



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

October 23, 2003

REPLY TO
ATTENTION OF:

Regulatory Branch

SUBJECT: Restoration Order, Enforcement No. 2000-02170(0)

Mr. Robert W. Barnes
Barnes Nursery Incorporated
3511 Cleveland Road West
Huron, Ohio 44839

Dear Mr. Barnes:

This is in reference to your unauthorized irrigation project along the southern shoreline of East Sandusky Bay. The project in question is located adjacent to Sheldon Marsh State Nature Preserve in Huron Township, Erie County, Ohio.

The Buffalo District issued you a provisional permit in December 2001 to maintain your existing irrigation channel and earthen berm with proposed modifications and mitigation to compensate for the temporary and permanent impacts to the aquatic environment. This Department of the Army permit is not valid without 401 Water Quality Certification (WQC) from the Ohio Environmental Protection Agency (OEPA) and a Coastal Zone Management (CZM) Federal consistency determination by the Ohio Department of Natural Resources (ODNR). Neither WQC nor CZM were ever obtained; therefore your project is unauthorized.

I have determined that you are in violation of both Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. In order to resolve this violation it will be necessary for you to completely restore the project site to pre-construction conditions and remove any excess dredged materials from East Sandusky Bay in accordance with the attached drawings. You must also comply with the following specifications, terms, and conditions:

RESTORATION SPECIFICATIONS:

a) Reverse backfill the entire channel (approximately 1,800 linear feet) with materials that were side cast to form the berm. Every attempt must be made to place the subsoil in the channel first, with the original topsoil placed and graded last.

b) Completely remove any remaining berm materials not backfilled and restore the area to pre-construction contours. All non-submerged disturbed areas will be seeded with an appropriate mix

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determined by the local Soil and Water Conservation District once final grading has occurred.

c) All mechanical restoration (backfilling and final grading of channel, removal of excess berm materials) activities must be completed by December 31, 2004. However, if during the 2005 growing season, *Phragmites australis* becomes established as the dominant plant in areas that were restored, appropriate controls must be applied to these areas (i.e. treat Phragmites with a 30% solution of water, Glypro and a surfactant) to facilitate the re-establishment of native plant species.

d) If during September 2004, the wetland vegetation in the area that you restored on April 18, 2001 (as shown on the attached drawings) is dominated by *Phragmites australis*, you will be instructed to perform additional remedial measures in this area. Examples of remedial measures that may be necessary include the removal/treatment of Phragmites, modifying the ground elevation, replacing topsoil, and/or seeding the disturbed areas with an appropriate wetland seed mix.

RESTORATION TERMS AND CONDITIONS:

1. At least 14 days prior to commencing the work required by this Restoration Order (ORDER), you must notify the District Commander of the dates you intend to commence restoration activities.

2. You are responsible for ensuring that the contractor and/or workers executing the activity(s) required by this ORDER have knowledge of the terms and conditions of the ORDER and that a copy of the ORDER is at the project site throughout the period the work is underway.

3. This ORDER does not authorize the discharge of dredged or fill material into East Sandusky Bay, for the purpose of creating temporary structures that include but are not limited to groins, cofferdams, work pads, laydown areas, and access roads.

4. No in-water work will be performed between March 1 and June 15 to preclude adverse impacts on the spawning, nursery, and feeding activities of indigenous fish species without first obtaining Department of the Army authorization.

5. No mechanized work will be performed between June 15 and October 31 to preclude adverse impacts on the activities of fledgling bald eagles (*Haliaeetus leucocephalus*). A visual survey for fledgling eagles shall be performed prior to any mechanized operations. A qualified designated agent, or Corps

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biologist, will conduct these surveys daily while mechanized operations are ongoing. All activities shall immediately be halted if any fledgling eagles are observed and you should contact Ms. Megan Seymour of the U.S. Fish and Wildlife Service at 614-469-6923 for further direction.

6. Sheldon Marsh has been designated as critical habitat for the piping plover (*Charadrius melodus*), a federally listed endangered species. Activities disturbing the natural behavior of piping plovers may constitute a "take" under the Endangered Species Act. Therefore, a visual survey for piping plovers shall be performed prior to any excavating and grading operations. A qualified designated agent, or Corps biologist, will conduct these surveys daily while excavating and grading operations are ongoing. All activities shall immediately be halted if any piping plovers are observed and you should contact Ms. Megan Seymour of the U.S. Fish and Wildlife Service at 614-469-6923 for further direction.

7. Any dredged or excavated material (not used as backfill) removed from East Sandusky Bay shall be properly disposed of at an upland site and maintained to prevent erosion and other non-point sources of pollution. All excess dredged or excavated material shall be disposed of at an upland disposal site approved by the Corps of Engineers.

8. Prior to any excavating, grading, or plowing in waters of the United States as required by this ORDER, you shall install and maintain erosion and sedimentation controls between the project area and the undisturbed areas of mudflat and/or open water habitat to prevent sedimentation into the mudflat and/or open water habitat.

9. All erosion and sediment control practices shall be checked daily to ensure they are not damaged and that they are functioning properly. If damaged, repairs will be completed by the next day. All sediment and erosion control practices shall remain in place until construction is completed and the area is stabilized.

10. Dredging operations shall be strictly controlled to minimize spillage and re-suspension of bottom sediment.

11. At the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, you shall ensure access to the project site to determine compliance with the conditions of this ORDER.

Regulatory Branch

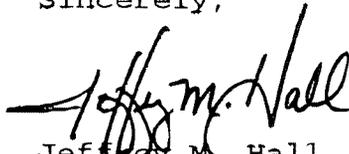
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You must complete the required restoration activities by December 31, 2004. A Corps representative will be on-site to monitor these activities. If you meet all the terms and conditions of this ORDER to the satisfaction of the Corps, the District Commander will close this file and take no further enforcement action regarding this matter. This ORDER has been coordinated with the OEPA, ODNR, US Environmental Protection Agency and the US Fish and Wildlife Service.

Please sign the acknowledgment form below and submit it to this office with a complete copy of the Restoration Order no later than November 14, 2003. If you fail to submit the acknowledgement form by the required date, this file will be forwarded to my Office of Counsel for appropriate legal action.

Questions pertaining to this matter should be directed to Philip Frapwell at (716) 879-4312, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, or by e-mail at: philip.d.frapwell@usace.army.mil

Sincerely,



Jeffrey M. Hall
Lieutenant Colonel, Corps of Engineers
District Engineer

I hereby agree to perform the activities described in this Restoration Order in accordance with the attached drawings, stated specifications, terms, and conditions:


Robert Barnes

10-27-03
Date

Enclosures

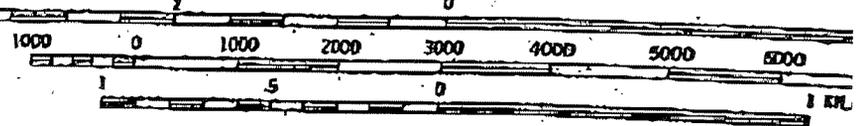
GEOLOGICAL

HURON QUAD

OHIO-ERI.

7.5 MINUTE SERIES

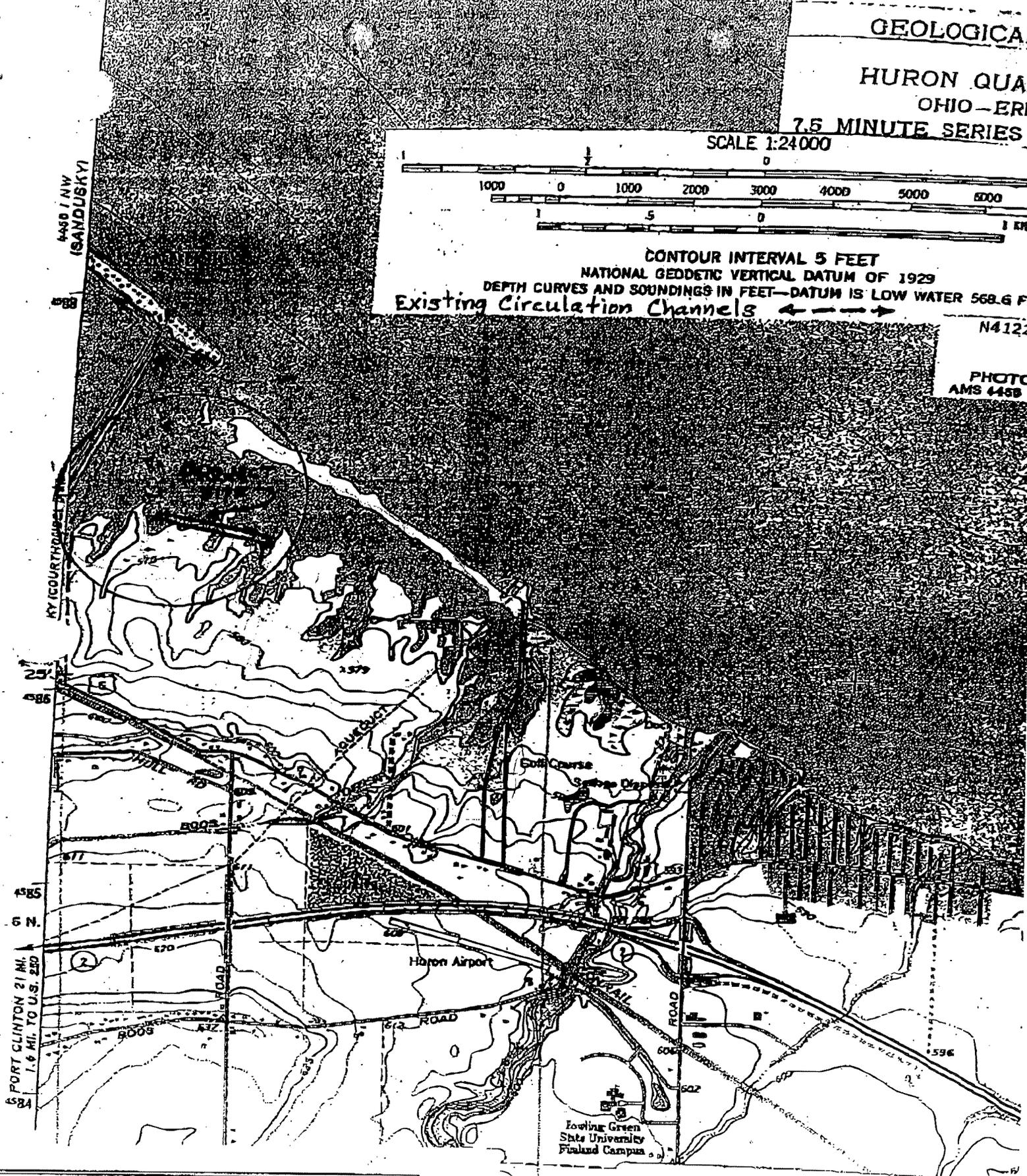
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CONTOUR INTERVAL 5 FEET
 NATIONAL GEODETIC VERTICAL DATUM OF 1929
 DEPTH CURVES AND SOUNDINGS IN FEET—DATUM IS LOW WATER 568.6 FT
 Existing Circulation Channels ← →

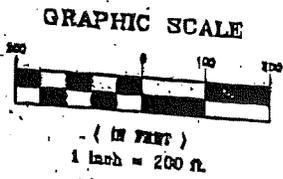
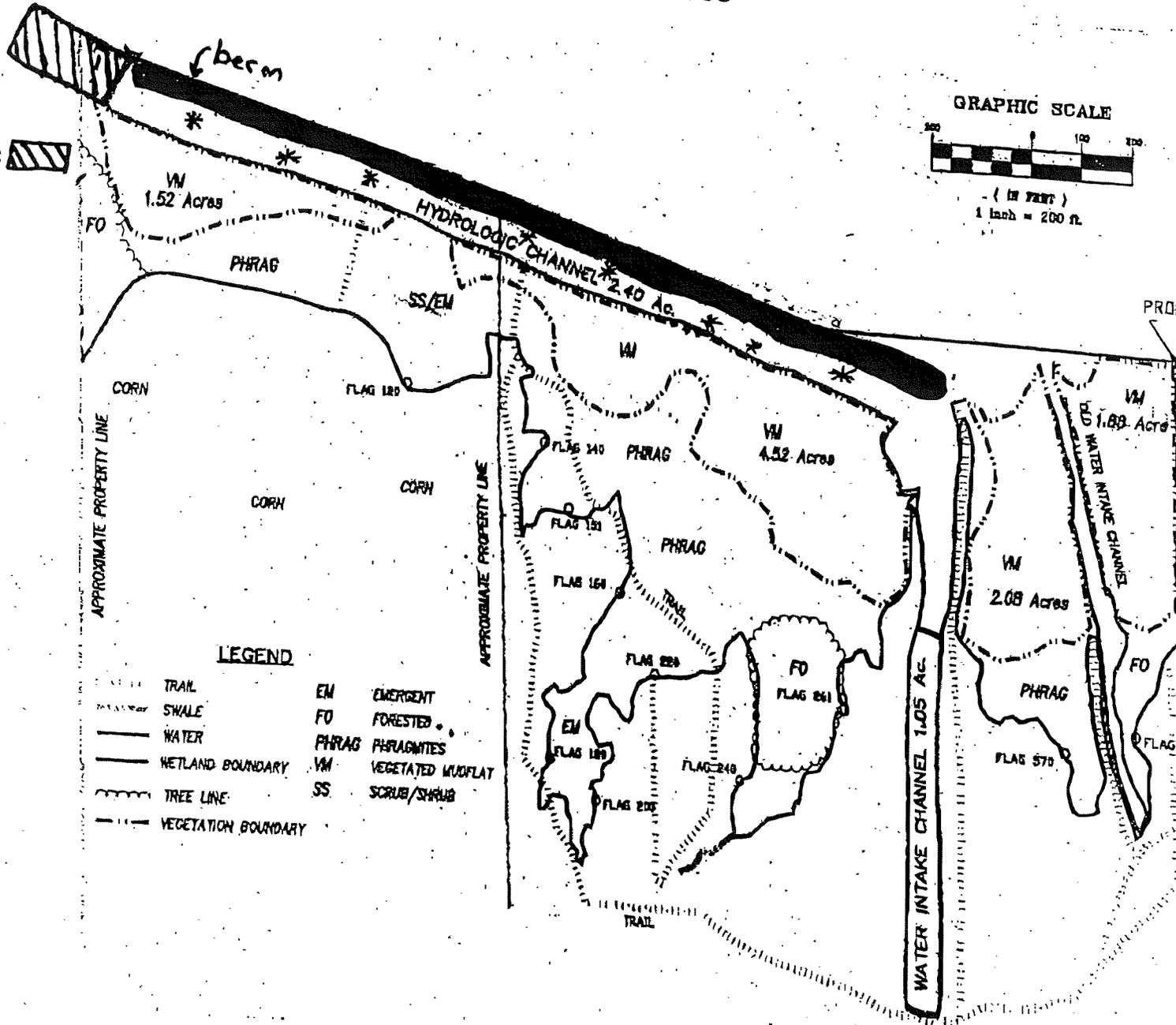
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PHOTO
AMS 4458



Existing Site Conditions (approximate) October 2003

Area restored on
April 18, 2001
(approximately
200' X 105')



LEGEND

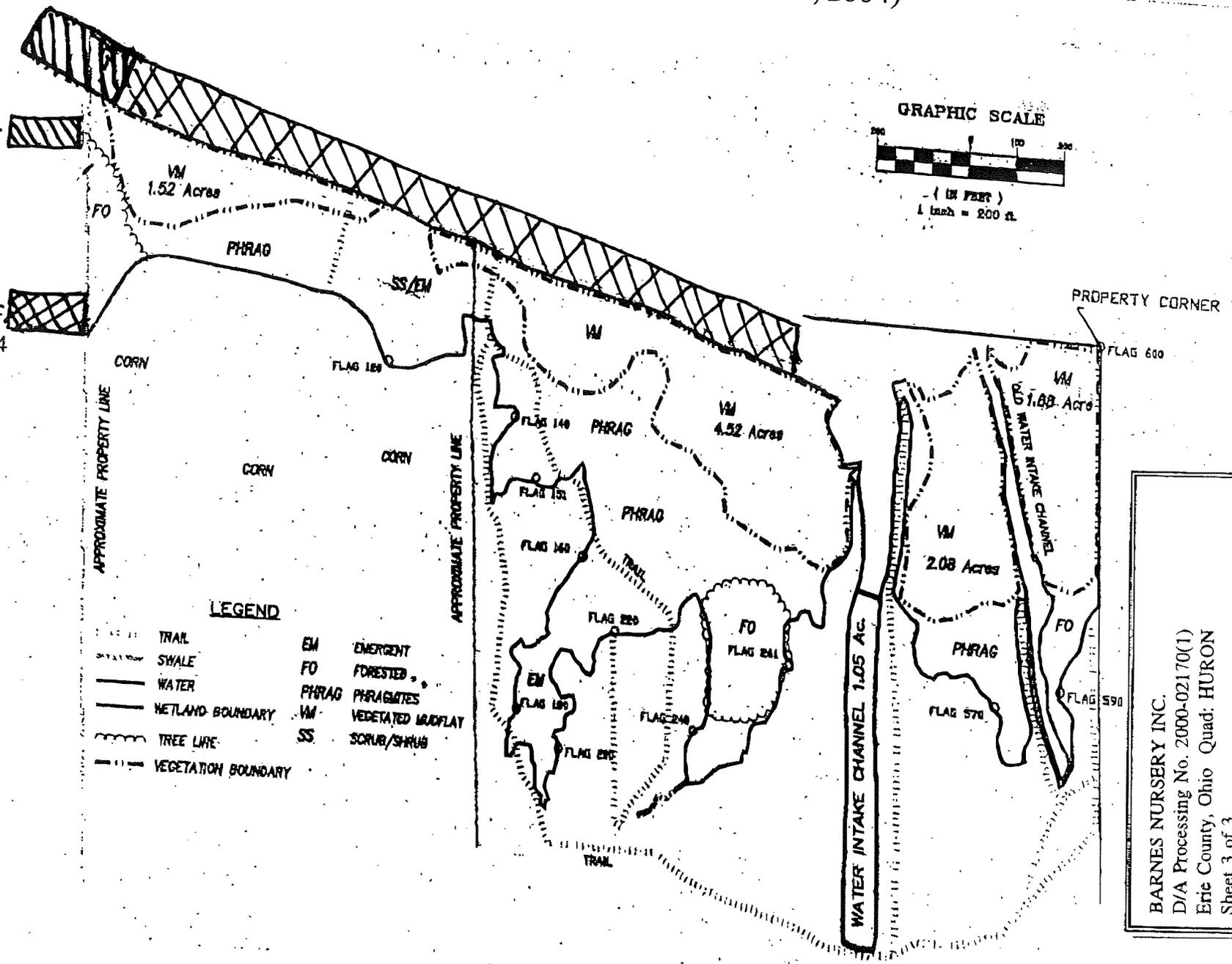
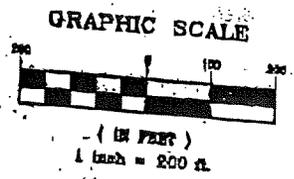
	TRAIL	EM	EMERGENT
	SWALE	FO	FORESTED
	WATER	PHRAG	PHRAGMITES
	WETLAND BOUNDARY	VM	VEGETATED MUDFLAT
	TREE LINE	SS	SCRUB/SHRUB
	VEGETATION BOUNDARY		

BARNES NURSERY INC.
 D/A Processing No. 2000-02170(1)
 Erie County, Ohio Quad: HURON
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Proposed Complete Restoration to Pre-Construction Conditions (to be completed by December 31, 2004)

Area restored on
April 18, 2001
(approximately
200' X 105')

Area to be
restored before
December 31, 2004
(approximately
1800' X 105')



LEGEND

	TRAIL	EM	EMERGENT
	SWALE	FO	FORESTED
	WATER	PHRAG	PHRAGITES
	WETLAND BOUNDARY	VM	VEGETATED MUDFLAT
	TREE LINE	SS	SCRUB/SHRUB
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