

Faculty Senate Woods Committee Report

Effective January 3, 2017, the University established a conservation easement covering approximately 15 acres of woods. This easement protects an area of forest with large, old trees, an exceptional diversity of wildflowers, and areas important for teaching, research, and campus recreation.

Submitted by Tom Rooney, Chair
January 16, 2017

Restricted Covenant in Wright State University Woods

As part of the Shared Services salt storage project in conjunction with the Ohio Dept. of Transportation, WSU was anticipating clearing a wooded site across University Blvd. from the existing WSU salt storage and maintenance site. To that end, and with the best intentions, the University cut a number of trees in winter 2014 that would have been bat nesting habitat. This was done to mitigate any impact on bats that might have chosen to nest there. Subsequently, it was discovered that the trees should not have been removed without prior approval of the Army Corp. of Engineers and the U. S. Fish and Wildlife (USF&W) Dept. The site was ultimately relocated and the area in question not built upon. However, an agreement was reached with USF&W that in consideration for removal of the trees and for a few trees that were removed at the site ultimately chosen for the Shared Services project, the University would set aside a 15 acre parcel of land via a Restricted Covenant. Through consultation with the WSU Faculty Senate ad hoc Woods Committee, a fifteen (15) acre area in the woods owned by the University was chosen for this purpose. The area set aside is in an area of old growth forest that is important for faculty research and was deemed to be the most suited for protection.

RESTRICTIVE COVENANT
Greene County, Ohio

THIS RESTRICTIVE COVENANT is made this 3rd day of January, 2017, by Wright State University, 3640 Colonel Glenn Highway, Dayton, Ohio 45430 (hereinafter, "Owner").

RECITALS

WHEREAS, Owner is the owner of certain real property located in Greene County, Ohio, the approximate boundary of which is more particularly described in Exhibit A and depicted in Exhibit B, which are attached hereto and incorporated herein by reference (hereinafter, the "Property"); and

WHEREAS, Owner desires to sanction the creation, enhancement, preservation, and/or restoration of a sufficient natural habitat on the Property; and

WHEREAS, proposed construction activities, conducted by another entity (the "Permittee") on the property of Owner resulted in the necessity to develop a mitigation plan in order to obtain §404 authorization from the Department of Army, Corps of Engineers (the "Corps"); and

WHEREAS, in consideration of the issuance of a §404 authorization (the "Permit") by the Corps (to include any successor agency) and certification and/or permits by the Ohio of Environmental Protection Agency ("Ohio EPA"), to include any successor agency, and for the protection of the created, enhanced, restored and/or preserved natural habitat, Owner has agreed to place certain restrictive covenants on the Property, each and all of which is and are for the benefit of the Property;

NOW THEREFORE, Owner hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns, lessees, or other occupiers and users ("Others") of the Property with respect to the rights granted hereafter.

ARTICLE 1

PROPERTY SUBJECT TO THIS RESTRICTIVE COVENANT

- 1.1. The Property which is and which shall be held for the purposes of this Restrictive Covenant is located in Greene County, Ohio, the approximate boundary of which is more particularly described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein by reference.

ARTICLE 2

USE RESTRICTIONS AND RESPONSIBILITIES

- 2.1. Unless the required permits or management plans from the appropriate agencies are obtained or otherwise allowed herein, Owner is and shall be prohibited from the following: (i) filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing; (ii) or similar work on the Property; (iii) intentionally introducing exotic species into the Property; (iv) substantially changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and (v) any other discharge or activity requiring a permit under any Federal or State clean water or water pollution laws and regulations, as amended. The following are expressly excepted from this paragraph provided Owner obtains prior written approval from the Corps: constructing a roadway across the Property, installing linear utility lines and vegetative clearing of its associated rights-of-way, or other activity that would cumulatively not jeopardize the overall integrity and purpose of the created, enhanced and/or restored Property. All permits that are otherwise normally required for such construction must be obtained prior to initiating construction. Nothing in this section is intended to modify, change, alter or diminish any previous written and signed agreement, which is or may be related to this Property, and this Restrictive Covenant is subject to all previous written and signed agreements.
- 2.2. After recording this Restrictive Covenant, these restrictive covenants may be altered by modification of the Permit pursuant to applicable Corps regulations and policy, provided all agencies that certified the Permit concur in writing with the modification, and subject to consultation with other resource agencies as appropriate. Such modifications shall become a part of these restrictive covenants. Owner may request to substitute in entirety property that is not encumbered by conservation easements or covenants for the Property herein, provided such substitute property is of equivalent functions and values as the Property herein, and is subject to equivalent conservation restrictions. Owner shall provide 60 days' advance notification to the Corps before any action is taken to void or modify the restrictive covenants, including transfer of title to, or establishment of any other legal claims over, the Property.
- 2.3. Any permit application, or request for certification or modification which may affect the Property, made to any government entity with authority over wetlands or other waters of the United States or waters of the State of Ohio shall expressly reference or include a copy of these restrictive covenants.
- 2.4. It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property. Owner reserves ownership of the surface estate, and subsurface, and all rights appertaining thereto, including without limitation the rights to exclude others and to use the Property for all purposes not in violation of these restrictive covenants.

- 2.5. The Corps, the Ohio EPA, and their authorized agents ("Regulators") shall have the right to enter and go upon the lands of Owner to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. This right of entry is given with the understanding that Regulators will conduct their actions hereunder entirely on its or their own behalf and not as an agent or servant of Owner.
- 2.6. Owner grants to the Corps, the U.S. Department of Justice, and the Ohio EPA the discretionary right to enforce these restrictive covenants in a judicial action against persons or other entities violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to, from the offending person or entity, a complete restoration of the Property for any violation, any judicial remedy, costs and attorneys' fees in which it obtains relief. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit.

ARTICLE 3

BURDEN AND BENEFIT

- 3.1. All of the restrictions imposed by this Restrictive Covenant run with and burden the Property and all restrictions hereby imposed shall be deemed to be restrictions running with the land and shall be effective limitations on the use of the Property from the date of execution of this Restrictive Covenant in perpetuity, subject to Article 4 hereof. All of these restrictions are binding on Owner and each successive owner of the Property or any portion thereof, and upon each person having any interest in the Property thereof derived from any owner of the Property hereafter.
- 3.2. Owner will incorporate (which may be by reference) its obligations under this Restrictive Covenant into all future deeds or other transfer documents executed in the future by Owner for the Property or any portion thereof or interest therein, and any grantees or other transferees will be required to comply with these restrictive covenants as if they were designated as Owner and had executed this Restrictive Covenant as Owner.
- 3.3. Should any separable part of these restrictive covenants be determined to be contrary to law, the remainder shall continue in full force and effect.

ARTICLE 4

RECORDING

- 4.1. Within 30 days after execution of this Restrictive Covenant, Owner shall file this Restrictive Covenant for recording, in the same manner as a deed to the Property, with the Greene County Recorder's Office.

IN WITNESS WHEREOF, Wright State University, being the Owner herein, duly executes this Restrictive Covenant this 3 day of JANUARY, 2017.

WRIGHT STATE UNIVERSITY

By: 

Print name: Gregory P. Sample

Its: Chief Real Estate & Facilities Officer

STATE OF OHIO :
COUNTY OF GREENE :

The foregoing instrument was sworn to and signed before me this 3rd day of January, 2017.


Notary Public

DEBRA RADFORD, Notary Public
In and for the State of Ohio
My Commission Expires Aug. 31, 2021

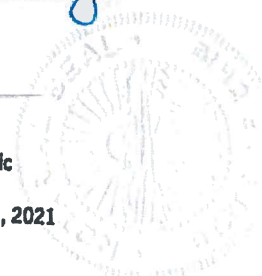


Exhibit A



VANATTAENGINEERINGINC

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December 28, 2016

**CONSERVATION AREA EASEMENT
WRIGHT STATE UNIVERSITY
15.000 ACRES**

LOCATED IN SECTION 36, TOWN 3, RANGE 7 M.Rs., CITY OF FAIRBORN, GREENE COUNTY, STATE OF OHIO AND BEING A CONSERVATION AREA EASEMENT BEING 1.944 ACRES OF THAT 12.984 ACRE TRACT AS CONVEYED TO BOARD OF TRUSTEES OF WRIGHT STATE UNIVERSITY BY THE DEED RECORDED IN O.R. 2467, PAGE 86 (EXHIBIT 1 PARCEL IV), 11.823 ACRES OF THAT 27.016 ACRE TRACT AS CONVEYED TO BOARD OF TRUSTEES OF WRIGHT STATE UNIVERSITY BY THE DEED RECORDED IN O.R. 2467, PAGE 86 (EXHIBIT 3 PARCEL III) AND BEING 1.233 ACRES OF THAT 13.844 ACRE TRACT AS CONVEYED TO BOARD OF TRUSTEES OF WRIGHT STATE UNIVERSITY BY THE DEED RECORDED IN O.R. 2467, PAGE 86 (EXHIBIT 1 PARCEL III) ALL OF THE OFFICIAL RECORDS OF SAID COUNTY AND BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A STONE FOUND AT THE NORTHEAST CORNER OF THAT 2.351 ACRE TRACT AS CONVEYED TO BOARD OF TRUSTEES OF WRIGHT STATE UNIVERSITY BY THE DEED RECORDED IN O.R. 3213, PAGE 481, SAID POINT ALSO BEING A SOUTHEAST CORNER OF THAT 137.026 ACRE TRACT AS CONVEYED TO BOARD OF TRUSTEES OF WRIGHT STATE UNIVERSITY BY THE DEED RECORDED IN O.R. 2467, PAGE 86 (EXHIBIT 1 PARCEL I) AND LYING ON THE WEST LINE OF THAT 75.781 ACRE TRACT AS CONVEYED TO BOARD OF TRUSTEES OF WRIGHT STATE UNIVERSITY BY THE DEED RECORDED IN O.R. 2467, PAGE 86 (EXHIBIT 3 PARCEL I) ALL OF THE OFFICIAL RECORDS OF SAID COUNTY;

THENCE LEAVING SAID 2.351 ACRE TRACT, WITH THE EAST LINE OF SAID 137.026 ACRE TRACT (EXHIBIT 1 PARCEL I), THE WEST LINE OF SAID 75.781 ACRE TRACT (EXHIBIT 3 PARCEL I) AND ITS EXTENSION BEING THE EAST LINE OF SAID 12.984 ACRE TRACT (EXHIBIT 1 PARCEL IV) AND THE WEST LINE OF SAID 13.844 ACRE TRACT (EXHIBIT 1 PARCEL III) NORTH 05°18'38" EAST, 1054.07 FEET TO A POINT;

THENCE LEAVING SAID COMMON LINE BETWEEN SAID 12.984 ACRE TRACT (EXHIBIT 1 PARCEL IV) AND THE WEST LINE OF SAID 13.844 ACRE TRACT (EXHIBIT 1 PARCEL III) SOUTH 72°13'59" WEST, 281.58 FEET TO A 5/8" IRON PIN SET CAPPED VAN ATTA #7354 AND THE TRUE POINT OF BEGINNING OF THE CONSERVATION AREA EASEMENT HEREIN DESCRIBED;

THENCE WITH SAID CONSERVATION AREA EASEMENT THE FOLLOWING COURSES:

1. NORTH 17°46'01" WEST, 522.72 FEET TO A 5/8" IRON PIN SET CAPPED VAN ATTA #7354;

2. THENCE NORTH 72°13'59" EAST, 1250.00 FEET TO A 5/8" IRON PIN SET CAPPED VAN ATTA #7354;
3. THENCE SOUTH 17°46'01" EAST, 522.72 FEET TO A 5/8" IRON PIN SET CAPPED VAN ATTA #7354;
4. THENCE SOUTH 72°13'59" WEST, 1250.00 FEET TO THE TRUE POINT OF BEGINNING AND THERE TERMINATE, CONTAINING 15.000 ACRES, MORE OR LESS, SUBJECT HOWEVER TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.



Jeffrey Van Atta
JEFFREY A. VAN ATTA, PS #7354
12/28/16
DATE

Exhibit B

EXHIBIT
**CONSERVATION AREA EASEMENT
WRIGHT STATE UNIVERSITY**

LOCATED IN SECTION 36, TOWN 3, RANGE 7 M.Rs.
CITY OF FAIRBORN, GREENE COUNTY, OHIO

DECEMBER 28, 2016

PREPARED BY:

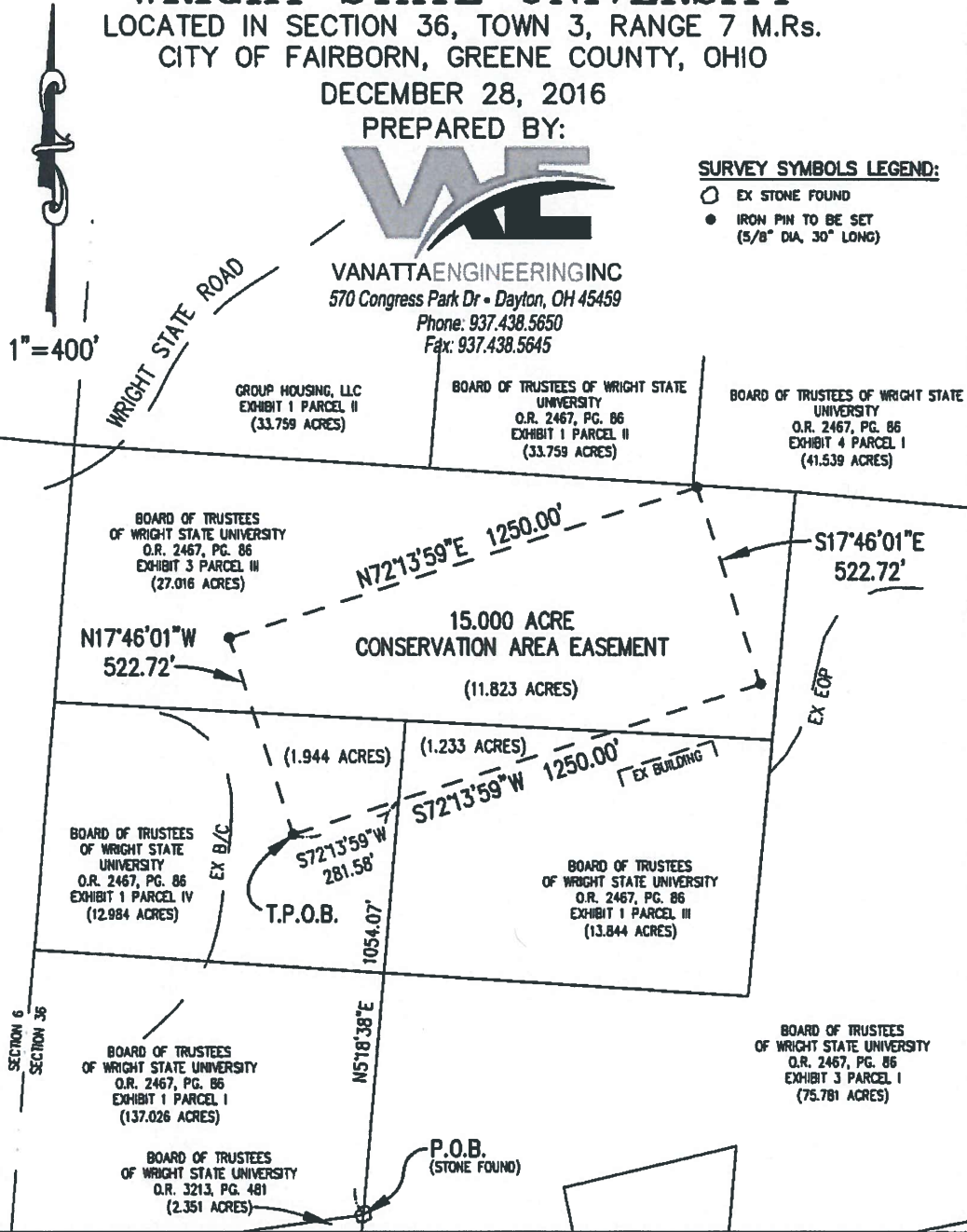


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SURVEY SYMBOLS LEGEND:

- EX STONE FOUND
- IRON PIN TO BE SET
(5/8" DIA, 30" LONG)

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Conservation Area – Exhibit ‘A’

