



## **II. PARTIES**

2. The provisions of this Consent Order shall apply to and be binding upon the Parties and their respective successors in interest and assigns to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure. The undersigned representatives of each party to this Consent Order certify that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party to it.

3. Defendant shall provide a copy of this Consent Order to any person that it engages to perform work required under this Consent Order at Ludlow Park, a.k.a. the Bank Avenue Landfill, a.k.a. the St. Bernard Landfill ("Landfill") and the Bank Avenue Sub Recorder #236 20 ("Bank Avenue Subdivision"). The Landfill is depicted on the map attached as Exhibit A, and the Bank Avenue Subdivision is depicted on the map attached as Exhibit B. Defendant shall provide a copy of, or website link to, this Consent Order to any person it engages to provide services or work required under this Consent Order at the Landfill and the Bank Avenue Subdivision.

## **III. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER**

4. The State has alleged that Defendants have violated R.C. Chapter 3734 and the rules promulgated thereunder. Defendants have denied these allegations.

5. Except as otherwise provided in paragraph 6 of this Consent Order, compliance with the terms of this Consent Order shall constitute a full release and satisfaction of any civil and administrative liability of Defendant and its agents successors in interest and assigns for the claims alleged in the State's Complaint or known by the Ohio

Environmental Protection Agency DMWM ("Ohio EPA") related to the Site at the time this Consent Order is entered by the Court.

6. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendant for: (A) claims or violations not known by the Ohio Environmental Protection Agency; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendant retains all rights, defenses, and/or claims it may legally raise to the extent that the State seeks further relief from Defendant in the future, or in any action brought to enforce the terms of this Consent Order, except that Defendant shall not assert, and may not maintain, against Plaintiff the defenses of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim splitting based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

7. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it and/or any work performed at the Facility to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of Defendant, its officials, employees or representatives. This Consent Order does not confer any rights on any individual or entity not a party to this Consent Order.

8. Except for the manner of compliance set forth in this Consent Order, nothing herein shall be construed to relieve Defendant of its obligation to comply with all



applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to the applicable permit requirements thereunder.

9. To the extent that the September 16, 2009 Director's Final Findings and Orders entered into by the Ohio EPA and Defendant for the Landfill conflict with this Consent Order, this Consent Order shall control.

#### **IV. PERMANENT INJUNCTION**

10. Except as set forth in Section V, Defendant agrees and is ordered and permanently enjoined to comply with R.C. Chapter 3734 and the rules promulgated thereunder with respect to the Landfill and the Bank Avenue Subdivision.

#### **V. INJUNCTIVE RELIEF**

11. Effective immediately, Defendant shall maintain the existing explosive gas monitors in good working order at each of the nearby homes as required by Ohio Adm.Code 3745-27-12(D)(5)(a)(ii)(b).

12. Within thirty (30) days of entry of this Consent Order, Defendant shall record on the plat and deed to the Landfill, or on some other instrument which is normally examined during title search, notification that in perpetuity will inform any prospective purchaser of the impacted acreage, location, depth, volume, and nature of solid waste deposited in the Landfill on at least parcel numbers: 582-0007-0002- 90, 582-0007- 0262- 90 and 582- 0007- 0287-00.

13. Within thirty (30) days of recording the Landfill notification document as set forth in the preceding paragraph, Defendant shall notify the Director of the Ohio EPA and the Hamilton County Public Health in writing of the recording of the plat and deed to the Landfill, or some other instrument which is normally examined during title search,

which describes the existence of a sanitary landfill on at least parcel numbers: 582-0007-0002- 90, 582-0007- 0262- 90 and 582- 0007- 0287-00.

14. Within sixty (60) days of entry of this Consent Order, Defendant shall revise each of the plats and deeds, or other instrument which is normally examined during a title search of the properties located in the Bank Avenue Sub Recorder #236- 20 that in perpetuity will notify any potential purchaser of each property of the existence of solid waste used as fill for the construction of the Bank Avenue Subdivision by Defendant.

15. Within sixty (60) days of entry of this Consent Order, Defendant shall submit to Ohio EPA and Hamilton County Public Health:

A. a copy of each plat map delineating the limits of waste placement in the Landfill, including all roads, homes and property boundaries; and

B. a copy of each plat and deed, or other instrument which is normally examined during a title search, to the Landfill required in Paragraph 13 above.

16. Within ninety (90) days of entry into this Consent Order, Defendant shall update and revise the Landfill's explosive gas monitoring plan (EGMP) for Ohio EPA's approval. In the event the revised EGMP is not approvable by Ohio EPA, Ohio EPA may approve the revised EGMP with appropriate conditions and Defendant shall implement the approved EGMP with conditions upon Ohio EPA's written approval.

17. Within ninety (90) days of entry into this Consent Order, Defendant shall engage the services of a qualified individual or consultant responsible for the maintenance of activities involving the Bank Avenue Landfill. At a minimum, this individual or consultant shall have extensive knowledge and training regarding sanitary landfill explosive gas monitoring systems and an understanding of Ohio's landfill explosive gas

monitoring regulations in Ohio Adm.Code 3745-27-12.

18. Within ninety (90) days of entry into this Consent Order, Defendant shall create and maintain a link on Defendant's website, [www.cityofstbernard.org](http://www.cityofstbernard.org), providing public access to this Consent Order, the corresponding Complaint, explosive gas monitoring activities and results, and any current and future updates regarding activities related to the maintenance of the Bank Avenue Landfill and the Site as a whole as required by this Consent Order. Defendant shall maintain this link on its main page entitled "Bank Ave. Landfill/Ludlow Park Information." In the event that the Defendant no longer maintains said website, Defendant shall use another effective form of notice to the public reasonably acceptable to Ohio EPA.

19. Effective immediately, Defendant shall notify Ohio EPA – Southwest District Office, Division of Materials and Waste Management in writing of any future request to excavate within the Bank Avenue Subdivision. Such written notification and details of the request for excavation shall be made at least thirty (30) days prior to the proposed date of excavation unless emergency circumstances are present, in which case Defendant shall notify Ohio EPA within forty-eight (48) hours of the emergency situation beginning. Such a non-emergency request may require specific authorization by the Director of Ohio EPA to commence any excavation. Defendant's Department of Buildings and Planning should consult with Ohio EPA as necessary.

20. Within thirty (30) days of entry into this Consent Order, Defendant shall send a copy of this Consent Order to each property owner located at the Bank Avenue Subdivision.



21. Effective immediately, Defendant shall comply with the September 16, 2009 Director's Final Findings and Orders issued to the Defendant.

## **VI. CIVIL PENALTY**

22. Defendant is ordered and enjoined to pay a civil penalty of one hundred and sixty thousand dollars (\$160,000) to the State within thirty (30) days of the entry of this Consent Order. Such payment shall be made by delivering a check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio", to Scott Hainer, Paralegal, or his successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

## **VII. ATTORNEY GENERAL ENFORCEMENT COSTS**

23. In addition to the payment of a civil penalty required by the preceding paragraph, Defendant is ordered and enjoined to pay the enforcement costs of the Ohio Attorney General in the amount of twenty-eight thousand dollars (\$28,000.00) in two separate payments, as follows:

- (i) Defendant shall pay the sum of ten thousand dollars (\$10,000.00) within ten (10) days after entry of this Consent Order by the Court by delivering a check payable to the "Treasurer, State of Ohio" to Scott Hainer, Paralegal, or his successor, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio; and
- (ii) Defendant shall pay the sum of eighteen thousand dollars (\$18,000.00) within ten (10) days after entry of this Consent Order by the Court by delivering a check payable to the "Ohio Environmental Education and Charitable Trust" Scott Hainer, Paralegal, or his successor, Office of the

Attorney General, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio. The purpose of this trust is to support and enhance environmental education and science to benefit the citizens of the State of Ohio, including but not limited to the education of law enforcement and compliance personnel, students and scientists, and to support and enhance the prosecution of the environmental laws of the State of Ohio.

### **VIII. STIPULATED PENALTIES**

24. In the event that Defendant fails to substantially comply with any of the requirements of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty that is meant to be coercive in nature in accordance with the following schedule:

- a. Defendant shall pay one hundred fifty dollars (\$150.00) per day for each day any such requirement is violated up to thirty (30) days;
- b. From thirty-one (31) days through ninety (90) days, Defendant shall pay two hundred fifty dollars (\$250.00) per day for each day any such requirement is violated;
- c. After ninety (90) days, Defendant shall pay five hundred dollars (\$500.00) per day for each day any such requirement is violated.

25. Stipulated penalties due under this Consent Order shall be paid by certified check or money order in the appropriate amount given the days of violation, payable to "Treasurer, State of Ohio" and mailed to Scott Hainer or his successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400. Payment of stipulated penalties



shall satisfy any obligation for civil penalties sought for violation by Defendant of this Consent Order.

#### **IX. NOTICES**

26. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

Ohio Environmental Protection Agency  
District Office  
Solid Waste Supervisor  
401 East Fifth Street  
Dayton, Ohio 45402

As to Defendant:

Mayor  
Village of St. Bernard  
110 Washington Avenue  
St. Bernard, Ohio 45217

With a copy to:

Director of Law  
Village of St. Bernard  
110 Washington Avenue  
St. Bernard, Ohio 45217

27. Either Party may change the name and/or address of its contact person(s) by sending written notice to the other Party.

#### **X. EFFECTIVE DATE**

28. This Consent Order shall become effective upon the date of its entry by the Court.

#### **XI. COSTS**

29. Defendant is hereby ordered to pay the court costs of this action.

## **XII. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction of this action for the purposes of making any Order or Decree, which it deems appropriate to carry out this Consent Order.

## **XIII. SIGNATORIES**

31. Each of the undersigned representatives of the Parties represents that they are fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

**IT IS SO ORDERED**

**JUDGE**  
**HAMILTON COUNTY**  
**COURT OF COMMON PLEAS**  
JUDGE ROBERT P. RUEHLMAN  
Court of Common Pleas  
Hamilton County, Ohio

**DATE** 11-27-14

**APPROVED BY:**

**MICHAEL DeWINE**  
**OHIO ATTORNEY GENERAL**



**NICHOLAS J. BRYAN (0079570)**

Senior Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-2766  
Facsimile: (614) 466-1926

*Attorney for Plaintiff*  
*State of Ohio*

**VILLAGE OF ST. BERNARD, OHIO**

**By:** \_\_\_\_\_  
**Print Name:** William Burkhardt  
**Title:** Mayor

\_\_\_\_\_  
Kim K. Burke (0002277)  
Taft Stettinius  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202-3957  
Telephone: (513) 381-2838  
Facsimile: (513) 381-0205

*Attorney for Defendant*  
*Village of St. Bernard, Ohio*



APPROVED BY:

MICHAEL DeWINE  
OHIO ATTORNEY GENERAL

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NICHOLAS J. BRYAN (0079570)

Senior Assistant Attorney General  
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*Attorney for Plaintiff  
State of Ohio*

VILLAGE OF ST. BERNARD, OHIO

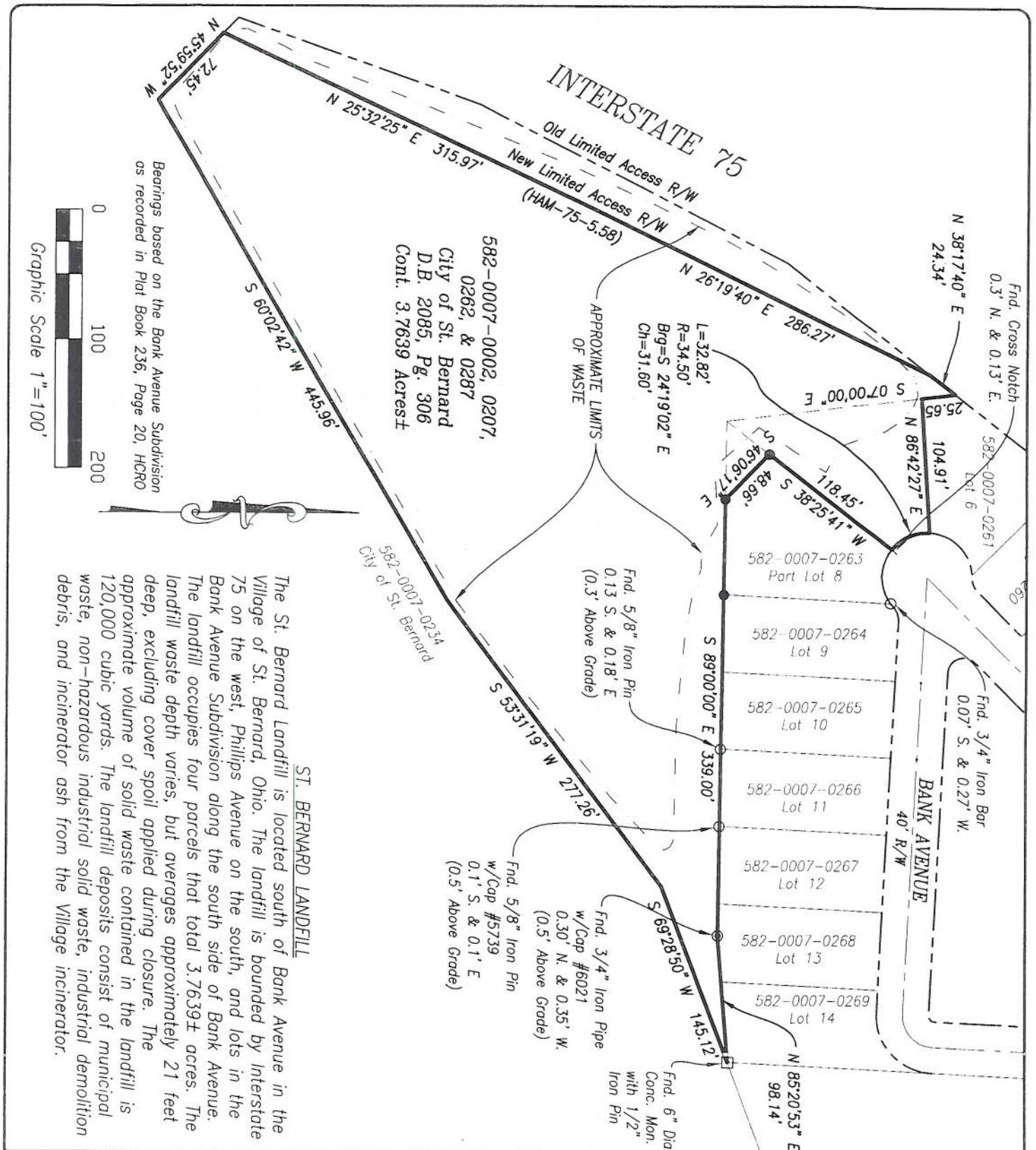
By: *William Burkhardt*  
Print Name: William Burkhardt  
Title: Mayor

*Kim K. Burke*  
Kim K. Burke (0002277)

425 Walnut Street, Suite 1800  
Cincinnati, OH 45202-3957  
Telephone: (513) 381-2838  
Facsimile: (513) 381-0205

*Attorney for Defendant  
Village of St. Bernard, Ohio*

# EXHIBIT A



The St. Bernard Landfill is located south of Bank Avenue in the Village of St. Bernard, Ohio. The landfill is bounded by Interstate 75 on the west, Phillips Avenue on the south, and lots in the Bank Avenue Subdivision along the south side of Bank Avenue. The landfill occupies four parcels that total 3.7639± acres. The landfill waste depth varies, but averages approximately 21 feet deep, excluding cover spoil applied during closure. The approximate volume of solid waste contained in the landfill is 120,000 cubic yards. The landfill deposits consist of municipal waste, non-hazardous industrial solid waste, industrial demolition debris, and incinerator ash from the Village incinerator.

## ST. BERNARD LANDFILL

### LANDFILL MAP for Village of St. Bernard located in

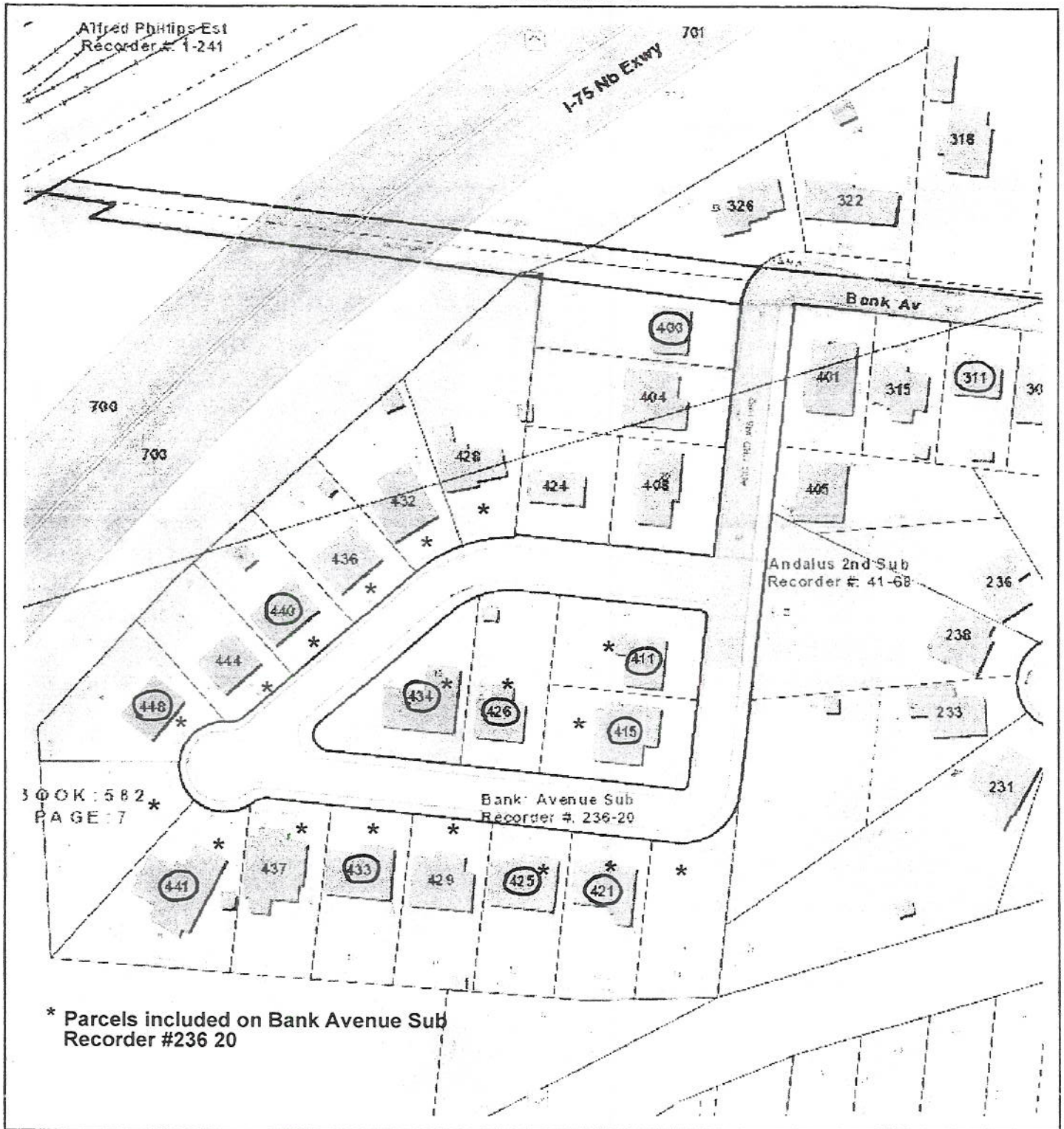
Section 16, Town 3, Fractional Range 2, M.P.  
Millcreek Twp., Village of St. Bernard, Hamilton Co., OH

**LAND CONSULTANTS**  
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OHIO (513) 381-1020  
TOLL-FREE (888) 537-2145

Date: August, 27, 2014  
Scale: 1" = 100'  
Job No: 81405801  
Drawn by: SJC/DTB  
Checked by: DTB  
Sheet 1 of 1




# EXHIBIT B



## CAGIS Online Map



CINCINNATI 

Hamilton County  Ohio

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