

APPENDIX C2
PUBLIC COMMENTS ON THE INITIAL
NATURAL RESOURCE RESTORATION PLAN & ENVIRONMENTAL
ASSESSMENT FOR THE ASHTABULA RIVER AND HARBOR SITE
Transcript of the April 22, 2008 Public Meeting

OHIO ENVIRONMENTAL PROTECTION AGENCY
PUBLIC HEARING

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Transcript of proceedings before the
Ohio Environmental Protection Agency, taken at
Lakeside High School, 6600 Sanborn Road, Ashtabula
Ohio, on Tuesday, April 22, 2008, commencing at
7:00 p.m.

APPEARANCES:

Caroline Markworth, Ohio EPA, Hearing Officer
Regan "Sig" Williams, Ohio EPA
Sheila Abraham, Ohio EPA
Mark Navarre, Ohio EPA
Dave DeVault, U.S. Fish and Wildlife Service
Kelly Bakayza, U.S. Department of Interior

PROCEEDINGS

1
2 MS. MARKWORTH: Did you have a
3 question, sir?

4 MR. GRIPPI: Yes. Kevin Grippi,
5 941 Norwood Drive, Ashtabula, Ohio. I have
6 two questions. Maybe I'll have more later on,
7 but I'll start with two questions.

8 First question is, City of Ashtabula
9 took a tremendous beating through the
10 industrial revolution as far as accepting the
11 effluent from the plants and the damages that
12 you talked about. It seems to me that the
13 list of projects are really light as far as
14 being located in the city of Ashtabula. Why
15 are more projects not in the city of Ashtabula
16 proper? That's my first question.

17 The second question is, it seems like
18 the classifications between Alternative A and
19 Alternative B are really locked in, very
20 segregated. Is there any way that you could
21 consider sort of commingling some of the
22 projects and moving maybe something from
23 Alternative A and Alternative B? Just seems
24 like everything's really locked in. Those are
25 my two questions for now.

1 MR. NAVARRE: I'll offer an initial
2 response and others can add to it. On your
3 first question, Mr. Grippi, about the
4 distinction between the city and the township,
5 right, and the location of projects? I mean,
6 some of the properties that we've considered
7 for the restoration opportunities are within
8 the city limits. Others are just south of the
9 city limits in the township, but all are in
10 the Ashtabula River corridor. And our focus
11 is not so much on a political geographic
12 distinction so much as an ecological one.
13 We're trying to develop projects that will
14 benefit the Ashtabula River and the Ashtabula
15 River corridor and the river watershed. And
16 so it's primarily the damage from Fields Brook
17 into the Ashtabula River, that concentration
18 is where most of the damage occurred. And
19 we're focused on projects that are in that
20 vicinity that will help restore that
21 watershed, regardless of whether it's in the
22 city or the township.

23 MS. ABRAHAM: Just to add to that.
24 Mark talked about geopolitical divisions, but
25 what you have to remember, I think what I'd

1 like you to remember, that anything that we do
2 by way of restoration of the Ashtabula
3 watershed will ultimately benefit the city and
4 township and everybody else. You will have
5 ecotourism. You will have more dollars
6 flowing in from economic benefits. So I'd
7 like us to work together to bring the best
8 value to the people of Ashtabula as a whole
9 and not look at just township and city, but at
10 the watershed as a whole.

11 Kevin had a second question.

12 MR. NAVARRE: The only thing I'll
13 add to the first point is that the other piece
14 of this that we try to consider is when a
15 property is acquired and preserved in its
16 natural state we need a steward to manage
17 that. The Ohio EPA doesn't perform that
18 role. The Department of Natural Resources
19 does not perform that role. And U.S. Fish and
20 Wildlife Service doesn't perform that role.
21 It has to be a local entity.

22 For example, one of the organizations
23 that we've worked with on the Brockway
24 property with Fields Brook natural resource
25 damage monies is the Ashtabula Township Park

1 Commission. When we acquired that property we
2 transferred it subject to an environmental
3 covenant to preserve it perpetuity, and now
4 the Township Parks Commission, represented
5 tonight by Mike Wayman, will manage that
6 property in perpetuity.

7 So one of the considerations we have to
8 factor into this is an end-use land steward
9 for properties that are acquired to benefit
10 the watershed.

11 MR. GRIPPI: May I ask, what
12 percentage of Alternative B projects are in
13 the city of Ashtabula?

14 MR. NAVARRE: I don't know.

15 MR. GRIPPI: Just approximately.

16 MS. ABRAHAM: I don't think we can
17 answer that because we don't have a complete
18 understanding, a full list of all the
19 projects; we're still working through those.
20 And as those projects become known and become
21 available, we will put out an addenda. You
22 and everybody will know what we're doing. It
23 will be done in the public arena. But at this
24 point we really can't answer your question
25 honestly.

1 MR. WILLIAMS: But in the case of
2 the Brockway property, even though that one is
3 in --

4 MR. GRIPPI: It's not in the
5 city.

6 MR. WILLIAMS: It's our
7 understanding it is within the city limits.
8 It's now held -- the property is held by the
9 Ashtabula Township Park Commission.

10 MR. GRIPPI: It's not in the city
11 of Ashtabula.

12 MR. WILLIAMS: That's what our
13 understanding is; it is within the city
14 limits.

15 MR. DEVAULT: I think, Kevin, the
16 bottom line, to answer your question, is --

17 MR. WILLIAMS: There are others
18 too.

19 MR. DEVAULT: There just isn't a
20 lot of space along the Ashtabula River within
21 the city limits. I mean, that's primarily
22 marinas and docks.

23 MR. WILLIAMS: But there is more
24 than just the Brockway property.

25 MR. SMITH: I would be able to

1 answer that also. The Brockway property, if
2 you go down there any given day, people walk
3 from the city and all around that area down to
4 that property and they go fishing all the
5 time. Once that property is, if it gets
6 rehabilitated even more to provide fishing
7 access for people in the city limits right
8 downtown, and in that whole area both on the
9 city and township side who walk to those areas
10 will be able to walk down there now and have
11 fishing opportunities even more.

12 MR. GRIPPI: Matt makes my point
13 exactly. We need those kinds of places within
14 the city limits.

15 MR. SMITH: But it's right there;
16 right next to the hospital.

17 MR. NAVARRE: I'll try with that
18 one too. I think one of the things that we
19 have right now is there is somewhat of a plan
20 between the two. By that I mean there are
21 some human-use benefits associated with
22 Alternative B projects. For example, Sig
23 mentioned enhancing the Brockway property that
24 was acquired with Fields Brook monies in terms
25 of adding things like a boat launch and access

1 for recreational opportunities, as well as
2 enhancing it's ecological property as a
3 wetland. So it's not just an ecological
4 benefit associated with improving the Brockway
5 property project. It's also a human-use
6 benefit associated with that too.

7 The difficulty we found with these six
8 criteria in the chart in evaluating the
9 Alternative C projects is that there is, as
10 Sig explained, there's less ecological benefit
11 associated with that; it's almost entirely
12 human use. And because of the statutory
13 requirement, the federal superfund statute,
14 the Natural Resource Damage Provision that
15 requires monies to be used by the trustees to
16 restore, replace or acquire the equivalent of
17 the natural resources damaged, the criteria
18 are then developed based on that statutory
19 mandate that we have to follow. So we are
20 sort of limited that way.

21 MR. GRIPPI: May I ask a follow-up
22 question?

23 MR. NAVARRE: Yes.

24 MR. GRIPPI: Getting back to my
25 city of Ashtabula limits. Can you tell the

1 group, what percentage of restoration activity
2 is going on within the city of Ashtabula as
3 opposed to outside of the corporate limits?
4 I'm curious.

5 MR. NAVARRE: When you say
6 restoration activities, do you mean sediment
7 dredged?

8 MR. GRIPPI: Clean-up activities.

9 MR. WILLIAMS: I believe all of it.
10 All of the Legacy Act project from basically
11 Jack's Marina down to the 5th Street bridge
12 and the water project from the 5th Street
13 bridge, 1,900 feet downstream. I'm quite sure
14 all of that is within the city.

15 MS. MARKWORTH: Ma'am, did you want
16 to ask your question?

17 MS. SCHMIDT: Cathie Schmidt,
18 Geneva, Ohio. This idea of restoration, if
19 harm has been done, actually your clean-up and
20 dredging and all is considered part of
21 restoration or cut that into sections? Is
22 that separate from restoration?

23 And also, just to point out that in the
24 no-action, if you've cleaned up the area
25 nature tends to take some action, because your

1 restoration -- have you done some harm by
2 clean-up? So are you restoring for that, not
3 just the harm done from factories?

4 MR. WILLIAMS: I can at least take a
5 shot at part of that. Yeah, there actually is
6 some harm done by the clean-up itself. It's
7 unavoidable. We're going to go in there with
8 a dredge and cut out what was once one or two
9 feet deep at the root of aquatic plants
10 growing and providing some kind of nursery
11 habitat for fish and aquatic invertebrates.
12 You go in there and dig that down to a 16- or
13 18- or 20-foot channel you've lost resources;
14 you've injured a resource. So that is
15 actually taken into account in the Legacy Act
16 project itself.

17 There's a component of that project
18 which has not been done yet, which is in the
19 planning stage, we hope to have it implemented
20 before too long, to actually mitigate for
21 injuries caused by the remedy itself, the
22 clean-up itself. That would involve probably
23 some form of creation of a new shallow fish
24 habitat along the bank of the river within the
25 remediation areas. Details of that haven't

1 been worked out yet, and how much money we'll
2 have available hasn't been worked out yet.
3 But it will be along the same lines as the
4 kind of restoration projects the trustees are
5 looking at for the settlement of the NRD
6 claim, but they will be done as part of the
7 Legacy Act as mitigation. It's really the
8 same thing, mitigation and restoration, just
9 under a different program. I don't know if
10 I've answered all of your questions or not.

11 MS. ABRAHAM: No. The one part of
12 the question was what's the distinction
13 between clean-up and restoration.

14 MR. NAVARRE: Mrs. Schmidt, there
15 is a definite distinction between those two.
16 And all of the work that's been done to date,
17 with the exception of the Fields Brook natural
18 resource damage settlement and the Brockway
19 property, but all of the clean-up work, the
20 dredging work that's been done to date has
21 been remediation of the Ashtabula River or the
22 damage caused. And so what we're engaged in
23 now is the restoration component, the Natural
24 Resource Damage Restoration component of that
25 that follows. And it's necessary for that to

1 come after the fact. It has to be a two-stage
2 process, otherwise we can't factor in all the
3 damages, as a result of both the injury caused
4 and the remediation work done, as Sig
5 mentioned, the dredging of the harbor and the
6 disposal of the contaminated soil.

7 MR. WILLIAMS: The remediation
8 really is to address the contamination in the
9 river, the contamination which has caused the
10 injuries. The NRD restoration is over and
11 above clean-up and is intended to actually
12 restore those injured resources to the extent
13 possible, and compensate the public for the
14 lost services related to those injuries.

15 MS. MARKWORTH: Question back there.

16 MS. CONJER: Yeah. My name is
17 Jacqueline Conjer from Ashtabula. On your
18 screen you showed about improving upland
19 habitat and restoring it. Is that strictly
20 within the Ashtabula River limitations or does
21 that also include Fields Brook?

22 MR. DEVAULT: At this point we're
23 looking at projects along the Ashtabula River
24 proper.

25 MR. WILLIAMS: We're not

1 contemplating, at this time at least, any
2 restoration or acquisitions outside of the
3 Ashtabula watershed. The regulations don't
4 require that, but it's always a preference to
5 try to be as close to the actual injury as
6 possible. And everything that we're
7 considering at this time is within the actual
8 river watershed.

9 MS. ABRAHAM: Is there a reason why
10 you asked the question? Do you know of any
11 particular property along Fields Brook that
12 you think --

13 MS. CONJER: No, I was just
14 curious. You acknowledge that it drains into
15 the Ashtabula River, so to me that's kind of a
16 tributary of the Ashtabula River, so it would
17 seem like, wouldn't you use the term upland
18 habitat? Maybe that's part of it.

19 MR. DEVAULT: One of our concerns
20 all along supplied to the Fields Brook
21 settlement also is actually trying to do
22 restoration work in the area of Fields Brook
23 that's been remediated, could cause more
24 contaminate release problems. And it's just
25 an area where we prefer to avoid if we can.

1 MR. WILLIAMS: We thought there were
2 limited really opportunities to do restoration
3 on Fields Brook itself, that's why the
4 Brockway property is done as part of the
5 Fields Brook NRD restoration. It was on the
6 river rather than on the Fields Brook.

7 MS. CONJER: So you're saying it's
8 basically already been done with Fields
9 Brook?

10 MS. ABRAHAM: No, we bought --

11 MR. WILLIAMS: We've gone outside of
12 the immediate Fields Brook to the Ashtabula
13 River. It was within the assessment area
14 though.

15 MS. ABRAHAM: We bought the
16 property with part of the Fields Brook Natural
17 Resource Damage Fund, but the work that
18 remains to be done we hope will get done using
19 some of the Ashtabula River settlement money,
20 we hope.

21 MS. MARKWORTH: We're going to go
22 right here.

23 MR. JOSEPH: Just another
24 clarifying question regarding the scope.

25 MS. MARKWORTH: Sir, could you state

1 your name and speak up a little bit?

2 MR. JOSEPH: Sure, Brett Joseph.

3 My clarifying question has to do with how
4 you're defining the relevant ecosystem, which
5 you referred to starting the ecosystem
6 functioning. Ecosystems can be defined
7 according to various levels of scale,
8 everything from the whole world to some
9 microsystem within a garden patch or something
10 like that. I'm just curious as to how -- is
11 it the watershed? Is it the tributaries or
12 just the main stem? What is the relevant
13 ecosystem for purposes of preservation
14 planning?

15 MR. DEVAULT: Our preference is,
16 and it always is, to address the area where
17 the injuries have actually occurred. And so
18 in this case, I mean, we strongly prefer
19 projects within the Ashtabula watershed. And
20 we strongly prefer projects more toward the
21 northern end of that. But that's not cast in
22 stone.

23 MR. JOSEPH: I guess the term
24 ecosystem, how is that being defined?

25 MS. ABRAHAM: Matthew maybe will be

1 able to help with some of this. But we were
2 looking at it as a watershed level. We're not
3 looking at the (indiscernible) just
4 watershed. Matthew, would you like to add to
5 that?

6 MR. SMITH: Matthew Smith, Ohio
7 Department of Natural Resources, Scenic Rivers
8 Program. I think the trustees have always
9 looked at mostly starting at the base of where
10 the problem was and work out through the
11 watershed as projects became available. No
12 consideration has been looked at outside of
13 the watershed itself, so that is the
14 ecosystems that has been looked at.

15 MS. MARKWORTH: In the blue shirt and
16 then the white.

17 MR. CONTAGALLO: My name is Tony
18 Cantagallo. I am the City Manager for the
19 city of Ashtabula. I have a question. When
20 you conducted your settlement agreement in Fox
21 River, Wisconsin, I notice that you built a
22 2,156 square foot multipurpose building/marsh
23 overlook platform, five miles of trails, and
24 460-acre village park house and waterfowl
25 preserve on the shore of Green Bay in the

1 village of Howard. The multipurpose building
2 will have an activity room for nature-related
3 education exhibits and programs, small
4 greenhouse and other areas needed for
5 preserved management and upkeep. Is that
6 Alternative C in Wisconsin or did it rise
7 above of C?

8 MR. DEVAULT: Much like what we're
9 proposing here, it was on the Green Bay Fox
10 River settlement. And I should point out that
11 was an interim settlement. That case hasn't
12 settled.

13 MR. CANTAGALLO: You took down the
14 greenhouse and everything afterwards?

15 MR. DEVAULT: Let me finish. There
16 was a fairly small component that was directed
17 toward human use, much like building
18 boardwalks and canoe launches and stuff here.
19 And so that's exactly what you're talking
20 about there.

21 MR. CANTAGALLO: My follow-up
22 question --

23 MR. DEVAULT: I should point out
24 that was a \$60,000,000 partial settlement that
25 was being worked with there, so we've got some

1 difference in scale.

2 MR. SMITH: Also, if I may
3 comment to that too. I think part of that Fox
4 River plan, they deemed that no more than 10%
5 of the total -- in that one plan, that no more
6 than 10% of all the settlement monies could be
7 applied towards infrastructure-type
8 activities. So even though all the Fox River
9 has some of these projects in there, it
10 doesn't total more than 10% of the total
11 monies used.

12 MR. CANTAGALLO: My second question
13 is, how much money has the NRD spent catching
14 fish in the river and eviscerating them to
15 determine how much toxicity they have?

16 MS. BAKAYZA: You know what,
17 Mr. Cantagallo, I can tell you I don't know
18 the exact amount of money, but I can tell you
19 that we can respond to that. That's
20 considered assessment costs, which is a
21 separate category under any potential
22 settlement, aside from the restoration. So
23 the trustees would be recovering assessment
24 costs and then there would be money that's
25 recovered for restoration. And we do have

1 that information, but I don't have it off the
2 top of my head.

3 MS. MARKWORTH: You might want to
4 fill out a blue card and when we take comments
5 you --

6 MR. CANTAGALLO: Would you say the
7 number is over a million dollars?

8 MS. BAKAYZA: I really -- I
9 honestly can tell I don't know, because you're
10 asking a very specific question.

11 MR. CANTAGALLO: If you could get me
12 that number I'd appreciate it.

13 MS. BAKAYZA: Right. Relative to a
14 very specific assessment activity, because
15 there were a lot of things done to assess the
16 river and the natural resources.

17 MS. MARKWORTH: Again, if you could
18 fill out a blue card when we're taking
19 comments, that will be responded to in the
20 responsiveness summary in writing.

21 MS. BAKAYZA: We can specifically
22 respond to it.

23 MR. DEVAULT: I think it is
24 important to be clear that not only are we
25 recovering damages for the injuries to the

1 natural resources, we are also recovering
2 those assessment costs from the responsible
3 parties.

4 MS. ABRAHAM: They are two separate
5 parts in a way. What we recover for projects
6 will be spent on the projects; what we recover
7 for assessment costs will be going to fund the
8 way we pull for our assessment costs for the
9 future.

10 MR. CANTAGALLO: Then just one other
11 question. How would the toxicity in the fish
12 today give you any information regarding the
13 toxicity that was in the fish yesterday? In
14 other words, when this toxic substance was put
15 in the river over the last 50 years, what
16 would you learn from the fish today?

17 MR. DEVAULT: You would learn the
18 condition of the fish today. I guess I don't
19 really understand your question.

20 MS. ABRAHAM: Mr. Cantagallo, one
21 of the things as trustees --

22 MR. CANTAGALLO: That was kind of an
23 underwhelming answer.

24 MS. ABRAHAM: One of the things as
25 trustees we're required to do is start this

1 process. The first thing we have to do is we
2 have to prove that an injury occurred. And to
3 prove that an injury occurred there are very
4 specific regulations and we follow those
5 regulations. And one of those things is you
6 have to demonstrate in fish tissue that there
7 is X, Y and Z, chemicals, different kinds of
8 chemicals. You have to demonstrate that these
9 specific things happened to the fish. And
10 until we do all that we can't document that
11 there was an actual injury. Once we document
12 there's an injury, then we move through the
13 process and say, okay, now what do we do to
14 make that injury whole?

15 So to ask, that's the initial first
16 step in the process. And I understand what
17 you're saying, and clearly there could have
18 been injury, far greater injury, many, many
19 years ago when things were spewing out of
20 Fields Brook and other places and larger
21 quantities. Unfortunately I wasn't alive
22 then. I couldn't go back -- we can't go back
23 and recreate it. We are doing the best to
24 collect the data that we are mandated to
25 collect to pull all together what we need to

1 restore the resources.

2 MR. CANTAGALLO: The gentleman from
3 Ohio EPA said that the river is what's being
4 considered for the rehabilitation that you're
5 looking at, because that's where the greatest
6 amount of all the toxicity was. So does that
7 mean that you're not going to spend any money
8 at all doing anything by way of restoration of
9 Walnut Beach?

10 MS. ABRAHAM: No, it doesn't.
11 Dave, Sig, would you like to answer that
12 question?

13 MR. DEVAULT: No, it absolutely
14 doesn't.

15 MS. ABRAHAM: Sig, would you like
16 to answer that, or Dave?

17 MR. CANTAGALLO: If there was no
18 toxicity at Walnut Beach, then the obvious
19 conclusion would be there would be no need for
20 you to spend any funds at Walnut Beach. Would
21 that be correct or is my own logic eluding
22 me?

23 MR. WILLIAMS: No, it would not be
24 necessarily correct. I mean, we pointed out
25 throughout the presentation that we looked at

1 near-shore areas at the mouth of the river in
2 both directions within the watershed, up the
3 river. We have a preference for doing
4 restoration work in areas where the injuries
5 occur, but there are not always that many
6 opportunities available right in the area
7 where the principal injuries occur.

8 So we looked at expanding out a little
9 bit like near near-shore areas like Walnut
10 Beach where there were, we felt, a rare type
11 of habitat that only exists in a couple places
12 in Ohio, the Doonspell (phonetic) habitat, and
13 we developed a restoration plan in cooperation
14 with the city park board and others and tried
15 to implement it at Walnut Beach using Fields
16 Brook restoration funds.

17 MR. CANTAGALLO: So you could still be
18 using weed killer at Walnut Beach to get rid
19 of the phragmites, is that correct?

20 MR. WILLIAMS: Well, if we were
21 going to do invasive species control, that's
22 probably the method that would be, because I
23 don't believe there's ever been another method
24 found that works.

25 MS. MARKWORTH: We're going to go

1 ahead with this gentleman's question.

2 MR. SANTIANA: My name is Joe
3 Santiana. I'm President of the Ashtabula
4 Lighthouse Preservation and Restoration
5 Society. I have two questions. Is the EPA
6 genuinely going to listen to the people in
7 this room as far as what we feel would be the
8 most beneficial from that fund for the city of
9 Ashtabula and our lakefront?

10 The second question is, is all of the
11 money in that fund, all of it, going to go
12 into the Ashtabula area or will some of that
13 fund be taken out of this area?

14 MR. DEVAULT: Let's start with your
15 last question first. First of all, there is
16 no fund, quote, unquote, fund. The
17 negotiations we are having with the
18 responsible parties are based on the company's
19 actually implementing restoration projects in
20 the area. So there is no bank account
21 someplace that we can draw. I'm trying to
22 remember the first half.

23 MR. NAVARRE: First question is
24 will we listen?

25 MR. DEVAULT: Yes. Will we listen?

1 The answer is obviously yes or we wouldn't be
2 here. But when it comes to projects and what
3 we can really do, we have to evaluate it based
4 on that language in the federal regulation
5 that says that we need to restore, replace or
6 acquire the equivalent of the injured
7 resources or services they provided. That's
8 why you saw us evaluating like the lighthouse
9 walkway based on it providing fishing access.
10 That is one of the services that -- I mean,
11 the fishery was severely injured in Ashtabula
12 for 30, 40 years, so that is a service that
13 could provide. But when you start looking at
14 it from a cost-benefit approach, you know,
15 we'll listen. I don't know how far we can
16 go.

17 AUDIENCE MEMBER: I didn't catch the
18 lady's name between Dave and Sheila.

19 MS. BAKAYZA: Kelly Bakayza.

20 AUDIENCE MEMBER: And from where?

21 MS. BAKAYZA: The United States
22 Department of the Interior.

23 AUDIENCE MEMBER: Is the Department of
24 Justice still involved?

25 MS. BAKAYZA: Oh, yes.

1 AUDIENCE MEMBER: My question is,
2 20-some years ago, I guess, now when we
3 started this project, and now it looks like
4 there is a pot of gold, but there isn't, we
5 know that, there were about 20 impaired uses
6 on the river. Are those directly related to
7 these projects when we wrote stage one of the
8 RAP, and I think it it was in '88?

9 MS. BAKAYZA: Stage one was
10 published in 1991.

11 AUDIENCE MEMBER: And the impaired
12 human uses then and the ecosystem, the
13 impairments of the ecosystem, those are what
14 we built to clean up upon. Is that what
15 you're going to focus, is that really the
16 focus?

17 MR. DEVAULT: I think between the
18 Legacy Act project and the restoration, and I
19 don't have the impaired uses at Ashtabula
20 memorized, I mean, it's going to be things
21 like contaminated sediments and fish
22 consumption advisories.

23 AUDIENCE MEMBER: We couldn't fish, we
24 couldn't swim, we couldn't do this and we
25 couldn't do that.

1 MR. DEVAULT: I think between the
2 two we're going to get a lot of that. I mean,
3 contaminated sediments are not only an
4 impaired use themselves, they also caused a
5 lot of the other impaired uses. So that's
6 been dealt with by the Legacy Act Project.
7 We're going to go in and try to increase the
8 biological productivity of the area by
9 improving habitat, which is going to improve
10 the fishery, reduce sedimentation. And so I
11 think a lot of them, it's not 100%.

12 AUDIENCE MEMBER: So in essence, from
13 Fields Brook to really where the clean-up ends
14 with the Legacy Act, is about a mile long.
15 Everybody thinks that you should be working
16 outside of that mile stretch. And we always
17 thought the focus should be cleaning up and
18 restoring within the damaged area. Is the
19 focus still there, even though there's the
20 Keester Marina, the yacht club, the railroad,
21 all the property really is owned there by
22 industry or private homes?

23 MR. DEVAULT: That's problematic,
24 and that's one of the reasons we're looking at
25 it from a watershed perspective, because, you

1 know, we're not going to build a wetland in
2 Keester's Marina. So we're limited by space
3 in that specific geographic area.

4 AUDIENCE MEMBER: But you start there
5 and then you go outside.

6 MR. DEVAULT: To the extent we can,
7 we are looking at some projects in the actual
8 area that was part of the Legacy Act.

9 MR. WILLIAMS: The Legacy Act
10 certainly is -- the long-range goal of the
11 Legacy Act is delisting of AOC, and that's
12 based on those lost or impaired beneficial
13 uses, reestablishing those beneficial uses.

14 AUDIENCE MEMBER: That's why I can't
15 get to in my mind between the NRDA monies and
16 then the actual clean-up monies, whether or
17 not your focus was still with those
18 impairments that we used as leverage to get
19 this thing started?

20 MR. DEVAULT: Our focus is the
21 injuries. And I mean, the injuries that
22 occurred were fish injuries, severely degraded
23 fishery, degradation of habitat, degradation
24 of benthos.

25 MS. FARBER: I'm Natalie Farber

1 with Ohio EPA. And I have worked with this
2 community as the River Rap Coordinator. And
3 there is six beneficial use impairments among
4 14 total possible, that there are six assigned
5 to this area, as Dave was touching on.
6 They're all related to the contaminated
7 sediments pretty much. It involved fishery
8 too, fish consumption and advisory,
9 degradation of habitat, not only of the fish
10 habitat, but also wildlife habitat. There's
11 also reduced population of wildlife and
12 fishery and degradation of benthos, or the
13 bottom of the river bed. And, of course,
14 there was the restriction of dredgings. So
15 there's six of those.

16 And really between the Legacy Act and
17 this other piece, this restoration piece, the
18 natural resource damage restoration plan,
19 those both together fit very well to address
20 all of those pieces and directly will
21 complement and address the area of concern
22 delisting.

23 MS. MARKWORTH: Sir, go ahead.

24 MR. GRIPPI: Dave, you mentioned
25 earlier that you'd be willing to look at the

1 project from the cost benefit. Within
2 Alternative C, the walkway to the lighthouse
3 would be eligible for transportation
4 enhancement money for ODOT to pay up to 80% of
5 the construction costs. Are there any
6 examples of projects within Alternative B
7 where you can leverage the trustees' money for
8 outside funds to make even better projects or
9 bigger projects?

10 MR. DEVAULT: Again, as I said
11 before, the trustees don't have any money.
12 These would be projects that would be
13 implemented by the responsible parties, by
14 actual companies themselves.

15 MR. GRIPPI: Are you going to
16 leverage their money for money to improve --

17 MR. DEVAULT: I can't leverage
18 their money. I'm sure they may be trying to
19 leverage their money.

20 MS. ABRAHAM: Matthew, you have a
21 comment?

22 MR. SMITH: I could say that if
23 something came up with the project where there
24 were monies available, maybe a grant was
25 applied for, and then you can do that, then

1 you could use -- they could match a part of
2 that amount if they were looking at a project
3 and they said, "Listen, we want to go half and
4 half on this project, or we want to go 60/40,
5 depending on" -- I'm sure that could be
6 something that would be worked out.

7 MR. GRIPPI: Matt, you don't
8 believe that ODNR has those funds in place for
9 this project as an alternate, do you?

10 MR. SMITH: Go to the website.
11 ODNR has all types of projects that they do
12 the work on and they do fund different
13 activities.

14 MS. MARKWORTH: Sir, down here.

15 MR. FRISBIE: Bob Frisbie. I'm the
16 Director of the Ashtabula Marine Museum, short
17 name; long name, Great Lakes Marine and Coast
18 Guard Memorial Museum. I'm also the historian
19 for the Ashtabula lighthouse, and under the
20 Restoration and Preservation Society of the
21 lighthouse.

22 We don't want this to happen again, all
23 of us, I know. So why not delve into a little
24 bit more of the learning curve. We had a lot
25 of people come to town in the early days.

1 They obviously thought that it was easy to
2 pour that stuff into the water and run it down
3 to the river and put it in the lake and
4 nobody's going to worry about it.

5 Today we've got youth that aren't being
6 trained in a lot of functions in their
7 schools. They're cutting curriculums and this
8 sort of thing. So I think that if we use the
9 learning center at the Walnut Beach as a
10 possible training facility for the people that
11 come to our town from other areas, not only to
12 do business here, but also to visit and
13 understand what we went through trying to have
14 this happen, I think the learning center and
15 interpretive center there would be an
16 excellent function to have that happen. I
17 don't hear that being said in your comments.

18 I can understand your specific use in
19 most cases is about the fish. They were there
20 drinking the water, creating the disease
21 within their bodies because of that, but so
22 were the people of Ashtabula. They were there
23 drinking the water out of the lake that came
24 down the river. They were the people that
25 were involved in this.

1 So my feeling is, or my question I
2 think in that respect is, why not give that a
3 little bit more credibility on your Option C
4 and possibly put it into the B? And along
5 with that, because I'm involved in the
6 lighthouse with the museum, we have an awful
7 lot of individuals that come here that want to
8 spend time at the lake, at the business of
9 tourism, and we aren't hearing anything about
10 the tourism; I hear a little bit of that.

11 But my focus, I think, would be to try
12 and get you to understand that there is very
13 little places, because of something that
14 gentleman just made comment of, and I think
15 you also, most of the lakeshore area and the
16 river shore area is owned by some individual
17 or some industry. So there is no way to get
18 into the fish and do your fishing. Once you
19 clean it up, we have nice clean fish, nobody
20 can get to them. Yes, they're going to feed
21 the lake, and yes, that's the beauty of this
22 thing, but we always have these people in the
23 area who would like to go fishing.

24 The walkway out there with its present
25 design gives a lot of walkway space to get

1 people out there. Once they're out there they
2 can fish off of these little extentions off of
3 that to be able to get to that. I didn't hear
4 much about that, so if you could kind of
5 comment on those two particular projects I
6 would be interested to hear that.

7 MS. ABRAHAM: I guess I'll start.
8 Mr. Frisbie, we hear you. Unfortunately our
9 hands are somewhat tied by the regulations.
10 And if we had the ability to fund everything
11 that everybody wanted, believe me, we would do
12 it. Unfortunately, we're constrained first by
13 the regulations, which say we have to focus on
14 the injuries to the natural resources. And
15 that is a limited factor.

16 And the second thing is, Dave talked
17 about restoration projects. There are a
18 number of restoration projects that could
19 happen all along the length of the river. And
20 we are trying to get the most that we can to
21 benefit the people of Ashtabula, not just the
22 city, but all of Ashtabula. And we're trying
23 to put in wherever we can fishing access,
24 trails, enhancements, small canoe launches.
25 If there is something in the Ashtabula

1 Township Parks Commission that we can help
2 enhance, we are working on all those things to
3 improve access for the people of Ashtabula.
4 But I want to be really clear, the cost of the
5 projects as they were presented to us doesn't
6 allow us to fully fund them.

7 Now, Mr. Cantagallo would be a really
8 good person for you to talk to, so maybe
9 working with him you can tap into other
10 sources of funding to be able to build those
11 kind of things that you're talking about. I
12 mean, you have some great local leadership; I
13 encourage you to talk to him and talk to some
14 other people. Mr. Grippi is clearly
15 enthusiastic. Set up a community
16 organization. We will help in whatever way we
17 can. Matthew will direct you to some sources
18 of funding, but we can't -- we were unable to
19 focus exclusively or to a large extent on
20 those kind of projects in this process.

21 MR. FRISBIE: I guess Mr. Grippi
22 alluded to it, if there is another funding
23 that we come up with, and there is a chance
24 that you folks could give us the additional
25 money to work on getting the major amount of

1 money, or something like this, is that within
2 your responsibility or within your area of
3 taking care of the projects?

4 MR. DEVAULT: Again, and we're
5 still in the negotiations stage, so none of
6 this is final, but what we're looking at is a
7 settlement where the responsible parties would
8 actually implement these projects.

9 MR. FRISBIE: So they would be the
10 in-charge person for -- so if we, for lack of
11 a better way, if we went to all of these
12 groups that are giving the money for their
13 problem that they created, or supposedly
14 created, then these people could come back to
15 you and say, "We're going to spend all this
16 money on "X" number of projects," and this
17 would be where you would go?

18 MR. DEVAULT: Not exactly.

19 MS. ABRAHAM: We'd still have to
20 look at the benefit to the resources. We
21 still have to make sure the injured resources
22 are made whole to some extent. Then we try
23 and factor in whatever else is possible. It's
24 not something that we can promise because
25 we're in the middle of settlement

1 negotiations, that's why we have our lawyers
2 here.

3 MR. WILLIAMS: The trustees are
4 responsible for the selection of the
5 restoration projects. The responsible
6 parties, if we come to this agreement, will be
7 responsible for implementing those projects
8 under our oversight and approval.

9 MR. FRISBIE: So they really don't
10 have any say-so in where their money is being
11 spent other than to say that they will spend
12 it?

13 MR. NAVARRE: Right. Ultimately we
14 have to decide how that money is spent. It's
15 our obligation as the trustees to spend it on
16 that limited frame work of restoring,
17 replacing or acquiring the equivalent of the
18 resources damaged. I think that's the
19 frustration I'm sensing from some of you
20 tonight, is that we don't have the latitude to
21 spend natural resource damage monies on
22 economic development projects or an
23 educational project because we're limited to
24 spending on a natural resource damage
25 restoration project. Essentially the federal

1 statute requires us to limit how we spend that
2 money to a natural resource damage restoration
3 project.

4 In his presentation Sig mentioned that
5 we're compensating for damage to the resource
6 and also damage to the lost use of that
7 resource to the public. So there is some
8 flexibility in terms of considering a project
9 such as the lighthouse breakwall project that
10 would provide enhanced fishing opportunities.
11 That's a link to compensating for the lost use
12 of that fishery resource, but I think we're
13 somewhat constrained by that. And if we
14 reached a settlement that included nothing but
15 restoring or improving the lighthouse, the
16 access to the lighthouse and installing
17 fishing piers, I think that would be contrary
18 to the statute.

19 MR. FRISBIE: I can understand
20 that.

21 MS. ABRAHAM: Can I just clarify
22 one thing? We are here as trustee
23 representatives. The actual trustees are the
24 Director of the Ohio EPA and the Director of
25 the Fish and Wildlife Service. So it's a

1 level much higher than us. They will make the
2 ultimate decision; we just recommend. We're
3 the grunts who do the work.

4 MR. JOSEPH: Just some further
5 clarification, because there are some
6 subtleties in the language here that are
7 used. I just want to understand, one thing
8 that between Alternative B and Alternative C,
9 where Alternative B refers to stating it
10 focuses directly to restore resources with the
11 implication that another alternative would
12 indirectly restore them. Then it refers to
13 providing enhanced ecosystem and public-use
14 services. When we get to Alternative C, the
15 terms slightly change, talks about human-use
16 services lost through injury, seemingly more
17 compensatory. I don't see a reference here to
18 indirectly or even restoring.

19 Then he get to the table between
20 Alternative B and Alternative C. I'm just
21 looking right down the line here at
22 Alternative C, whether it will rehabilitate
23 wetlands, flood plains, riparian or associated
24 wetland habitat. No. Improve aquatic habitat
25 and near-shore habitat. No. Provide for

1 enhancement of abundance and diversity of
2 self-sustaining fish populations? No.
3 Preservation of wetlands, flood plain,
4 riparian and associated upland habitat. No.
5 Then you get to the last point, improve
6 outdoor recreational opportunities/enhance
7 public awareness. Both of them say yes.

8 My question is, and Alternative C is
9 titled, "Augmentation of Human Use Related to
10 Natural Resource Services". It is not
11 restoring any of those natural resource
12 services in terms of the ecosystem functioning
13 itself.

14 What are these human uses related to?
15 I mean, other resources elsewhere? That's
16 what I don't get. It seems that it's not
17 indirect restoration, it's just a difference
18 between actually restoring the resources
19 versus compensating for human uses that were
20 maybe lost by this generation. But this is a
21 multigenerational problem in the make. I'm
22 just wondering whether a pot of money to
23 compensate -- to spend on certain projects
24 that would benefit the public right now would
25 necessarily provide the kind of lasting

1 restoration of the underlying resource
2 functioning that is what ultimately sustains
3 those human uses, including fishing access and
4 so forth. So that's what I want to
5 understand, is whether Alternative C actually
6 meets the purposes of restoration.

7 MR. DEVAULT: I think that's the
8 reason, what you just said, which I could
9 never repeat. I mean, that's the reasoning.
10 It's not the preferred alternative. That's
11 the reason Alternative B is, because that does
12 restore the underlying ecological system that
13 will support the future services and uses of
14 the resources.

15 MS. ABRAHAM: You said that very
16 eloquently.

17 MS. MARKWORTH: We're going to go to
18 the comment period. If you have more
19 questions afterwards, we'll be around and you
20 can ask them individually.

21 Go ahead, sir.

22 MR. SCHMIDT: Just a couple quick
23 ones first. Phil Schmidt, I live in Geneva.
24 My wife and I both enjoy the outdoors and
25 nature and we're quite active in advocating

1 benefits for disabled and elderly people. But
2 I'd just like to get a little better
3 understanding of what's what here.

4 Now, do all the states have to
5 basically conduct their NRD programs under the
6 same federal guidelines and restrictions and
7 in essentially the same manner?

8 MS. ABRAHAM: Yes.

9 MR. SCHMIDT: And then if that's
10 so, then what was done at the Fox River
11 project is potentially something we could have
12 similar things done here. Is that not right?

13 MS. BAKAYZA: The Fox River project
14 was an interim settlement, that is a huge
15 monetary settlement that --

16 MR. SCHMIDT: I don't understand
17 that stuff. Just tell me, can we do what was
18 done at Fox River or not?

19 MR. DEVAULT: Frankly, no. And
20 it's because the settlement here isn't going
21 to be as large. The injuries weren't as
22 great. The geographic area for Fox River
23 included not only the Fox River, but all of
24 Green Bay and a small portion of Lake
25 Michigan. So you're talking about a huge

1 settlement there.

2 MR. SCHMIDT: Did they just
3 negotiate a better settlement? Because when
4 you talk about what we lost here, that
5 Ashtabula River was filthy and it dumped out
6 into the lake and people took the drinking
7 water out of the lake. People around Fields
8 Brook, we suffered a lot of serious health
9 problems here. We lost our fishing rights. I
10 tried to run a sailboat up the river and it
11 went aground the first time I went around with
12 it. We have big losses. And is there any
13 dollar value yet established for this
14 settlement for here?

15 MS. BAKAYZA: We're still in
16 negotiations.

17 MR. SCHMIDT: So you can negotiate
18 more money maybe. That you may be able to do,
19 maybe not. I don't want to abuse my privilege
20 here, but I do believe too that the NRDA
21 pretty much specifically says that there is
22 two types of compensation that are supposed to
23 be done. One is to restore the initial injury
24 resources, and the other is to compensate the
25 public for the loss of those resources and the

1 damages they incurred.

2 And the last thing I'd like to point
3 out is, I question completely your approach to
4 evaluating these alternatives, because they're
5 not -- I understand where you folks come
6 from. You're going to be biased to protecting
7 the natural resources, but from those of us
8 who sit here in Ashtabula County, and I'm sure
9 for citizens in Ashtabula city especially, we
10 feel you should at least give equal weight.
11 And those boxes at the end of your chart
12 should be weighted boxes so that in the end
13 there's at least equal weight given to the
14 losses that the people have suffered here and
15 their compensation.

16 And I would like to see it be such that
17 the elderly and the disabled, those people
18 that went through years and years of the loss
19 of those rivers are now old. They can't walk
20 around; they can't canoe up the river. They
21 can't get at it because you're not going to
22 get public access to it. And they like to
23 just go somewhere on a smooth surface that
24 they can maybe walk, in a difficult way, but
25 have easy access to it, go around in

1 wheelchairs, sit there and watch the sunset
2 and watch the lake and listen to the waves.
3 There's a lot of really good enjoyment you can
4 get from just being able to have good access
5 to the lakefront, see the sunsets and enjoy
6 it.

7 And I think you need to go back and
8 redo your table so that it's equally
9 representative of both of those two things
10 that this settlement is supposed to go over.

11 MS. MARKWORTH: Sir, that might be a
12 comment that you want to put in to be
13 responded to. Go ahead.

14 MR. GRIPPI: I have two more
15 questions. What role did the Ohio Attorney
16 General's office have with the NRD trustees?
17 And also, this one's for Dave, can you quickly
18 summarize the current state of the natural
19 damages on the river; how are the fish doing
20 right now?

21 MR. NAVARRE: I'll answer the first
22 question because I'm with the Ohio EPA. The
23 Ohio Attorney General's office represents us
24 if we are not able to negotiate a settlement
25 and went to court, the same way that the

1 Department of Justice would represent the Fish
2 and Wildlife Service in court. So we're
3 working with them as we continue to try to
4 negotiate a settlement.

5 MR. DEVAULT: We're onto fish.
6 Well, the way we evaluate that is we compare
7 the fish in one area to a comparable area that
8 isn't contaminated. In this case we've looked
9 at Ashtabula versus Conneaut, because Conneaut
10 has a lot of the same features as Ashtabula,
11 except that it isn't particularly
12 contaminated. You have about half the number
13 of native fish species that you would expect
14 to be in Ashtabula. You have about half the
15 number of individual fish in Ashtabula. The
16 fish you do have have impaired immune systems.
17 They have extremely high incidences of
18 parasite, again, probably as a result of the
19 impaired immune systems. They have a lot of
20 reproductive malfunction within the fish in
21 the river. So the fish are pretty screwed up
22 in Ashtabula.

23 Now, hopefully this -- now that the
24 dredging is completed, you've taken away the
25 cause, things should improve.

1 MS. MARKWORTH: Go ahead, sir.

2 MR. HILL: Scott Hill, Western
3 Reserve Land Conservancy. I'm also a citizen
4 of Orwell Township. I just have a question in
5 terms of, I'd like to know if you have any
6 benefit cost analysis data on the cost of
7 restoration versus say the preservation of
8 riparian barriers upstream?

9 MR. DEVAULT: I think it just makes
10 sense that preservation is going to be far
11 less expensive than restoring something. I
12 don't know where you're going with that.

13 MS. ABRAHAM: What we did to
14 evaluate the cost benefit analysis -- to do
15 the cost benefit analysis from an ecological
16 standpoint, NOAA, the National Oceanic and
17 Atmospheric Administration, has a model called
18 the HEA, Habitat Equivalency Analysis model,
19 and we use that and it's a little complicated,
20 but we use that to generate an ecological
21 currency. Then we looked at the acreage and
22 what we spent on a particular project, and so
23 that's how we evaluated the ecological cost
24 benefit.

25 MR. HILL: Is it basically a

1 biological diversity formula?

2 MR. DEVAULT: It's a compounded-
3 interest calculation essentially.

4 MS. ABRAHAM: Are you thinking
5 about Ohio EPA's indices?

6 MR. HILL: Yes.

7 MS. ABRAHAM: Ohio EPA has a number
8 of biological indices, and we actually did
9 some of those. We did those in Ashtabula and
10 in Conneaut to do this comparison that Dave is
11 talking about. So we evaluated from that
12 point also, but for the cost benefit we
13 actually took a look at the ecological
14 currency.

15 MS. MARKWORTH: Before I get to your
16 question, does anybody have a blue card or
17 need a blue card? I'm going to go ahead and
18 collect them as we ask your last question.

19 AUDIENCE MEMBER: You mentioned
20 numerous times tonight the Brockway property
21 that you had purchased. Where is the
22 property? How many acres and what did you pay
23 for it?

24 MR. DEVAULT: 37 acres. It's just
25 across from the hospital. It's 37 acres.

1 There's approximately a six-acre wetland on
2 it. And Mr. Brockway would prefer that we
3 call it the CVM property. He's concerned that
4 people may think he sold his marina, which he
5 hasn't.

6 AUDIENCE MEMBER: It's not public
7 knowledge?

8 MR. DEVAULT: I mean, that's where
9 it is. We paid -- I'm not exactly sure, but
10 between 250,000 and 270,000. Mike would know;
11 Mike actually paid it.

12 MR. WILLIAMS: It's the undeveloped
13 portion of the Brockway property just south of
14 24th Street on the east side of the river
15 across from the hospital.

16 MS. MARKWORTH: We're going to go
17 into the public comments and we'll ask
18 questions afterwards.

19 MR. BREWER: Can I ask one more
20 question?

21 MS. MARKWORTH: Okay.

22 MR. BREWER: Rick Brewer,
23 Painesville, Ohio. It seems to me by the way
24 negotiations have taken place and the projects
25 that you have chosen that you are near a

1 tentative settlement of some sort. And the
2 public has no input at all, is that correct?

3 MR. NAVARRE: Well, tentative
4 settlement, we are still negotiating with the
5 responsible parties.

6 MR. BREWER: Will the public have
7 any input as to those projects?

8 MR. NAVARRE: I think the
9 opportunity for the public for real input is
10 now. There will also be an opportunity, if we
11 reach a settlement, to comment on the consent
12 decree that's lodged in federal court. But I
13 think the realistic, genuine opportunity to
14 comment on the restoration plan and the
15 projects that comprise it is now. This is the
16 genuine opportunity to do that, not to wait
17 until and if we reach a settlement that's
18 lodged in federal court.

19 MR. BREWER: May I ask a follow-
20 up? Dave, you referred to the fact that the
21 Fox River partial settlement is \$60,000,000.
22 Matthew said only 10% of that could be used
23 for recreation and human use. We would need
24 to know to compare the two what this project
25 was worth.

1 MS. BAKAYZA: What what project is
2 worth?

3 MR. BREWER: What the settlement
4 you're going to negotiate is worth in
5 dollars. And we're not hearing anything about
6 that because you say there's no pile of money
7 on the one hand. And on the other hand, some
8 of my dollars are going to go into the project
9 before it's done and we would need to know
10 that in order to see whether we would have any
11 entitlement to 10% or whatever it is that Fox
12 River got.

13 MS. BAKAYZA: Let me just clarify
14 one thing. First of all, for those of you
15 that have a question with respect to
16 educational facilities, because I hear that
17 this is a recurring theme, I would encourage
18 you to put your questions down on paper so
19 that we can formally respond to them. I at
20 this point am not prepared to -- I mean, we've
21 done some research on this. I'm not the
22 attorney on the Fox River case, so I would
23 like to make sure that factually I have all
24 the information that I would need to be able
25 to respond to what specifically was done.

1 MR. BREWER: I can give you this
2 if you like.

3 MS. BAKAYZA: But I can't read that
4 right now, sir. But I'm just saying, I would
5 just like to be able to respond, so if you put
6 your questions down we're definitely going to
7 respond to them. I just can't answer
8 something specific right now about another
9 case in another state which I'm not the
10 attorney that had negotiated the settlement or
11 what have you. So it's not to say what's
12 similar and what's dissimilar because I don't
13 have that familiarity with it. So if you
14 could put them down I would really appreciate
15 that so we can get those responses to you.

16 With respect to this, I think the
17 second question that you said was, what Dave
18 is trying to say is right now we are in
19 settlement negotiations. There is no, quote,
20 unquote, pot of money. We are negotiating to
21 have restoration projects completed by the
22 responsible parties. We don't know what's
23 going to happen or what's going to transpire
24 and we're actually in negotiations at this
25 point. So I don't think that we're trying to

1 hide the ball, we just don't know where we
2 are. We don't have a final settlement.

3 MR. DEVAULT: Before we could tell
4 you what this settlement is going to be worth
5 in dollars we would have to have completed
6 it.

7 MR. BREWER: At that point there
8 would be no public input.

9 MS. BAKAYZA: Your public input is
10 right now. I think that we're actually -- we
11 want to hear from you because we're in
12 negotiations so that we can make a very
13 informed decision about what we want to do.
14 And that's why we're actually holding this
15 meeting prior to the finalization of the
16 consent decree because, in a lot of instances,
17 I've got to be honest with you, you don't have
18 the restoration plan come out until after the
19 settlement's already been done. We were
20 trying to take a very proactive approach in
21 terms of trying to get public comment prior to
22 filing the consent decree. So I think this is
23 a great opportunity for you to make any
24 comments that you would like so that we can
25 respond to them and consider them. And that's

1 purposely why we held this meeting prior to
2 finalizing anything.

3 MS. MARKWORTH: Are there any more
4 blue cards that anyone would like to turn in?

5 AUDIENCE MEMBER: Since you folks seem
6 to think project B or plan B is what you would
7 recommend, you must have some idea what it's
8 going to cost. So what do you think it's
9 going to cost? I mean, because if you're
10 negotiating with industry then you ought to
11 have some idea what you expect to get from
12 them to cover your plan B.

13 MR. NAVARRE: Sheila Abraham
14 explained earlier the use of something called
15 the Habitat Equivalency Analysis, the
16 so-called HEA model, and that's based on
17 substituting an alternative currency for
18 dollars.

19 AUDIENCE MEMBER: Which means what?

20 MR. NAVARRE: Which means that from
21 an ecological standpoint we tried to evaluate
22 the number of acres of habitat that were
23 damaged as a result of the industrial
24 activities in the Fields Brook corridor.

25 AUDIENCE MEMBER: You must have some

1 idea of cost.

2 MR. NAVARRE: I'm saying that we
3 focused on an approach that substituted acres,
4 damaged habitat, for dollars, because we were
5 trying to come up with a settlement model that
6 would replace those damaged acres with
7 restored acreage.

8 Settlements can take a variety of
9 forms. A simple approach, and the one that
10 we're customarily used to in western society,
11 is to negotiate in dollars. But sometimes
12 it's difficult to do that when the parties are
13 not willing to pay what you feel in dollars
14 you're entitled to. And I can tell you that
15 after completing a between 50 and \$60,000,000
16 dredge Great Lakes Legacy Act project to clean
17 up that river, these responsible parties, this
18 group of companies, and the amount of money
19 that they contributed, along with federal
20 grant monies and state monies and so forth, I
21 think feel like that it's going to be very
22 difficult for them to produce more dollars
23 towards this resolution.

24 So we approached it differently. We
25 approached it in terms of the amount of

1 acreage that we would require to be restored
2 in order to compensate. That's in process.
3 There is not a dollar figure attached to that;
4 we're negotiating in terms of restored acres.
5 That's why I can't give you an answer in
6 dollars because I can't put a cost number on
7 it for you. It's about trying to restore the
8 damaged resource in terms of damaged habitat
9 and acreage.

10 MS. MARKWORTH: We're going to move
11 on to get your comments on the record. We've
12 seen some people leave and we want to make
13 sure people have the opportunity. If you'd
14 like to stay when we're done with the comments
15 you're welcome to and talk to our panel and
16 they can answer your question for you.

17 Are there anymore blue cards? I'll go
18 ahead and call the first name. Again, you
19 could -- with the public comments you have
20 five minutes to state your comment. You do
21 have the opportunity to submit comments in
22 writing again up to the 30th. And there is
23 information on the agenda for submitting your
24 comment. You can submit one card for your
25 comments

1 And the first person is Frank
2 Lichtkoppler.

3 MR. LICHTKOPPLER: My name is Frank
4 Lichtkoppler. I'll give you a copy of this
5 stuff. I've been working with the Ashtabula
6 Remedial Action Council (RAP) since 1988. I
7 am a founding member of the Ashtabula River
8 Partnership (ARP) and have worked with the APR
9 since it was formed in late 1994.

10 In the early 1980s the International
11 Joint Commission declared the Ashtabula River
12 and Harbor a Great Lakes environmental Area of
13 Concern because the pollution of the river had
14 impaired the beneficial use of the river. The
15 Beneficial Uses Impairments that were
16 documented for the Ashtabula River and Harbor
17 include: Restrictions on fish and wildlife
18 consumption; degradation of fish wildlife
19 populations; fish tumors or other deformities;
20 degradation of benthos (bottom habitat);
21 restriction of dredging activities; loss of
22 fish and wildlife habitat. I looked it up
23 today.

24 This designation of the Ashtabula River
25 and Harbor and Great Lakes environmental Area

1 of Concern helped to spur on the work of the
2 local Ashtabula River Remedial Action Plan
3 Council. Under the threat of a Superfund the
4 the Ashtabula River Partnership was formed to
5 focus on and find a better way to dredge the
6 contaminated sediments from the Ashtabula
7 River and Harbor. After many years of work
8 this environmental dredging is almost
9 complete. When it is finished it will provide
10 increased commercial and recreational access
11 to the Ashtabula River. However, the
12 environmental restoration and elimination of
13 the beneficial use impairments remains to be
14 accomplished. National resource restoration
15 and protection is needed in order to delist
16 the Ashtabula River from the IJC list of areas
17 of concern.

18 Damages to the fish and wildlife
19 populations and habitat in the Ashtabula River
20 and Harbor have been documented and three
21 Resource Restoration alternatives have been
22 proposed. Alternative A, no action, will do
23 nothing to help restore the beneficial uses of
24 the Ashtabula River, and will not help us to
25 delist the river as an area of concern. With

1 Alternative A there will be no increase in
2 public access to Ashtabula River resources and
3 no restoration of those resources.

4 The Alternative C, I call human-use
5 alternative, will provide for increased public
6 access and increased public education on the
7 natural resources of the Ashtabula River, but
8 those resources will not be restored and
9 improved under Alternative C. This
10 alternative will not help us remove the area
11 of concern stigma from the Ashtabula River and
12 Harbor.

13 Alternative B, habitat restoration and
14 protections, will enhance and preserve
15 riparian, flood plain and upland habitat; it
16 will enhance, reestablish and preserve
17 wetlands; it will improve the aquatic
18 habitat. These actions will help to eliminate
19 the beneficial use impairments on the
20 Ashtabula River and help us to remove the
21 Ashtabula River from the list of Great Lakes
22 Areas of Concern.

23 This restoration and protection of fish
24 and wildlife habitat will also provide for
25 increased access to the natural resources of

1 the Ashtabula River and Lake Erie.

2 Alternative B is the only alternative that
3 will increase the wetland habitat, increase
4 aquatic habitat, increase fish species
5 diversity, increase fish populations, increase
6 wildlife populations, and improve surface
7 water quality.

8 Alternative B will help to remove the
9 IJC Area of Concern designation and all the
10 negative publicity and adverse media attention
11 that is associated with that designation.

12 Alternative B will also help to increase the
13 quality of life in the community, increase
14 opportunities for wildlife enjoyment and bird
15 watching, improve fishing by removing the
16 restrictions on fish consumption, and enhance
17 the local economy via increased nature-based
18 tourism, improved boating access and improved
19 fishing opportunities.

20 I'd like to thank you for the
21 opportunity to comment on this draft natural
22 resource plan. I do have a question. What
23 are the acres that you want to see restored?
24 You talked about coming back in acres.

25 MS. MARKWORTH: Sir, we can answer

1 afterwards. We're just taking the public
2 comments right now.

3 Next, Brett Joseph.

4 MR. JOSEPH: Thank you. I'm not
5 going to take the whole five minutes. I have
6 a couple comments, but I do want to mention
7 again, my name is Brett Joseph. My ancestors
8 were longshoremen in Ashtabula Harbor a couple
9 generations ago, probably right at the
10 beginning of the period when some of the harm
11 was being done. It is personal for me. I
12 live in Conneaut. I live on Kayan (phonetic)
13 Creek right now, and an area that has recently
14 undergone land acquisitions and so forth to
15 restore ecological connectivity and we're
16 seeing the benefits of that. I would love to
17 see that in the Ashtabula River as well.

18 Also, just to mention that I spent 15
19 years of my life in the area of coastal zone
20 protection and coastal zone enhancement, so
21 I've very sensitive to issues of beach access
22 and human uses and so forth. But what I want
23 to convey in my comment is to paraphrase
24 Einstein, "We can't solve problems of the past
25 by at the same time thinking what created them

1 in the first place."

2 There's a little bit of a sense of that
3 in the way the alternatives are laid out
4 here. You're seeing it in the comments
5 today. I urge you not to fall into the trap
6 of making the choice between protecting the
7 resources and benefiting the people who depend
8 on those resources. I know that all of the
9 alternatives have a little of both. There is
10 a sense, particularly between B and C, that
11 one is really more for the resources, resource
12 restoration, where as the other is really
13 benefiting the people. And I think that's old
14 thinking. That's a false dichotomy and I urge
15 you to try to move beyond that in the ultimate
16 choice of alternatives.

17 The context here is a multi-
18 generational context, that's why I was
19 speaking about my ancestors. We need to think
20 as, say, the seventh generation down the
21 line. We need to think ahead of the projects
22 that are selected today. Are they going to
23 depreciate? A restroom facility, how long is
24 that going to last? Yeah, it will benefit
25 people for a while, but restoring a river,

1 that's going to have a lasting impact,
2 particularly when you talk about hydrological
3 connectivity. It took a long time for the
4 resource to get damaged and here's an
5 opportunity, perhaps once, definitely once-
6 in-a-generation opportunity, to restore these
7 essential functions of the ecosystem.

8 Have you ever seen those aerial photos
9 of the shore land of Lake Erie, particularly
10 ones from the satellite? You see that big mud
11 slur that comes out of the mouths of all the
12 rivers. That really in one picture tells the
13 whole story, showing that sediment washing
14 downstream. You see that all over. And the
15 only way to address that kind of impact and
16 longterm damage and longterm alteration of the
17 system is to start connecting those components
18 of the watershed, the riparian areas, the
19 tributaries, and so forth, and the fisheries
20 as well, all depend on those connections.

21 And finally, just to use one further
22 illustration, I think we often view
23 compensation as being in lieu of the resource
24 that was lost. Well, restoration, the whole
25 concept restoration and the reason it's

1 written into law, is that when it's possible
2 to restore, I mean, nature does heal, but
3 sometimes it needs a little bit of
4 assistance. And I urge you not to go with the
5 prosthetic. I mean, if you lost a leg and you
6 had the ability to regenerate that leg, we
7 would all prefer to have the natural leg back
8 rather than the prosthesis. Unfortunately we
9 can't do that, but in nature, nature has an
10 amazing regenerative capacity. It will never
11 be perfect, it will never be exactly like it
12 was, that's not what I'm saying.

13 I'm saying it's false dichotomy to say
14 it's either compensate by creating a sum of
15 money for some other project elsewhere versus
16 taking measures that are really cost
17 effective, because it really doesn't take that
18 much to be able to record the connectivity, do
19 some planting, control the species. That can
20 go a long way for a long time. Thank you.

21 MS. MARKWORTH: Bob Frisbie.

22 MR. FRISBIE: Bob Frisbie. I'd
23 like to just let you know that I still believe
24 that the human portion of it is being ignored
25 to some extent, and that the learning

1 capabilities need to be given out to the youth
2 and the future generations so that we don't
3 have these problems again. And one of the
4 ways we could do that would be this.

5 The second portion of my comment is
6 that the walkway providing an access to the
7 lake to the fishermen, not only, as some have
8 mentioned, for the people who are disabled,
9 myself included, to be able to get to the lake
10 to get on this type of an arrangement and be
11 able to get to the lake, drop a line in, and
12 actually get experience to actually see healed
13 fish being brought to the surface.

14 So I believe that your ecosystem
15 repairs are very important, not to be left
16 out, but if you can see your way to look into
17 assisting, if not providing, the funds for
18 these items, to look at both of those items in
19 the future.

20 MS. MARKWORTH: Philip Schmidt.

21 MR. SCHMIDT: Could I delay for a
22 little bit?

23 MS. MARKWORTH: Sure. John Keenan.

24 MR. KEENAN: There's like an
25 elephant in the living room I'd like to bring

1 up here. The most visible and ongoing
2 environment impact is the Norfolk and Southern
3 Coal Terminal. This company has blocked
4 access to the lakefront wetlands. They've
5 filled wetlands and built permanent structures
6 on these areas. What else have they done?
7 They are using these filled wetlands to claim
8 status as an upland owner and lay claim to the
9 lakeshore sand deposits. They continue with
10 chronic coal dusty emissions.

11 I'd like to know the status with you
12 folks. I understand they're in separate
13 negotiations with Norfolk and Southern.
14 That's the most visible and ongoing
15 environmental impact in that area, is the
16 Norfolk and Southern Coal Terminal. No matter
17 what you do in that area that's the elephant
18 in the living room, I think. And how did they
19 opt out of the settlement? I don't understand
20 that. If you could explain that. Thank you.

21 MS. MARKWORTH: Mark Hanneman.

22 MR. HANNEMAN: Much of what I have
23 to say has been said. Both Alternatives B and
24 C have merit. Clearly I don't foresee any
25 settlement option that's going to allow for

1 all. I look at it though, it's in
2 chronological order. A, we've seen no action
3 for a long time. B, we need to get these
4 things done before we can actually pursue
5 Alternative C. If you want people to fish you
6 have to have fish. If you want to have fish
7 in the harbor you have to provide a habitat
8 for them. It's rather simple. Like you said,
9 nature does take its course and will allow
10 healing, but we do have to supply a little
11 help. So that's all I have.

12 MS. MARKWORTH: Joe Santiana.

13 MR. SANTIANA: Like I said before,
14 I'm the President of the Ashtabula Lighthouse
15 Society. Some of the things have already been
16 said. When you dredge the river and you
17 dredge Fields Brook, which I own a house where
18 Fields Brook runs through and water runs clean
19 again, the fish will naturally come back.
20 Throwing millions of dollars into certain
21 types of habitat for the fish which they'll do
22 naturally.

23 This area was a large industrial area
24 at one time and everybody depended on it for
25 jobs. Now the industry has left and left

1 their pollution behind. We don't have that
2 much left here. We would like to see money,
3 and I'm not speaking for everybody, we would
4 like to see this money have the greatest
5 impact to improve our area.

6 Now, there's nothing wrong with a
7 habitat for fish and everything else, but
8 there's also a habitat for the humans who are
9 still living here. I think it's very
10 important -- we stand behind the breakwall
11 walk that's going to be at the end of the
12 Greenways trail. This will bring thousands of
13 tourists to Ashtabula, and improvement of
14 Walnut Beach.

15 The jobs have left so there's nothing
16 else to do as far as bringing in new things.
17 So the only thing we can rely on is trying to
18 boost our tourism in this area. And Bob
19 mentioned a lot of things, and other people,
20 tonight in speaking,

21 So our organization, and we talked to
22 hundreds of other people, we all feel the
23 same, we should have part -- the public and
24 the elected politicians in Ashtabula County
25 should have had a part in the negotiations for

1 this money. This shouldn't have been kept
2 silent. I mean, as long as the money is going
3 to spent in this area, we want it to have the
4 greatest impact on this area, possible
5 impact.

6 And fishing access, that was one of the
7 things that was destroyed when a lot of these
8 industries came in here and things had to
9 develop along the river at that time.

10 Somebody had just spoke about it, there's no
11 fish to catch. There are fish out there; they
12 weren't going to come into a dirty river and
13 swim upstream. Once the river is cleaned up,
14 and over a period of time it will clean
15 naturally up on its own, the fish will come
16 back. But if you have no access to get there
17 and fish, you are wasting your time with the
18 money if people can't get to it. That's all I
19 have to say.

20 MS. MARKWORTH: Mike Wayman.

21 MR. WAYMAN: My name is Mike
22 Wayman. I'm currently the Chairman of the
23 Ashtabula Park Commissioner. I'm also
24 currently the Chairman of the Ashtabula River
25 Watershed Steering Committee.

1 Part of the steering committee's
2 mission and goal is to preserve the water
3 quality, open space, the natural,
4 recreational, agricultural and scenic
5 resources of the Ashtabula River by uniting
6 residents, landowners, businesses and
7 communities in the stewardship and permanent
8 protection of the Ashtabula River and
9 Ashtabula River Watershed. So hopefully we're
10 not sitting here 50 years from now having the
11 same dialogue.

12 We are also working with the Ohio
13 Department of Natural Resources and scenic
14 river program, along with Matthew Smith, to
15 see if the upper Ashtabula River can receive
16 designation as a scenic river, which
17 ultimately will bring a sense of pride and
18 awareness to the Ashtabula River and hopefully
19 economic input.

20 As part of the Ashtabula Township Park
21 Commission I had offered, along with Indian
22 Trails, many opportunities to help meet the
23 goals set forth in the restoration plan. And
24 we offer to help in any way to meet your
25 goals. Thank you.

1 MS. MARKWORTH: Kevin Grippi.

2 MR. GRIPPI: Thank you for your
3 service. I know all of you have been coming
4 to Ashtabula County for years working on this,
5 and you're all wonderful public servants and
6 we're lucky to have you out here fighting for
7 these projects and our community. I think
8 quite often you guys just take too much of a
9 beating. I just want to acknowledge that
10 you're doing good and I appreciate what you're
11 doing.

12 I also want to remind you, and you've
13 been around Ashtabula, you know, this
14 wonderful building we're in today does not
15 represent our community. Ashtabula is a
16 desperately poor community that's spiraling
17 ever so down into the depths and we need a
18 break. We need you to go back and sharpen
19 your pencils and take a look at blending some
20 of the projects together and provide more
21 human-use projects that can benefit our
22 community now, not 20, 30, 40 years from now.
23 Hopefully when things turn around and the
24 environment mends itself and suburbs grow
25 their way out here, that's all great for the

1 future. Right now we need a break, and I'd
2 like you to consider that.

3 I'd also like you to give -- I know
4 we're not supposed to talk about geopolitical
5 lines, but you need to give fair consideration
6 to the fact that 100% of the damages were done
7 in the city of Ashtabula. 100% of the clean-
8 up -- I'm sorry, not the damages, the clean-
9 up, 100% of the clean-up was done in the city
10 of Ashtabula. And truly there has to be more
11 projects within the city limits of Ashtabula.
12 Thank you.

13 MS. MARKWORTH: Scott Hill.

14 MR. HILL: I work for a group
15 that does land conservation in 14 counties in
16 northern Ohio. I've been to about 20 meetings
17 in the last week with very much the same
18 topic. There seems to be an ongoing struggle
19 between the restoration problem and the
20 economic stimulus problem when there really
21 shouldn't be. The vast majority of our goals
22 are the same.

23 In northern Ohio the three counties
24 with the highest area of property values,
25 Medina, Lake and Geauga County, also have the

1 largest amount of green space. The economic
2 stimulus comes from having green space; it's
3 difficult to measure. But I will tell you
4 that the ten communities that have the highest
5 quality of living in our country all have very
6 active green space projects.

7 It is true you do need access to go
8 fishing, but without the fish it won't do a
9 lot of good. If you restore a vibrant
10 fishery, if you protect the riparian corridors
11 along your river, you will have a vibrant
12 fishery that can then fund and finance
13 continued economic development. There's no
14 question that economic stimulus is really the
15 driving force, especially in this community.
16 I don't think those two goals are divergent.

17 MS. MARKWORTH: Philip Schmidt.

18 MR. SCHMIDT: Thank you for giving
19 me the opportunity. I too would like to thank
20 you for what you do. You do have a difficult
21 job at times dealing with people like me. But
22 I didn't mean to come across as mean-spirited
23 or disparaging to you.

24 I'm just trying to point out that I
25 feel the method that was used to evaluate

1 these alternates was biased against
2 Alternative C and, therefore, it did not
3 fairly compare the two. The trustees I feel
4 should come up with a new approach that
5 recognizes that compensating the public for
6 the loss of their natural resources is just as
7 important and just as much deserving to be
8 done as it is to restore those resources.
9 That's not to say it's not important to
10 restore the resources, but it should also not
11 be lost; it's important. These are
12 essentially punitive damages that these
13 companies are paying at this point, while it's
14 to restore, to us, the losses that we incurred
15 for almost 50 years that they were making that
16 river so we couldn't really use it.

17 So companies came in here, most of
18 them, the responsible parties, and they
19 operated, they made profits, and certainly
20 they gave us income, some of us, but then when
21 the jig was up they took off and they've left
22 us as a very depressed area. And we are
23 striving to get back to where we're a strong
24 economy.

25 We also like our green space. A lot of

1 people living in Ashtabula County live here
2 because they like living in an open area and
3 not in an urban area, but it doesn't mean we
4 don't value the opportunity to go down and
5 enjoy either being by the lake or walking
6 along the shore or seeing a sunset.

7 And to me this Alternative C is not as
8 much an economic issue as it is one of getting
9 something out of it that I can enjoy
10 recreationally. And I feel it also is going
11 to be important for generations after us to
12 not only be told in school about conservation
13 and ecology down there maybe at the Walnut
14 Beach area, but also to be told in an
15 educational setting right there where they can
16 see about it and see about the lake.

17 So anyway, I feel the approach that
18 should be taken shouldn't simply be a table
19 with yes or no answers, relating to
20 prioritization factors that are biased to
21 restoring natural resources. But it should be
22 an approach that involves, A, weighted factors
23 that represent, when you total them all up,
24 both of these two objectives of compensating
25 the public and restoring resources. When you

1 look at these weighted factors that you list
2 on the left side of your table, they ought to
3 be equally weighted for both of those things.

4 And then, B, you should be giving the
5 responses, not just a yes or no answer, but
6 you ought rate them from one to ten
7 individually on each one of those
8 prioritization factors as to how well they
9 meet that factor. That's how businesses and
10 people and organizations go about trying to
11 sort stuff out. They don't make up a table
12 with just what I feel are biased factors and
13 then just answer yes or no and count up how
14 many yeses and how many nos. Some things are
15 a lot more important than others.

16 I think last of all, well, not last of
17 all but next to last, I would like to see that
18 consideration is given to how the projects
19 benefit the elderly and the disabled.

20 And last, I feel it's essential that
21 that final approach you take provides equal
22 money for both approaches. It is vitally
23 important to the public in this area to keep
24 the river in good shape. I don't think any of
25 us question that at all; we don't want to see

1 that go away. But it's also very important
2 for us to have access to that lake and to
3 build up that resource so that our children
4 and our grandparents will be able to go down
5 there and fish and boat and go to an
6 educational center and enjoy the beach and
7 wildlife there. Thank you.

8 MR. BACON: (Via blue card)

9 There is a dire need for a detailed map of the
10 area in question displaying the specific
11 locations of reparations, the injured
12 habitat: Specific locations of targeted
13 wetland restorations; exact areas dredged;
14 existing occupied, privately-owned property
15 and manmade structures should be involved,
16 also the Brockway property; terrain elevation,
17 wooded areas, et cetera, would also be
18 helpful. Said document should be created as a
19 pdf and made available online.

20 MS. MARKWORTH: Does anybody else
21 have a blue card they'd like to submit? I
22 just want to remind you that the public-
23 comment period is open until April 30th. At
24 the bottom of your agenda there is contact
25 information if you want to submit anything in

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writing, any written comments or any supporting materials. If you do have additional questions, I invite you to come down and speak to the folks that are here tonight. They're here to talk to you and answer your questions. Thank you for coming.

(Hearing concluded.)

- - -

1 State of Ohio,)
2 County of Cuyahoga.) SS:

3
4 C E R T I F I C A T E

5 This certifies that the foregoing is a true
6 and correct transcript of the proceedings had
7 before the State of Ohio, Environmental
8 Protection Agency, at Lakeside High School,
9 6600 Sanborn Roadin Ashtabula, Ohio, on
10 Tuesday, April 22, 2008, commencing at
11 7:00 p.m.

12
13 In Re:
14 Ashtabula Restoration of Natural Resources

15
16
17
18 *Joni S. Sheldon*

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