015-0014**

**Exhibit A**

CWA-05-2015-0014

**AES SURVEYING AND LAND PLANNING, INC**

730 Bev Road, Unit 1  
Boardman, Ohio 44512

(330) 953-0227 office

(330) 319-7580 fax

(330) 720-0127 cell

jim@aes-surveying.com

**LEGAL DESCRIPTION**

**Preservation – Conservation Easement**

**D. Patrone / M Carbon**

**Official Record 2505 Page 179**

Situated in the State of Ohio, County of Mahoning and Township of Poland;

Known as being Part of Great Lot 26 in said Poland Township and being further bounded and described as follows as follows:

**Beginning** at an iron pin found on the southeast corner of lands now or formerly owned by Robert J. Smith as found recorded in Official Record 5670 at Page 0110 in the in the Mahoning County Record of Deeds:

**Thence** South 02 degrees 17 minutes 01 seconds East along the westerly line of lands of Robeson Land Co. LTD as found recorded in Official Record 6088 at Page 2228 in the Mahoning County record of deeds, 253.50 feet to an iron pin found on the northeast corner of lands of RJA land and Lumber Management Company as found recorded in Official Record 5740 at Page 2010 in the Mahoning County Record of Plats;

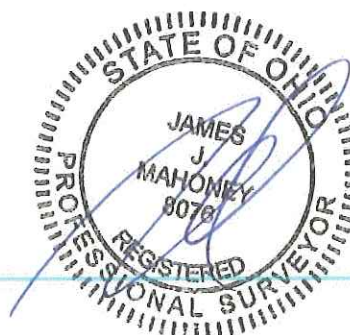
**Thence** South 88 degrees 05 minutes 34 seconds West along the northerly line of said lands of RJA Land & Lumber Management Company, 500.59 feet to a point

**Thence** by the next three courses through the subject parcel, North 54 degrees 10 minutes 25 seconds East 67.46 feet to a point;

**Thence** North 68 degrees 53 minutes 25 seconds East, 248.07 feet to a point;

**Thence** North 02 degrees 17 minutes 01 seconds West, 134.50 feet to a point on the southerly line of said lands of Smith;

Thence North 88 degrees 10 minutes 09 seconds East along said southerly line of smith, 210.00 feet to the Point of Beginning and containing 1.670 Acres of land.



# AES SURVEYING AND LAND PLANNING, INC.

730 Bev Road, Unit 1, Boardman, Ohio 44512 Phone: 330-953-0227 Fax: 330-319-7580

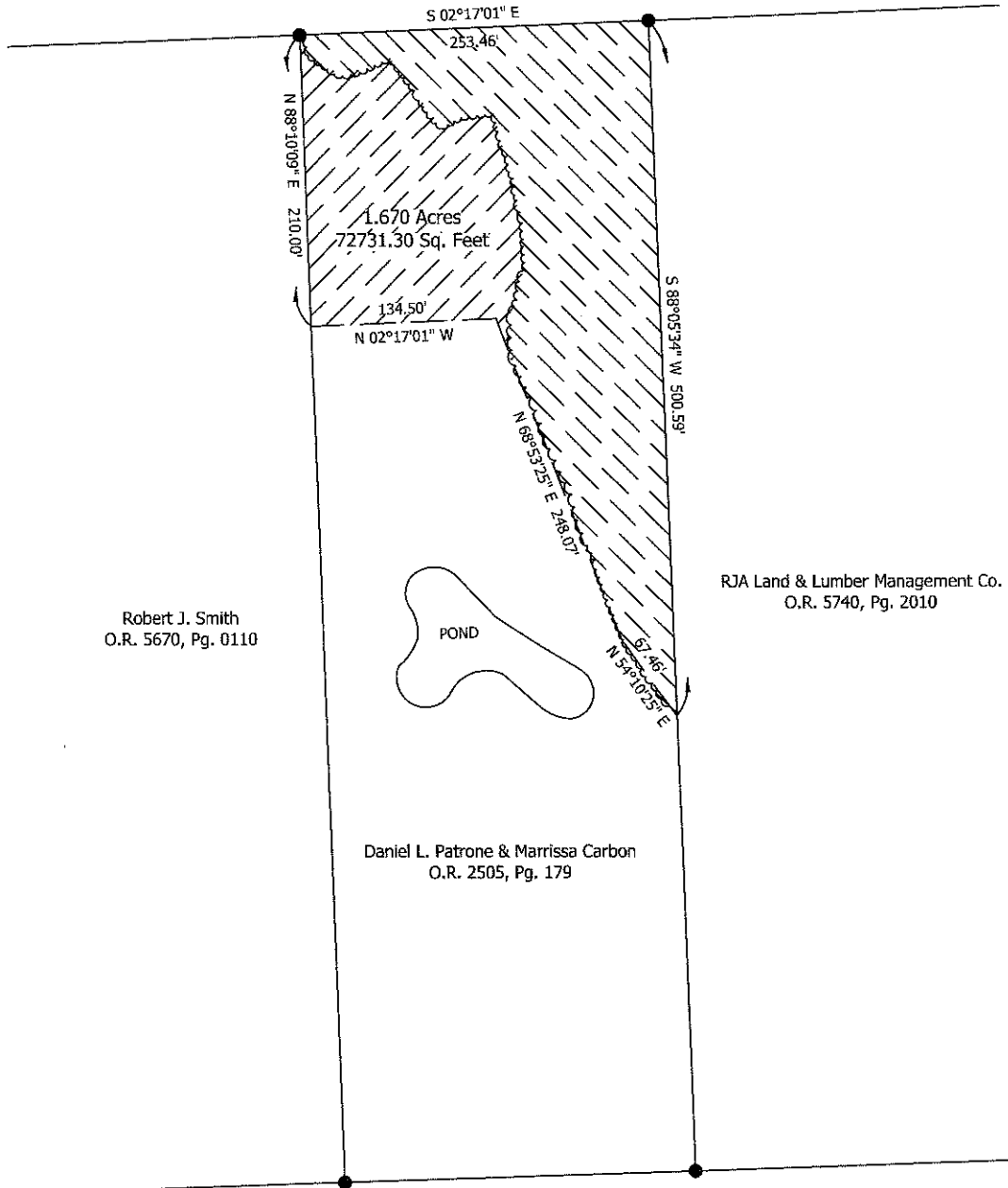
Preservation - Conservation Easement

Exhibit A

6893 Clingan Rd.  
Part of Great Lot No. 26  
Poland Township, Mahoning County, Ohio  
March 2015

CWA-05-2015-0014

Robeson Land Co. LTD  
O.R. 6088, Pg. 2228



Robert J. Smith  
O.R. 5670, Pg. 0110

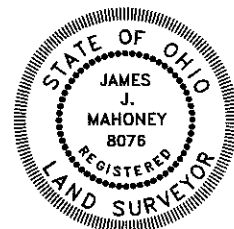
RJA Land & Lumber Management Co.  
O.R. 5740, Pg. 2010

Daniel L. Patrone & Marrassa Carbon  
O.R. 2505, Pg. 179

Clingan Rd. 60' R/W



1 inch = 100 ft.



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**CWA-05-2015-0014**

**Exhibit B**

# AES SURVEYING AND LAND PLANNING, INC.

730 Bev Road, Unit 1, Boardman, Ohio 44512 Phone: 330-953-0227 Fax: 330-319-7580

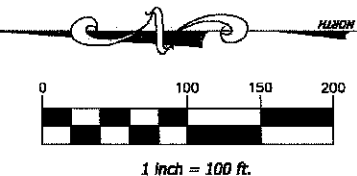
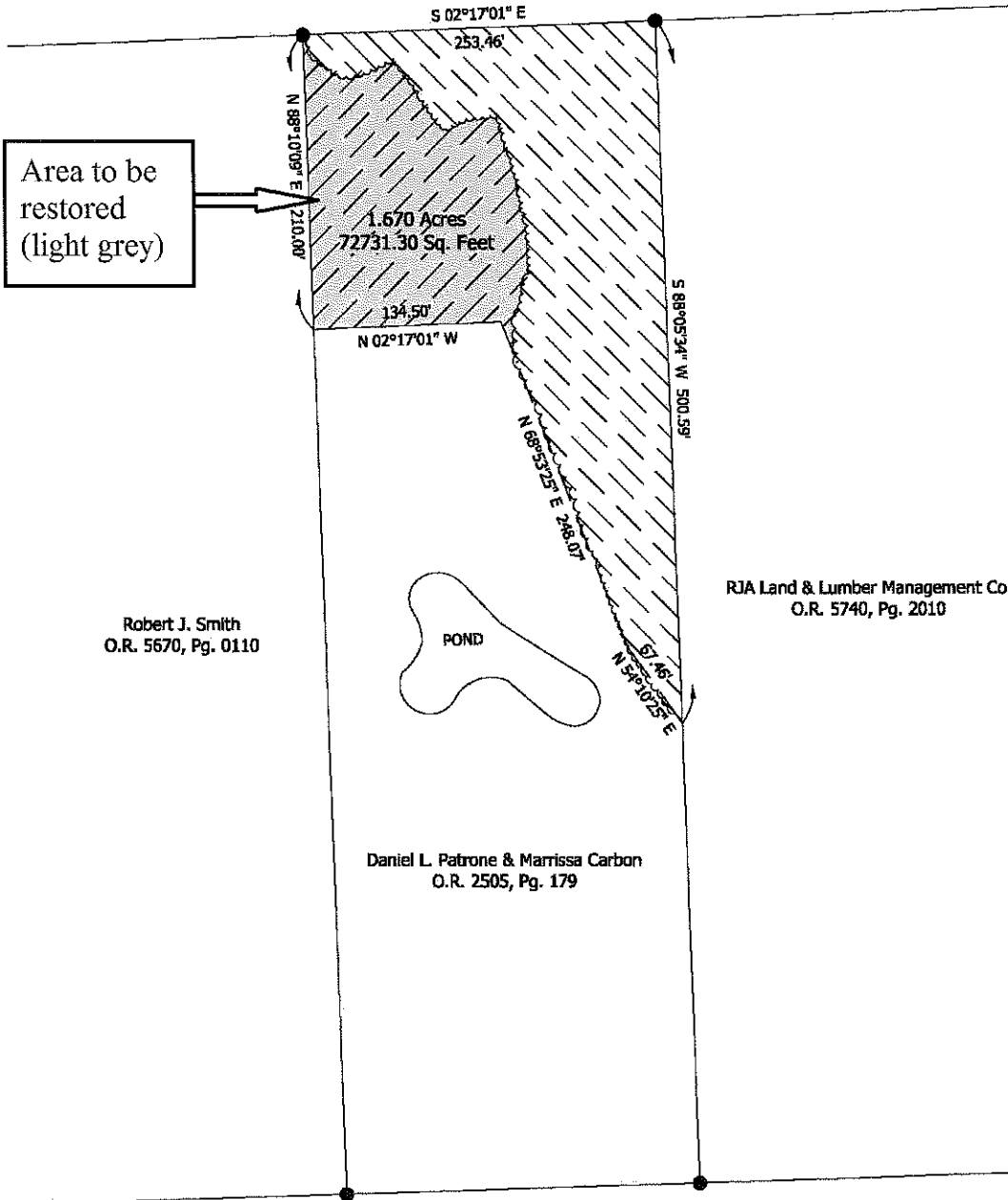
Preservation - Conservation Easement

Exhibit A

6893 Clingan Rd.  
Part of Great Lot No. 26  
Poland Township, Mahoning County, Ohio  
March 2015

CWA-05-2015-0014

Robeson Land Co. LTD  
O.R. 6088, Pg. 2228



Clingan Rd. 60' R/W

