

Wetlands, Bats and Permits, Oh My!

Calming Your Permitting Fears

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What are you afraid of?



Why can't I just start my project?



US Army Corps of Engineers

Regulatory Mission:

To protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.



Building Strong!

2

Section 401 and 404 Permitting



How to Plan for Permitting?

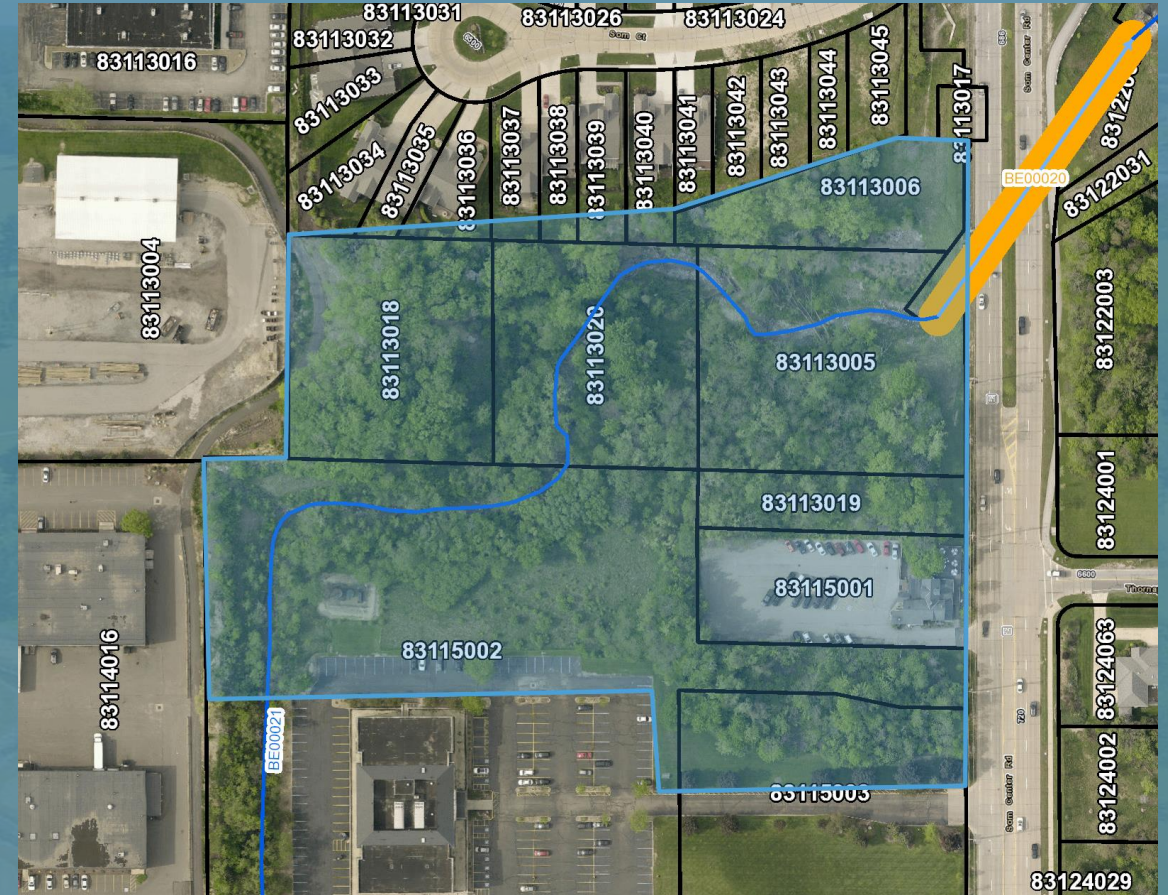


Beechers Brook



Site Evaluation

- ▶ What?
 - ▶ Elements to include
- ▶ When?
 - ▶ During in the design process
 - ▶ Time of Year
- ▶ Where?
 - ▶ Project Site
 - ▶ Include access and laydown areas
- ▶ Who?
 - ▶ Experienced ecological scientists/consultants



Site Evaluation: What?

- ▶ Wetlands
- ▶ Streams
- ▶ Endangered Species Habitat
- ▶ Historical Resources



Site Evaluation: Take Pictures!



Upstream and
Downstream



Stream Substrate



Four Cardinal Directions

Site Evaluation: Federally Listed Species



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Site Evaluation: Freshwater Mussels

- ▶ Ohio Mussel Survey Protocol (ODNR)
 - ▶ Watershed Size
 - ▶ FLS Surveys
- ▶ Stream Classifications
 - ▶ Unlisted: Not listed in Appendix A with watersheds >10 mi²
 - ▶ Group 1: Small to mid-sized streams, FLS not expected
 - ▶ Group 2: Small to mid-sized streams, FLS expected
 - ▶ Group 3: Large Rivers, FLS not expected
 - ▶ Group 4: Large Rivers, FLS expected



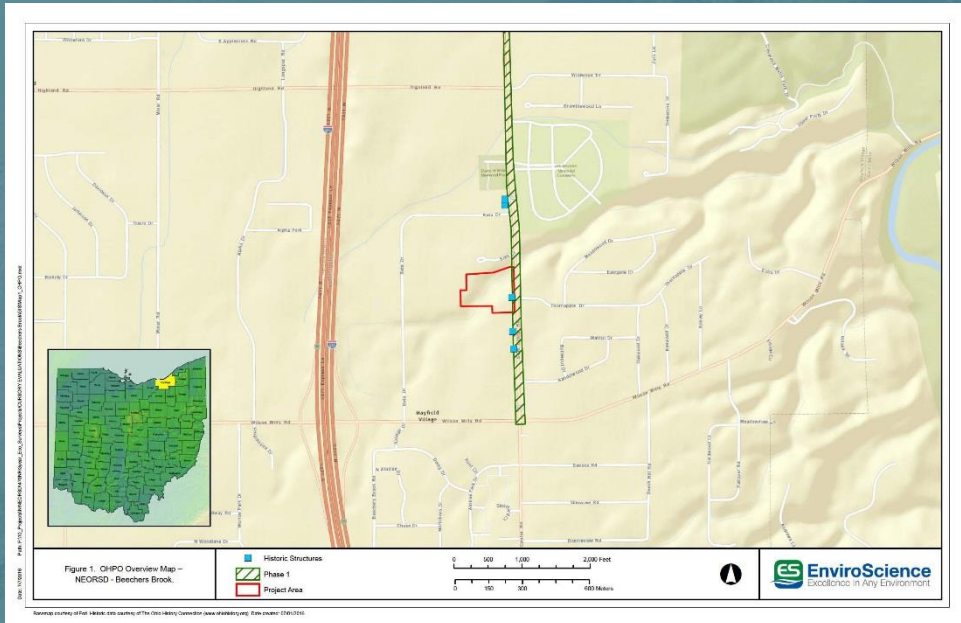


Site Evaluation: Historical Resources

- ▶ Historic Properties and Structures
- ▶ Historic Districts
- ▶ Historic Artifacts

Site Evaluation: Beechers Brook

- ▶ Stream
- ▶ Wetlands
- ▶ Potential Roost Trees
- ▶ Historical Resources



How to Plan for Permitting?



When is a 401/404 Permit Needed?



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When is a Permit Needed?

▶ USACE

- ▶ Discharge of fill or dredged material below the OHWM

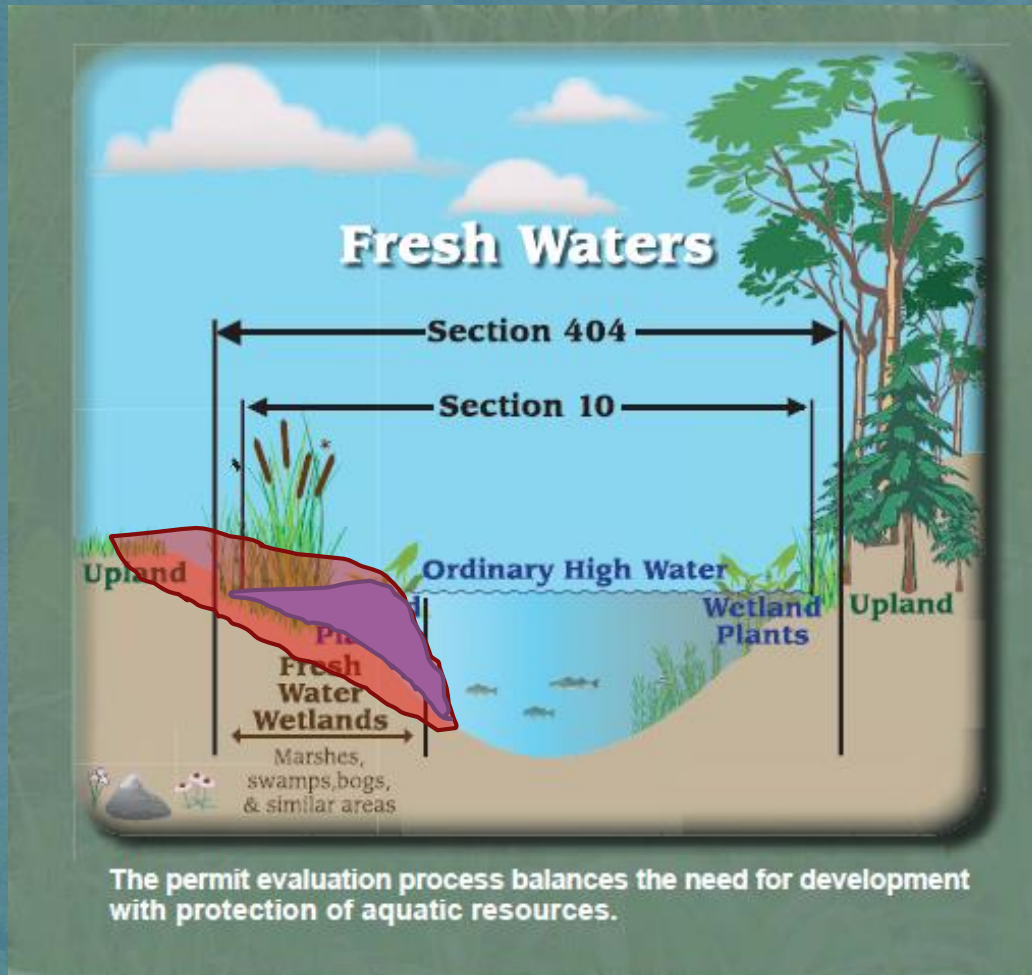
▶ Ohio EPA

- ▶ Federal Permit Triggers need for Ohio EPA Permit
- ▶ Water Quality Certification
- ▶ Isolated Wetlands



Ordinary High Water Mark

- ▶ What is it?
 - ▶ “An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding area.”
- ▶ Why is it important?



Permitting 101: What Kind of Permit?

- ▶ USACE: 404 Permit
 - ▶ Nationwide Permits (NWP)
 - ▶ Individual 404 Permit
- ▶ Ohio EPA: 401 Permit
 - ▶ Water Quality Certification
 - ▶ Isolated Wetland Permits
 - ▶ Director Authorization
 - ▶ Individual 401 Permit



NWP: Permitted Activities

- ▶ Maintaining Assets (NWP 3)
- ▶ Bank Stabilization (NWP 13)
- ▶ Stream Restoration (NWP 27)
- ▶ Temporary Impacts (NWP 33)
- ▶ Stormwater Management Facilities (NWP 43)

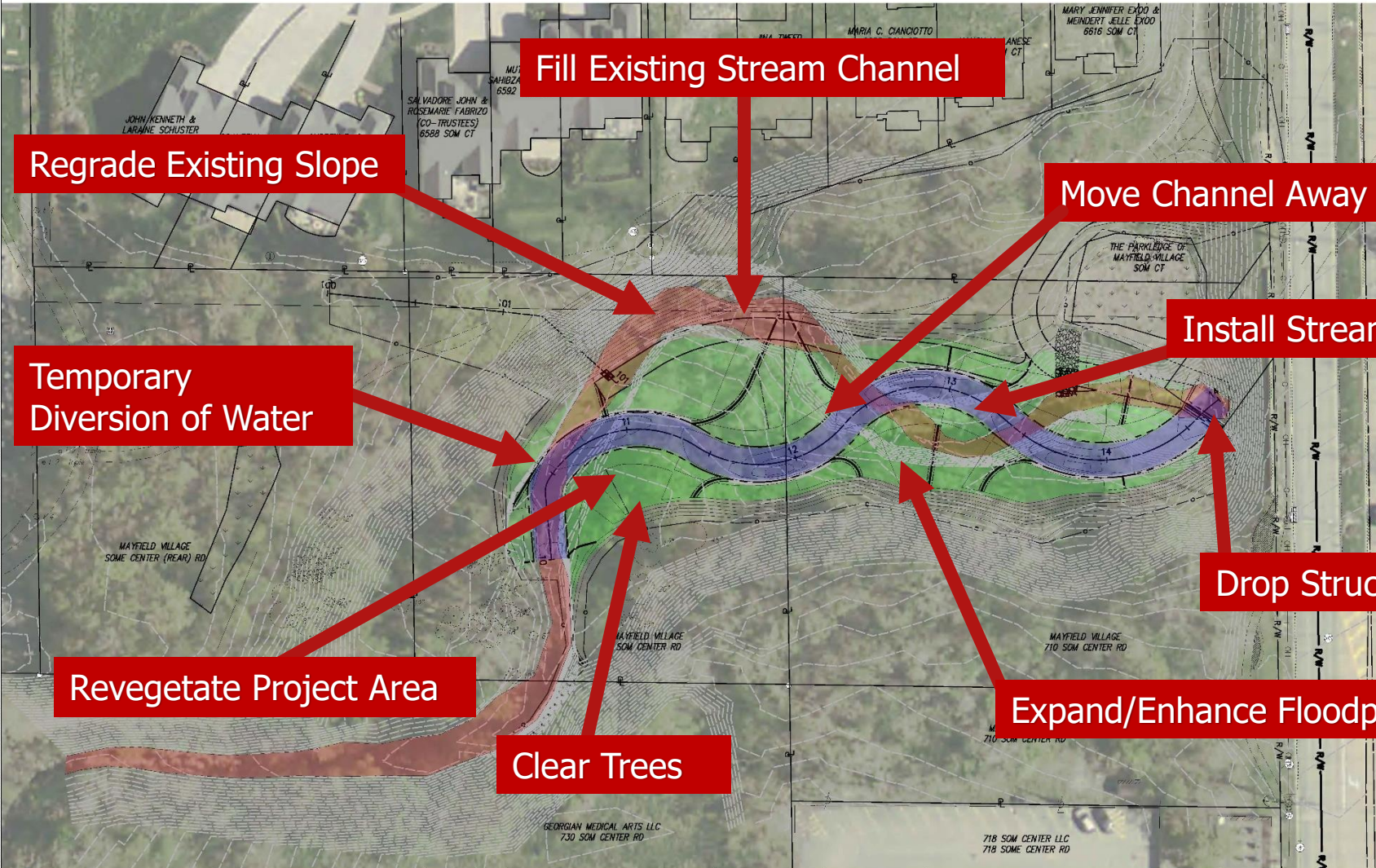


Permitting Assessment: Project Details

- ▶ What are your planned activities?
 - ▶ Work below the Ordinary High Water Mark?
 - ▶ Clearing Trees or Shrubs?
- ▶ How will the work be performed?
- ▶ When will the work be performed?
- ▶ What are the impacts of the work?
 - ▶ Temporary or permanent?



C:\2017\2017336\BEECHERS BROOK\DWG\SHEETS\2017336 LANDSCAPING PLAN - WINTER PRACTICE.DWG - PLOTTED 4/12/2018 8:55 AM BY ARCH. JANCE



LEGEND

SEE SHEET 3 FOR GENERAL LEGEND.

- EXISTING TREE AND SIZE
- EXISTING WETLAND
- EXISTING ROCK CHANNEL PROTECTION
- PROPOSED ROCK CHANNEL PROTECTION
- PROPOSED BRUSH LAYERING AND STREAM BANK ARMORING

NOTES

- FOR PLANT LIST AND LANDSCAPE NOTES, SEE SHEETS 29-30.
- FINAL PLANT LOCATIONS SHALL BE DIRECTED ONSITE BY ECOLOGIST OR LANDSCAPE ARCHITECT.
- PROPOSED SHRUBS SHALL BE INSTALLED IN GROUPS NO LESS THAN 5 PER SPECIES.



REV	NO	DATE	ISSUED BY	REMARKS
4	04/18	JTL		GNP SUBMITTAL
3	02/17	JTL		60% DESIGN SUBMITTAL
2	02/17	JTL		PERMIT SUBMITTAL
1	09/17	JTL		30% DESIGN SUBMITTAL

DESIGNED BY: JRA
DRAWN BY: JIV
SHEET CHECKED BY: JIV
CHECKED BY: JIV
APPROVED BY: JIV
ISSUED DATE: 3/1/18

BEECHERS BROOK
STREAM RESTORATION PROJECT

LANDSCAPING PLAN

WARNING
0 1/2 1
IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE

PROJECT SET: 1369
SHEET NO: SHEET 31/36
SHEET: L-003

Which Permit Fits Best?

- ▶ What is the *intent* of the project?
- ▶ NWP 13 – Bank Stabilization
 - ▶ Nationwide Conditions
 - ▶ Regional Conditions
 - ▶ State of Ohio Conditions
- ▶ Evaluate Limits and Exclusions

Permitting Assessment: Details to Consider

- ▶ Length of project?
- ▶ One cubic yard per running foot?
- ▶ Where is this project taking place?
- ▶ Vertical bulkhead?
- ▶ Wetland impacts?

Permitting Assessment: Is a Pre-Construction Notification (PCN) Needed?

► Look for PCN “triggers”

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Keep Going...What do the Regional or State Conditions Say?

Corps NWP 13 Specific Regional Conditions:

- a. PCN in accordance with Nationwide Permit General Condition 32 and Regional General Condition 6 is required for the following activities:
 - All activities in the Ohio River and the Muskingum River;
 - All activities in Lake Erie, Sandusky Bay, and Maumee Bay that involve the discharge of greater than 10 cubic yards of dredge and/or fill material below the ordinary high water mark; and
 - The use of any vertical bulkhead. A vertical bulkhead is defined as any structure, or fill, with a vertical face. It may be constructed of timber, steel, concrete, etc.



Wetland Impacts
Greater than 0.1 acres
require compensatory
mitigation.



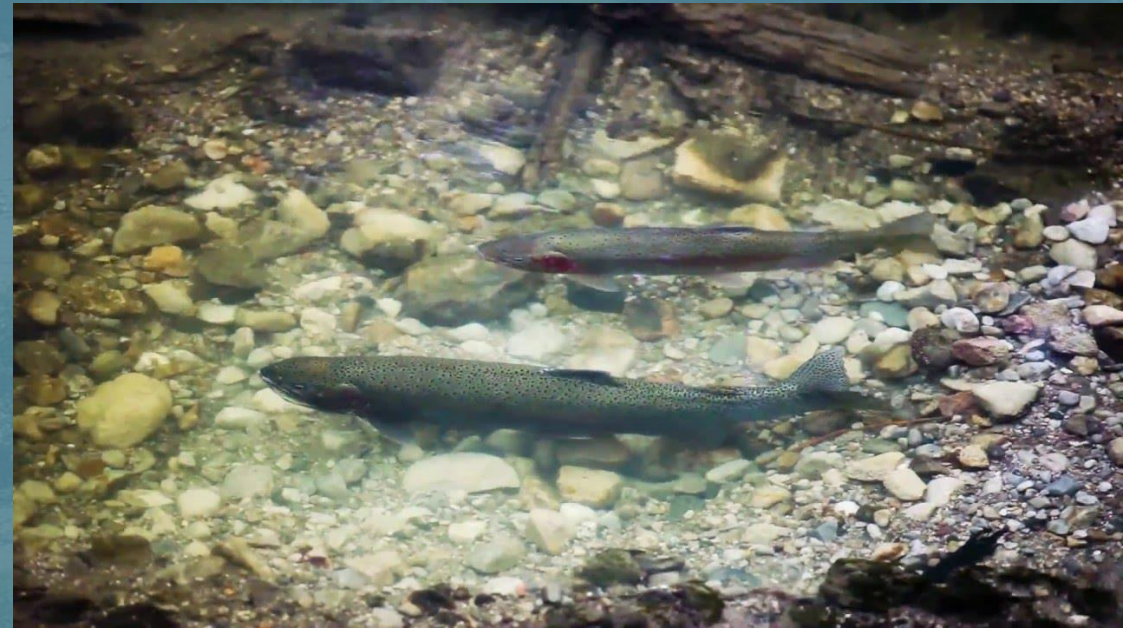
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Permitting Assessment: Is a PCN Needed?

- ▶ A non-PCN NWP may require a PCN if:
 - ▶ Federally-listed endangered or threatened species or their habitat
 - ▶ Potential to affect historic property
 - ▶ Waters of special concern
 - ▶ National Wild and Scenic Rivers
 - ▶ In-water work restricted period



Permitting Assessment: What if I Don't *Need* to Submit a PCN?

- ▶ **REMEMBER** – If you meet the requirements of the NWP, you are still performing the project under that permit.
- ▶ Provide the specific NWP and General Conditions to your Project Manager and Contractor.
- ▶ Document your justification and keep it on file.
- ▶ Make it clear to others involved in the project that if the scope changes or their “how” changes it may trigger the need to obtain a PCN.

Nationwide Permits by State

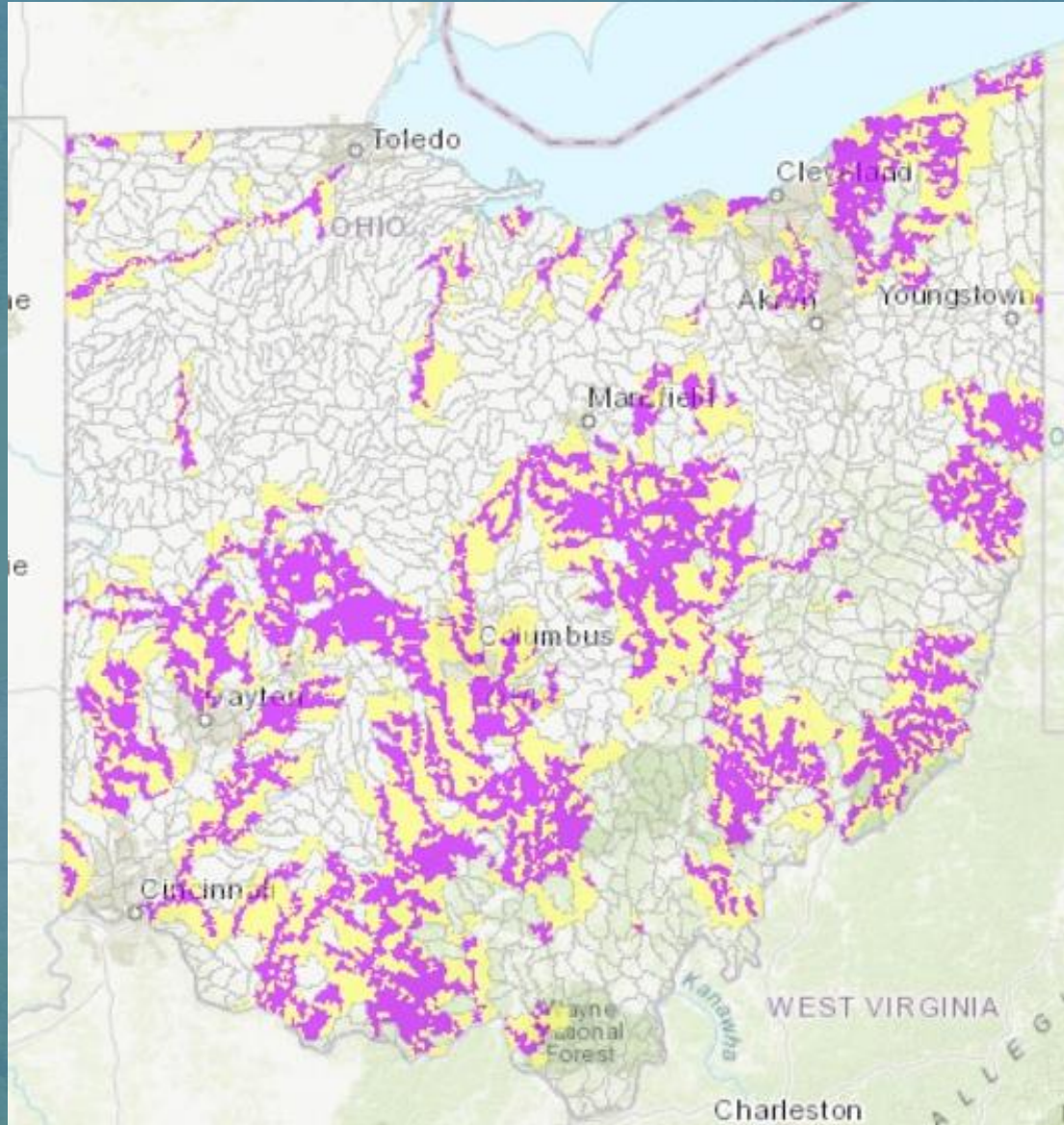
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- ☒ Buffalo District 2017 Nationwide Permit Program - New York
- ☐ Buffalo District 2017 Nationwide Permit Program - Ohio

2017 NWP Regional Conditions: On March 21, 2017 the Buffalo, Huntington & Pittsburgh Districts issued a joint public notice (PN) announcing the final Regional Conditions, Water Quality Certification and Coastal Consistency Determination for the 2017 NWP in the State of Ohio. [Click HERE](#) to view the PN.

Activities Authorized By 2017 Nationwide Permits for Ohio	
1. Aids to Navigation	29. Residential Developments
2. Structures in Artificial Canals	30. Moist Soil Management for Wildlife
3. Maintenance	31. Maintenance of Existing Flood Control Facilities

Permitting Assessment: Ohio Eligibility Map



Ineligible

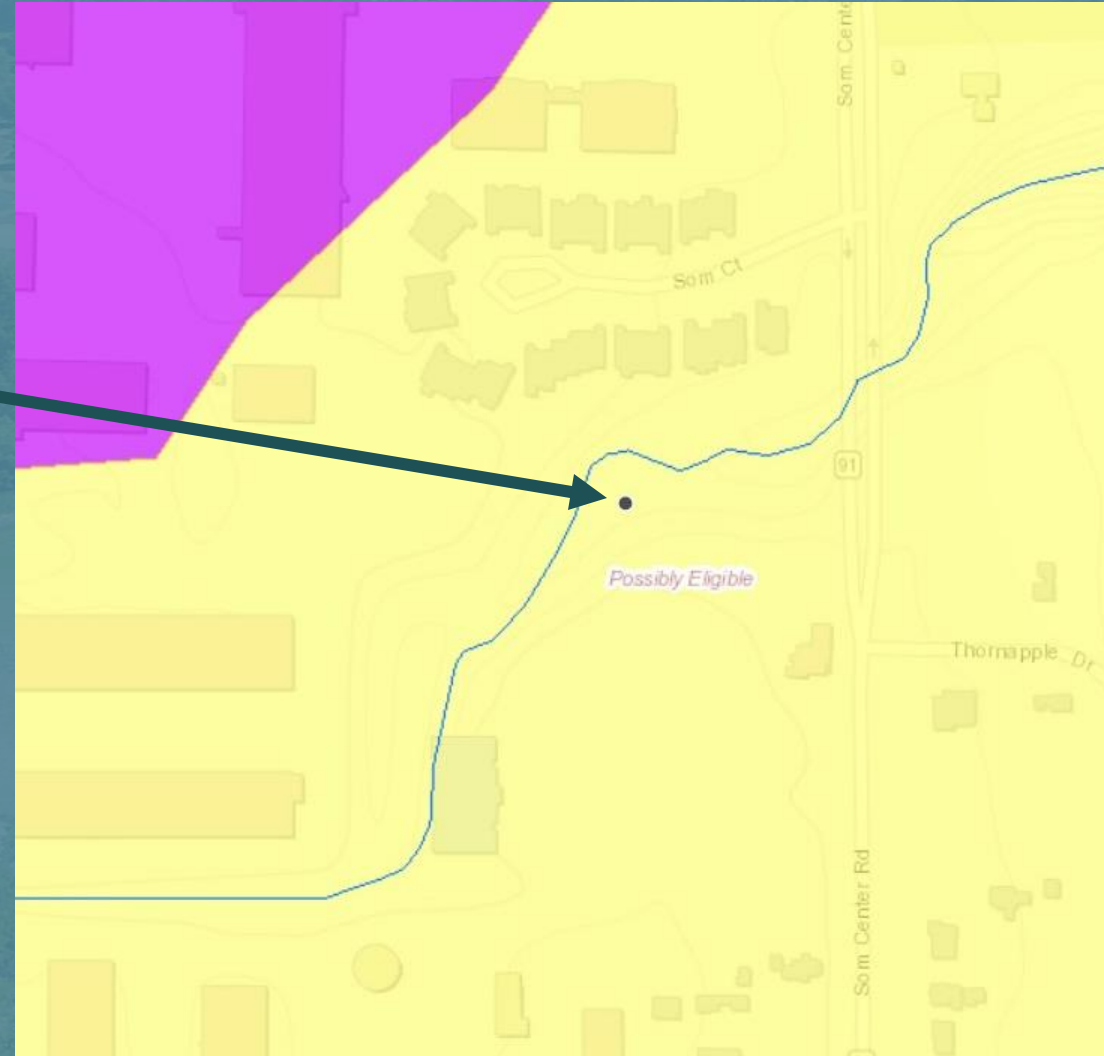


Possibly Eligible

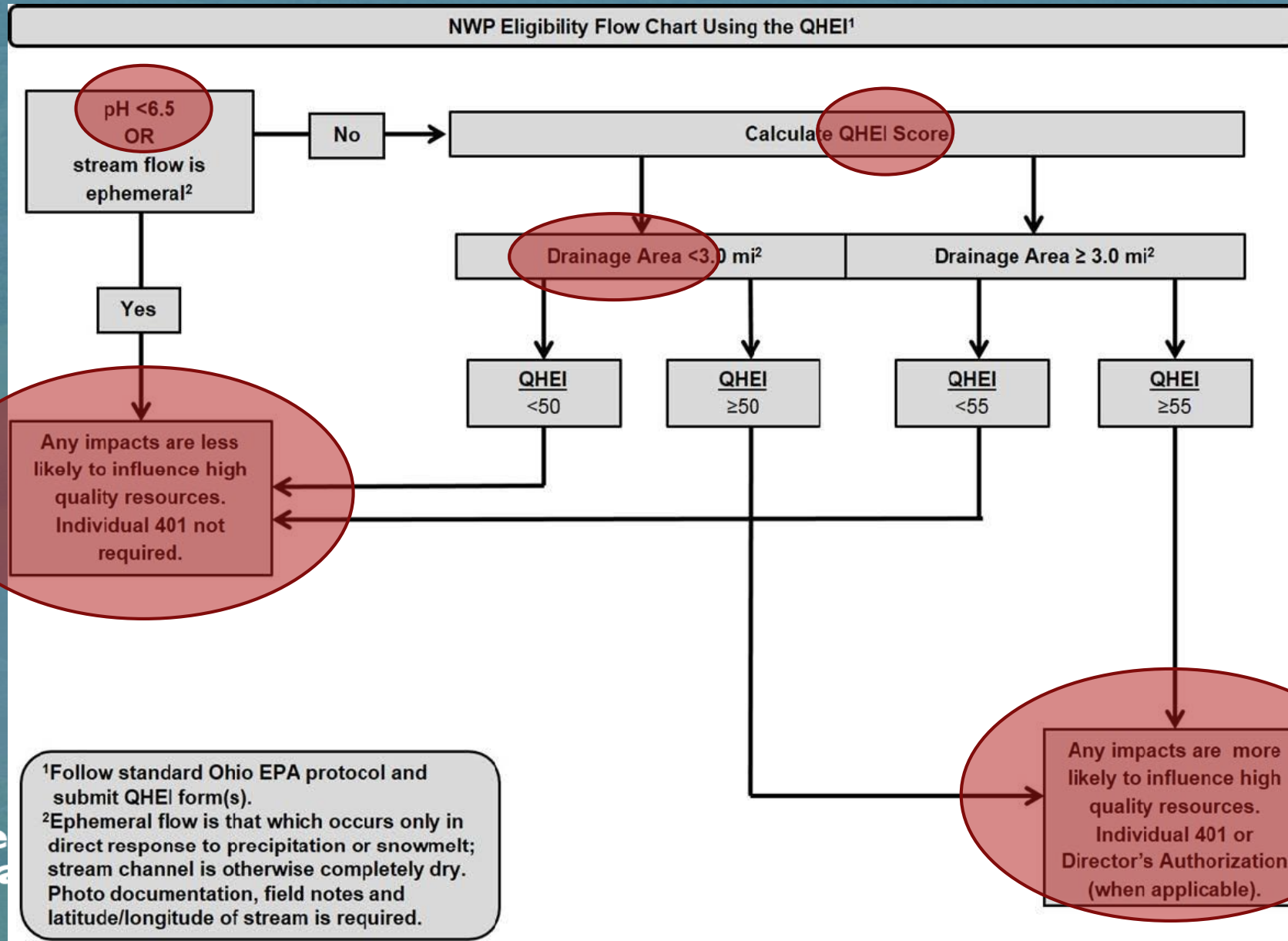
<http://oeпа.maps.arcgis.com/apps/webappviewer/index.html?id=e6b46d29a38f46229c1eb47deefe49b6>

Permitting Assessment: Beechers Brook

Project
Location



Permitting Assessment: NWP Eligibility Flow Chart



Pre-Application Meeting

- ▶ USACE Site Visit:
 - ▶ Jurisdictional Determinations (JDs)
 - ▶ Project Overview
 - ▶ Permitting Guidance
- ▶ USACE Communication:
 - ▶ Develop Relationship with Regulator
 - ▶ Phone calls can count as pre-application meetings



Stay Involved!

- ▶ Work with the Project Manager to get a good understanding of the project
 - ▶ Attend progress meetings
 - ▶ Pay attention to any *changes* in scope of project
 - ▶ Pay attention to *how* the work is going to be performed
 - ▶ Pay attention to *when* the work is scheduled to begin



How to Plan for Permitting?

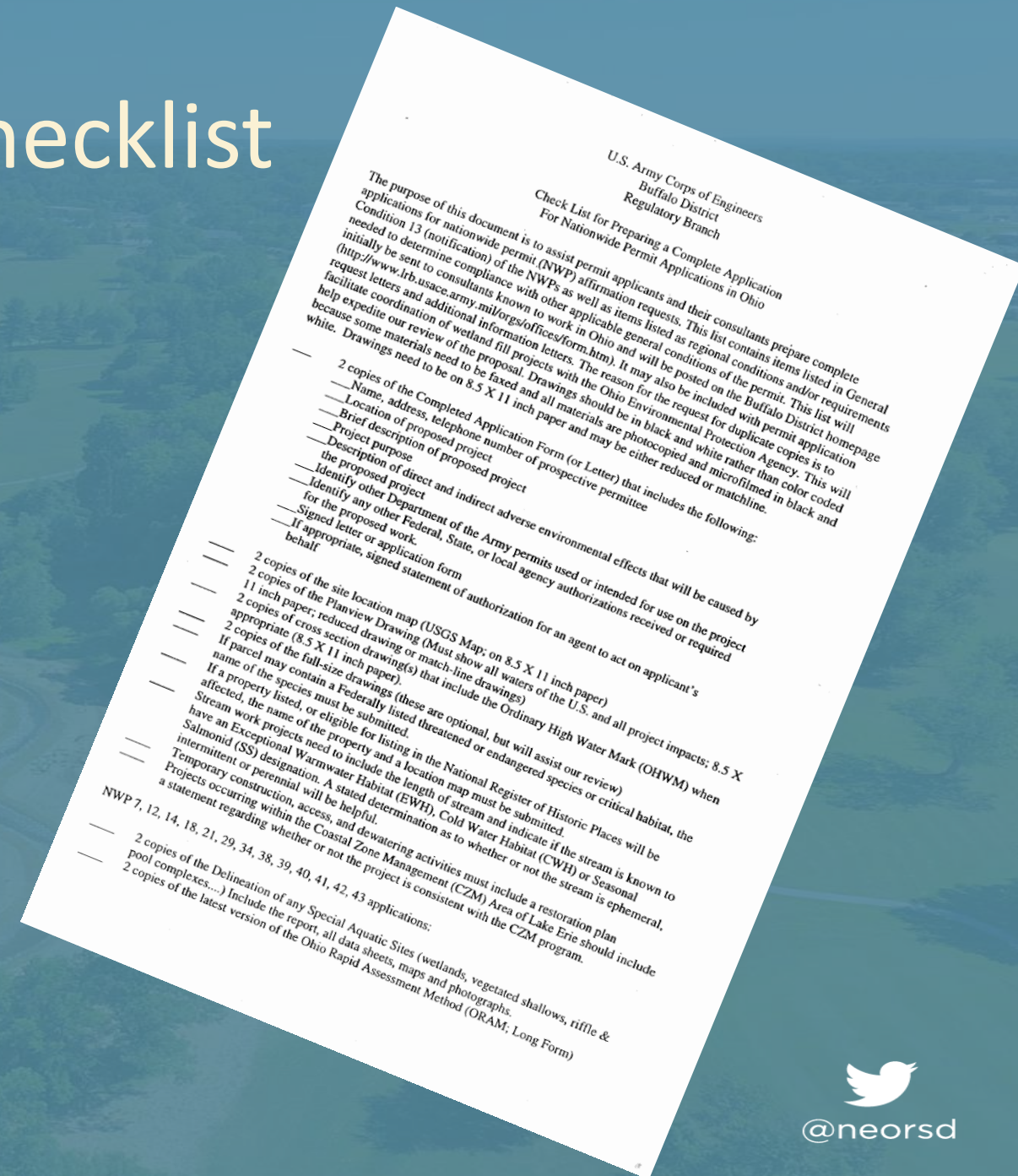


Application Preparation: Checklist

- ▶ Cover Letter
- ▶ NWP Form
- ▶ Site Map
- ▶ Drawings
 - ▶ Plan View
 - ▶ Cross-Sections w/OHWM
- ▶ Photographs
- ▶ Ecological Reports
- ▶ Historical Reports (if applicable)



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Step 1 – Write a Robust Cover Letter

- ▶ Clearly state the purpose of the project
- ▶ Describe each component of the project and the activities that will be performed
- ▶ Include information on all ecological resources and what the impacts will be
 - ▶ Remember to include temporary impacts

Stop and Think About Project Timing

- ▶ Tree Clearing Restrictions
 - ▶ Summer Roosting Season April 1 – September 31
- ▶ In-Water Work Restrictions for Spawning
 - ▶ Salmonid Streams 9/15-6/30
 - ▶ Percid Streams 3/15-6/30
 - ▶ Other Streams 4/15-6/30
- ▶ Mussel Surveys



Step 2 – Complete the NWP application Form

U.S. ARMY CORPS OF ENGINEERS
APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
33 CFR 325. The proponent agency is CECHW-COIR.

Form Approved -
OMB No. 0750-0093
Expires: 30-SEPTEMBER-2015

Public reporting for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0750-0093). Return your form to either of those addresses. Comply with the proposed activity.

Authorities: Rivers and Harbors Act, Section 10, 33 USC Act, Section 103, 33 USC 1413; Regulatory Programs of the Federal, state, and local government agencies, and the Department of Defense, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0750-0093). Return your form to either of those addresses. Comply with the proposed activity.

1. APPLICATION NO. 2. FIELD OFFICE

3. APPLICANT'S NAME
First - Middle - Last -
Company -
E-mail Address -
Address -
City - State - Zip -

4. APPLICANT'S PHONE NOS. w/AREA CODE
a. Residence b. Business c. Fax

5. STATEMENT OF AUTHORIZATION
I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.
SIGNATURE OF APPLICANT DATE

6. NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

7. PROJECT NAME OR TITLE (see instructions)

8. NAME OF WATERBODY, IF KNOWN (if applicable) 9. PROJECT STREET ADDRESS (if applicable)
Address
City - State - Zip -

10. LOCATION OF PROJECT
Latitude -N Longitude -W
State Tax Parcel ID Municipality
Section - Township - Range -

11. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)

12. DIRECTIONS TO THE SITE

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)
Acres
or AND
Linear Feet

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:
Type Amount in Cubic Yards Type Amount in Cubic Yards

23. Description of Avoidance, Minimization, and Compensation (see instructions)

24. Is Any Portion of the Work Already Completed? ☐ Yes ☐ No IF YES, DESCRIBE THE COMPLETED WORK

DATE APPLIED DATE APPROVED DATE DENIED

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or device, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entries, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

ENG FORM 4345, DEC 2014 PREVIOUS EDITIONS ARE OBSOLETE. Page 1 of 3

ENG FORM 4345, DEC 2014 Page 2 of 3

ENG FORM 4345, DEC 2014 Page 3 of 3

► http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/Application/OH_permit_engform_4345_2014dec.pdf?ver=2015-10-06-143148-373

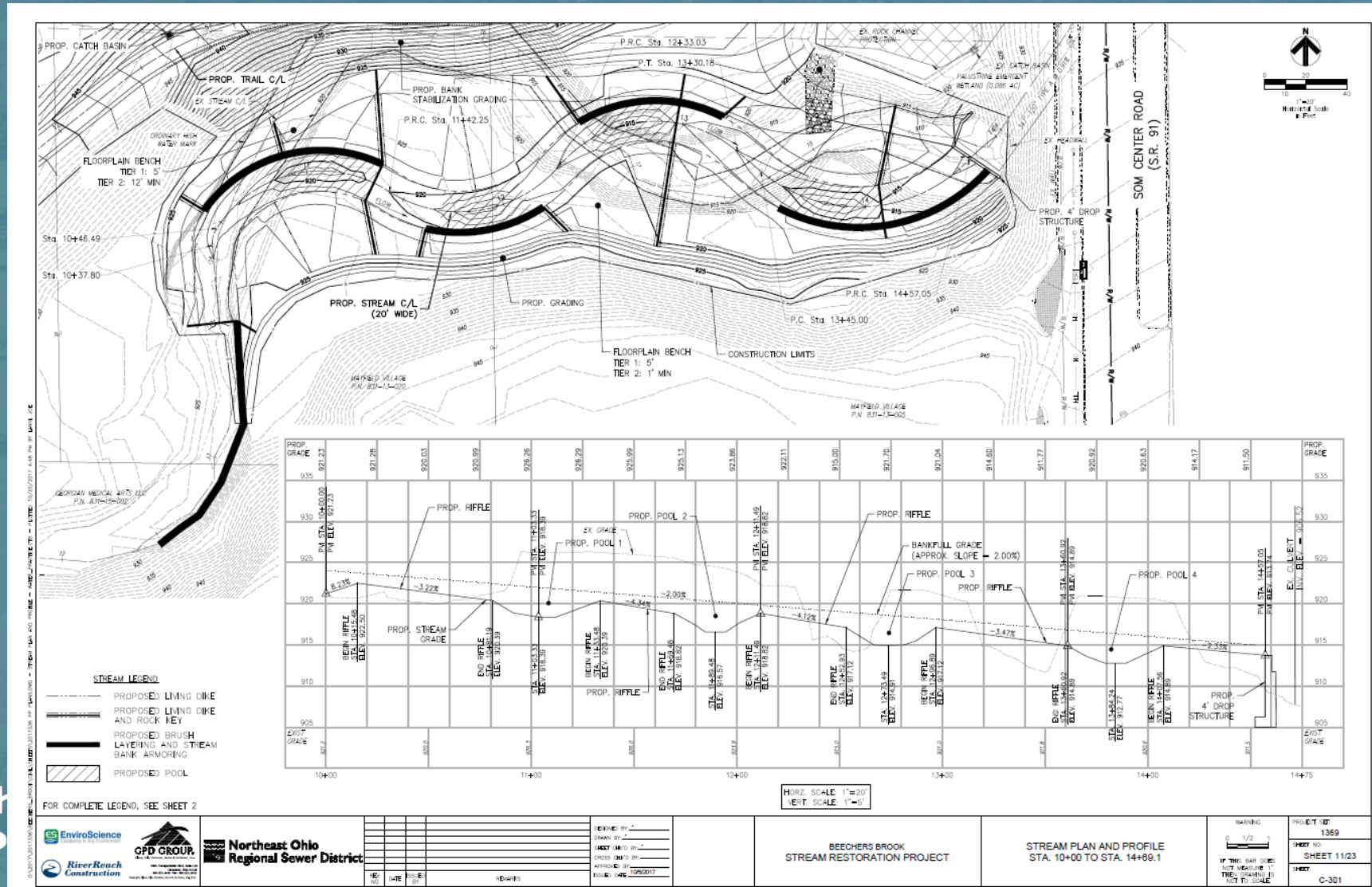


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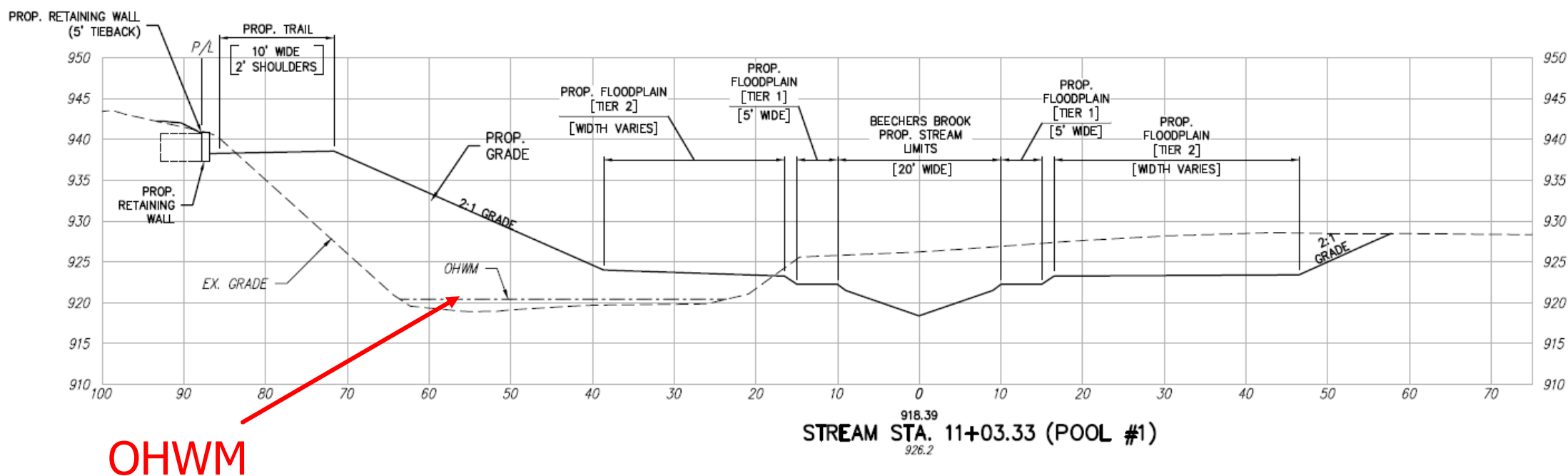


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Step 3 – Maps and Drawings



Step 3 – Maps and Drawings



Step 4 - Attachments

- ▶ Ecological or Historical Reports
 - ▶ Wetland Delineations
 - ▶ QHEIs
 - ▶ Site Photos
- ▶ Supporting Information
- ▶ In-Water Work Waiver Request



▶ **Project Execution**

How to Plan for
Permitting?

▶ **Regulatory Agency
Coordination**



**Northeast Ohio
Regional Sewerage Authority**

▶ **Permitting**

▶ **Site Evaluation**

USACE Districts

Buffalo District



Pittsburgh District

Huntington District

Regulatory Agency Coordination: USACE


- ▶ USACE must determine if the PCN is complete within 30 days
 - ▶ USACE notifies the prospective permittee if it is not during that window
- ▶ The prospective permittee shall not begin the activity until either:
 - ▶ Notified in writing by USACE that the activity may proceed
 - ▶ 45 calendar days have passed from the USACE's receipt of the complete PCN and the prospective permittee has not received written notice (Lots of caveats!)

Regulatory Agency Coordination: Ohio EPA

https://ebiz.epa.ohio.gov/app/services/dsw/401/home/c Ohio EPA - eBusiness Center

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 **Ohio**
Ohio Environmental
Protection Agency

eBusiness Center

srehner - Sarah Rehner

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401 Application List 1

Create New 401 WQC / Isolated Wetland Permit Application

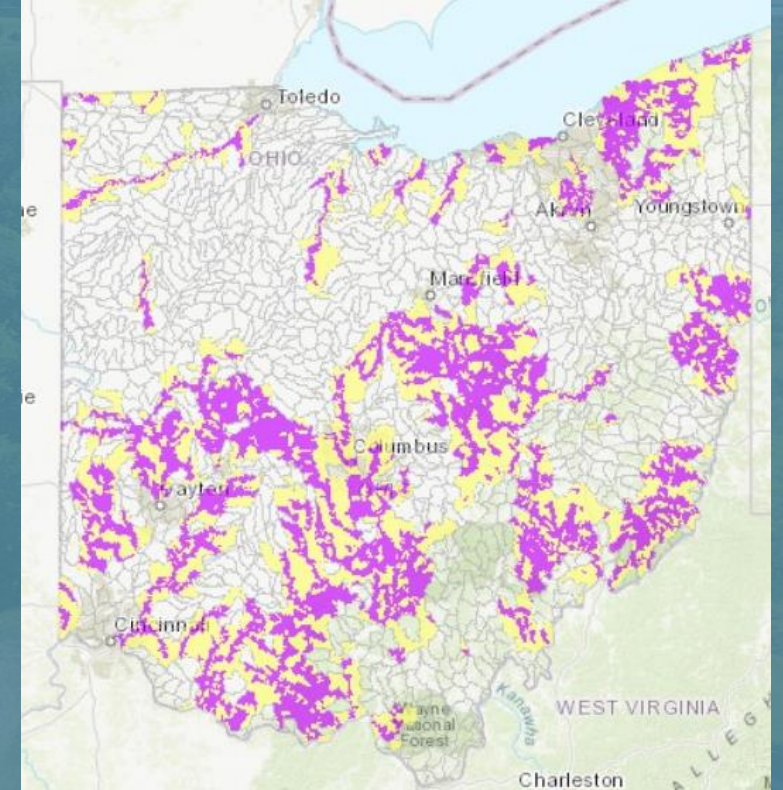
Application ID	Application Type	Created	Status	Actions
288544	401 Directors Authorization	12/21/2017	Reviewed	Actions

1 - 1 displayed , 1 in total

Ohio EPA | 50 West Town Street, Suite 700 Columbus Ohio 43215 | (614) 644-3020 | v???.?
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Regulatory Agency Coordination: Ohio EPA

- ▶ Director's Authorization
 - ▶ Cost \$2,000
 - ▶ 15 day public notice and comment period
 - ▶ Same 45 day language as the NWP
 - ▶ Our experience.... about 2 months

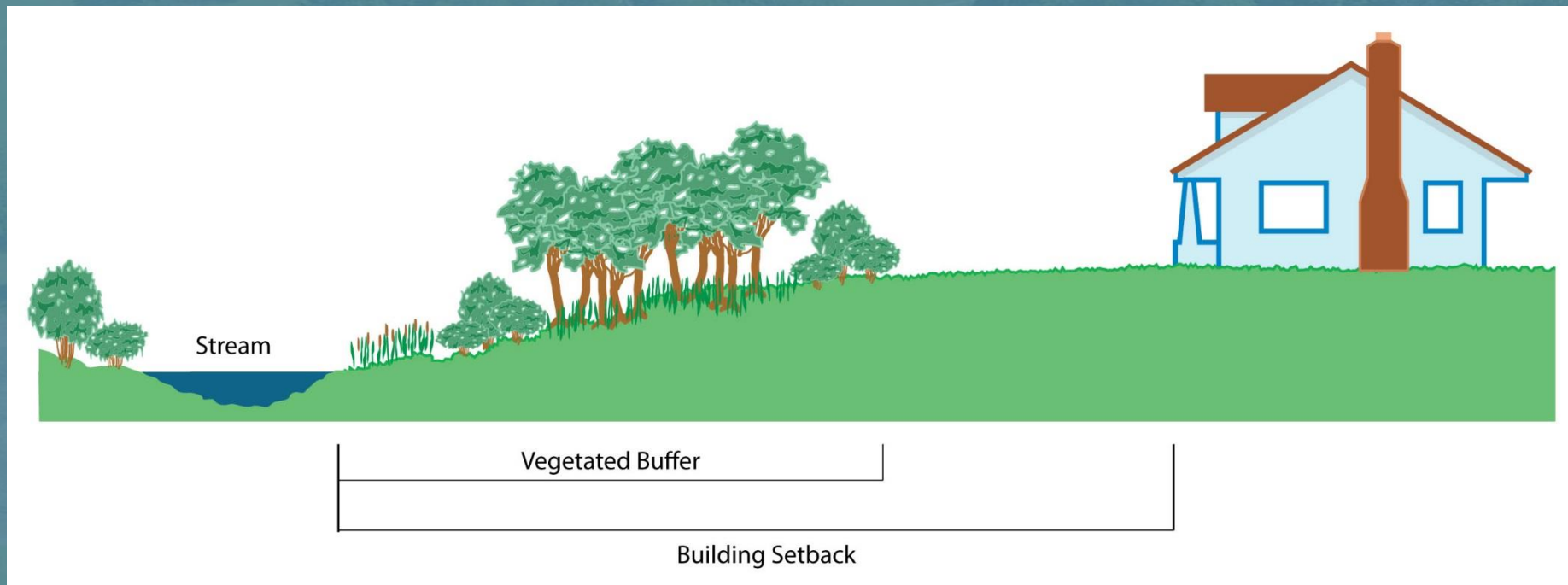


Regulatory Agency Coordination: Other Agencies

- ▶ State Historic Preservation Office (Section 106)
 - ▶ 30 day review period
- ▶ Endangered Species ACT. USFWS (Section 7)
 - ▶ You can clear trees after coordination is completed. You do not have to wait for your permit. Get it in writing!
- ▶ Ohio Department of Natural Resources
 - ▶ Mussels
 - ▶ In-water Work Waiver
 - ▶ Dam Safety
 - ▶ Coastal Permits
 - ▶ Coastal Erosion Area
 - ▶ Shore Structure Permit
 - ▶ Submerged Land Lease

Local Community Coordination

- ▶ Floodplain Permitting
- ▶ Architectural Review
- ▶ Riparian Setbacks
- ▶ Etc.

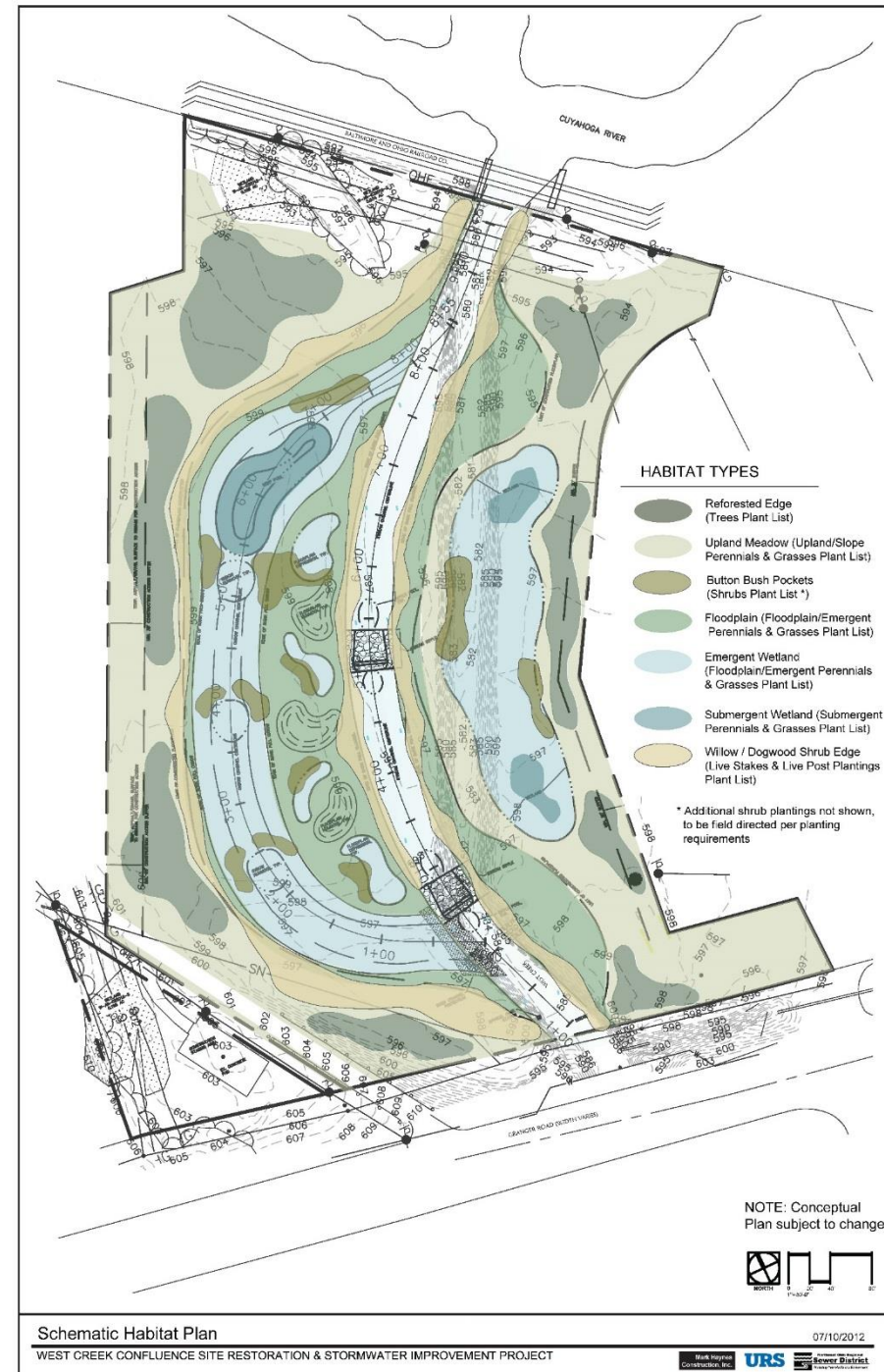


How to Plan for Permitting?



Project Execution: Specs & Plans

- ▶ Put constraints in the specifications and plans
- ▶ Let the contractor know upfront what is expected of them
- ▶ Attach the permit as a reference document to bid specs



Pre-Construction Meetings



- ▶ Participate in any pre-constructions meetings
- ▶ Make sure a copy of the permit is onsite
- ▶ Verify that all avoided water resources and buffer/riparian areas are demarcated in the field and protected with suitable materials



Field Monitoring During Construction



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Project is Complete!

- ▶ Submit Completion Certification (30 Days)
 - ▶ May trigger site visit
- ▶ Monitoring
- ▶ Reporting



"You had the power all along, my dear. You just had to learn it for yourself."
– Glinda the Good Witch

