

EMERGENCY ORDINANCE NO. 2021-48

AN ORDINANCE AUTHORIZING A LONG-TERM LAND USE PERMIT FROM THE MIAMI CONSERVANCY DISTRICT TO BE USED FOR PUBLIC PURPOSES RELATED TO THE GREAT MIAMI RIVER TRAIL – MONROE SECTION, AND DECLARING AN EMERGENCY.

WHEREAS, the Land Use Permit from the Miami Conservancy District will be used for the Great Miami River Trail.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Council hereby authorizes a long-term Land Use Permit from the Miami Conservancy District to be used for public purposes related to the Great Miami River Trail – Monroe Section. The terms and conditions of the Land Use Permit shall be substantially similar as set forth in Exhibit “1” attached hereto and made a part hereof.

Further, the City Manager is authorized to execute any necessary documents to complete the Land Use Permit.

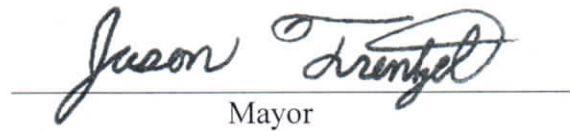
SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to have the authorized use of property in place to avoid any delay in the completion of the Great Miami River Trail. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: October 12, 2021

ATTEST:

APPROVED:


Clerk of Council


Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.


Clerk of Council
City of Monroe, Ohio

The Miami Conservancy District

LAND USE PERMIT NO. 16-3791-1

THE MIAMI CONSERVANCY DISTRICT, a body corporate and political subdivision of the State of Ohio, hereinafter called "MCD", in consideration of compensation as specified within this Permit, and subject to the terms, conditions and restrictions hereinafter set forth, hereby grants to

**CITY OF MONROE
233 SOUTH MAIN STREET
MONROE, OHIO 45050-0330**

hereinafter called the "Grantee" the authority and permission to use that portion of MCD property as further described below for the following specified use and for no other use without express written consent by MCD.

The right to construct, use, maintain and remove a **ten (10) foot wide public access TRAIL** known as **THE GREAT MIAMI RIVER TRAIL, MONROE SECTION**, as shown on the attached Exhibit "A".

The property, **Part MCD Parcel No. 1657**, is located in the City of Monroe on Lot 2805, Butler County, Ohio, and more specifically left bank Great Miami River along Dicks Creek west of Route 4 as shown on the attached Exhibit "B".

All real property, easements, land, structures, infrastructure, and facilities that are owned or controlled by MCD or any MCD subdistrict shall hereinafter be called "MCD property."m

THIS PERMIT IS GRANTED SUBJECT TO COMPLIANCE WITH THE FOLLOWING TERMS, CONDITIONS AND RESTRICTIONS AS SET FORTH BY MCD IN ACCORDANCE WITH SECTION 6101.19 OF THE OHIO REVISED CODE:

1. PROPERTY USE, MAINTENANCE & RESTRICTION: The Grantee AGREES to maintain all property as authorized for use within this Permit. Maintenance shall include regular inspection and repair of the trail including trail repaving as needed along with mowing and trimming within five (5) feet of the trail. The Grantee or contracted agent will be responsible to sweep, clean and remove trash and debris from the trail.

The Grantee may install and maintain trail Signage with the Grantee providing all locations of signs located on MCD Property.

The Grantee AGREES to maintain all appurtenances associated with the trail including but not limited to signage, fences, walls, culverts, rip rap, drainage pipes, and drainage structures.

Whenever the employees, agents, or contractors of said Grantee enter upon MCD property, for the purpose of maintaining, modifying, repairing or removing any structures and/or improvements as described within this Permit, the Grantee AGREES all operations will be confined to a reasonable area adjacent to said structures and/or improvements.

The Grantee AGREES all MCD property will be continually used and maintained in a safe and responsible manner that does not affect MCD operations and maintenance.

The Grantee must contact MCD for approval prior to performing any repairs or maintenance on MCD property that would result in any land disturbance.

Any land disturbing activity on MCD property involving the services of a contractor will require that the contractor contact MCD to acquire a MCD Construction Permit prior to doing any work on MCD property.

The Grantee, prior to initiating any land disturbing activity, AGREES to contact OUPS to determine if there are any utilities located within the permit area. The Grantee further AGREES to protect all identified utilities from damage that could result from land use as outlined within this Permit.

All activities listed in the attached Exhibit "C" are prohibited unless specifically authorized in this permit.

The Grantee AGREES all use of vehicles on MCD property shall be in compliance with the Ohio Revised Code and other applicable laws.

2. DAMAGE TO MCD PROPERTY: Any damages, resulting from the land use granted, caused to MCD structures and facilities including, but not limited to, levees, dams, floodwalls, bikeways, roads, gates, wells, gages, monitoring equipment, monuments and/or MCD property shall be repaired or replaced in a manner satisfactory to MCD as more specifically defined in Exhibit "D" of this Permit. Revocation, termination or expiration of the Permit does not release the Grantee from its obligation to repair damages. In the event the repair or replacement is not completed in a reasonable amount of time, MCD may, at its option, cause said repairs or replacements to be accomplished and Grantee shall reimburse MCD for any expenses incurred.

3. TERM: The term of this Permit shall be for a period of **twenty (20) years, effective October 1, 2021 and terminating on September 30, 2041.**

4. MCD's RIGHT OF REVOCATION

- a. If the property use causes damage or imminent damage to MCD property, or creates a health or safety hazard, MCD will order all use by the Grantee be stopped immediately and notify the Grantee to repair or replace MCD Property and remove the hazard. If the Grantee fails to respond in the time set by MCD, MCD will revoke the rights granted by this Permit. Such revocation would not release the Grantee from its obligation to restore the land as required by item 6 below.
- b. If, at any time, in the opinion of MCD, the said use interferes with the primary objectives of MCD; or should the best interests of MCD so justify; this Permit shall be revoked. MCD will provide seven (7) days written notice of revocation. Such revocation would not release the Grantee from its obligation to restore the land as required by item 6 below.

5. GRANTEE'S RIGHT OF TERMINATION: The Grantee may request termination of this Permit if the use of MCD property described in this Permit is no longer necessary or desired. The Grantee

shall notify the MCD Property Administrator within forty-eight (48) hours following cessation of the permitted land use to request termination.

6. RESTORATION: Prior to termination of this Permit, the Grantee AGREES to remove or properly abandon all structures and/or improvements and repair or restore all MCD property as specified in Exhibit "D" of this Permit. Revocation, termination or expiration of the permit does not release the Grantee from its obligation to restore the property. In the event the Grantee does not restore or remove the said structures and/or improvements within a timely manner, MCD may, at its option, cause said work to be accomplished and Grantee shall reimburse MCD for any expenses incurred.

7. FAILURE TO IMPLEMENT LAND USE: Should the Grantee fail to implement the requested land use **within two (2) years of the effective date of this Permit**, the Permit will terminate. Furthermore, MCD will retain all permit fees unless the Grantee, prior to termination, has submitted written notification concerning cancellation of the Permit.

8. FINAL INSPECTION: Within forty-eight (48) hours following cessation of the permitted use and all restoration, the Grantee AGREES to notify the MCD Property Administrator for final inspection.

9. OPTION OF RENEWAL: This Permit may be renewed, subject to MCD approval, provided all terms, conditions, and restrictions of the Permit have been maintained to the reasonable satisfaction of MCD. **All renewals will be subject to those terms, conditions, and Permit fees in effect at time of renewal and renewal will not be unreasonably denied.**

10. INSURANCE: MCD is to be insured in an amount not less than **One Million (\$1,000,000) Dollars**, from any liability resulting from injuries to persons or property and all direct cost and expenses associated therewith. Prior to issuance of this Permit the Grantee AGREES to provide to MCD verification of liability coverage naming "**The Miami Conservancy District**" as an additional insured for an amount of not less than **One Million (\$1,000,000) Dollars**. The Grantee must provide MCD a copy of a certificate of liability verifying that MCD has been named as an additional insured. Insurance coverage must be in force throughout the term of the permit. If insurance coverage is cancelled the permit will terminate.

11. SOIL & WATER CONTAMINATION: The Grantee AGREES to assume all liability and responsibility for clean-up and restoration required due to soil and water contamination resulting from the land use granted within this Permit.

12. RELEASE OF LIABILITY: The Grantee herein releases MCD, to the extent permitted by law, from any and all liability resulting from injuries to persons or property and all direct cost and expenses associated therewith, resulting from or caused by floodwater, maintenance or construction operations and/or any other activities of MCD, its agents, employees or contractors provided such damages were not caused by the negligent act or omission of MCD, its agents, employees or contractors.

13. RIGHT OF ACCESS: MCD, shall at all times, have the right to enter upon any MCD property for the purpose of using, monitoring, maintaining, altering or repairing any works, or improvements owned or controlled by MCD. MCD retains the right to photograph, for private and/or public use, any use, work or event, which takes place on MCD property.

MCD shall have the right of inspection to determine compliance with this Permit. Upon notification of any violation, the Grantee AGREES to promptly take corrective action as directed by MCD. Should

corrective action not be taken within the time specified, MCD may revoke this Permit, subject to the terms and conditions as stated within this Permit.

14. TRANSFER OF LAND USE RIGHTS: This Permit is NOT assignable or transferable.

15. PRE-EXISTING LAND USE RIGHTS: All rights granted within this Permit will be limited by, and subject to, any rights and claims of record that exist prior to the effective date of this Permit, regarding all property described within this Permit. Said claims of record include, but are not limited to, any existing easements, right-of-ways, and/or permits.

16. ADDITIONAL RIGHTS: MCD does not claim full warranty deed ownership to all MCD property. The Grantee must accept full responsibility for acquiring any additional rights to property not owned by MCD, when use of such property is necessary for the purposes of this Permit. Furthermore, MCD, in granting land use authorization, is to be released from any additional expense and/or all liability related to any unauthorized use of property.

17. PUBLIC DISCLOSURE: All MCD records, including deeds, leases, permits and all related correspondence, will be considered public records and shall be available for public use and disclosure.

18. COMPLIANCE WITH LAWS: The Grantee AGREES that MCD property is not to be used or occupied for any unlawful purpose. Additionally, all use of MCD property will comply with all laws, ordinances, rules, regulations, requirements, and orders of the United States of America, the State of Ohio, and of all governmental authorities or agencies, including, without limitation, all bureaus, boards or officials thereof respecting said premises and the use and occupation thereof.

19. ADDITIONAL IMPROVEMENTS: The Grantee AGREES no additional temporary or permanent structures and/or improvements will be constructed by the Grantee on MCD property without prior written MCD approval.

20. PERMIT FEE: The Administrative fee is **One Hundred Fifty (\$150.00) Dollars.**

EXHIBIT C - PROHIBITED USE

The following activities are prohibited on MCD property:

- a. Violating any federal, state, county, municipal, or other applicable law, ordinance, rule, regulation or requirement.
- b. Soliciting.
- c. Abandoning any animal.
- d. Lighting fires or burning any materials.
- e. Sledding, skiing, or ice skating.
- f. Camping.
- g. Operating any vehicle on dam or levee slopes.
- h. Moving, by-passing, or damaging any gate, barricade or barrier so placed to temporarily or permanently close a road or area to traffic.
- i. Hunting and trapping.
- j. Depositing burning material or hot ashes on grass, plants or in refuse receptacles.
- k. Dumping, depositing or discarding, intentionally or unintentionally, any trash, garbage, building debris, rubble, metal, concrete, asphalt, organic waste, or other noxious materials.
- l. Damaging, destroying, or disturbing any MCD land as described below:
 1. Removing any property, structures, facilities, or amenities, or any part thereof.
 2. Writing upon, painting, cutting, mutilating, defacing, or damaging in any manner any building, flood control structure, equipment, or other property, or part thereof.
 3. Climbing or rappelling any flood control structure, rock escarpment or other natural features.
 4. Willfully destroying, injuring or removing any bench marks, witness marks, stakes, or other reference marks (ORC 6101.81).
 5. Disturbing, defacing, removing, or injuring trees or other vegetation beyond the work limits of the approved plans.

LAND USE PERMIT NO. 16-3791-1

EXHIBIT "D"

RESTORATION REQUIREMENTS

All MCD owned or controlled property disturbed by land use and/or construction will be restored to the reasonable satisfaction of MCD **within thirty (30) days** of project completion and/or prior to termination of this Permit as follows.

Restoration of Property:

1. Grantee shall contact MCD's Property Administrator 48 hours in advance of restoration.
2. Seed mix specifications shall be submitted to MCD for approval.
3. All disturbed areas shall be graded to the lines and grades of the adjacent undisturbed areas
4. All disturbed areas shall be graded away from the toe of the levees or dams and all run off shall flow towards the river.
5. All disturbed areas shall be graded in a way as to not create any ponding.
6. Any top soil lost during land use shall be replaced to a compacted depth of four inches.
7. After regrading and placing top soil where necessary all disturbed areas shall be seeded, fertilized, and mulched.
8. Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
9. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer.
10. Mulch shall consist of straw, and be free of weed seed.
11. Evenly place straw mulch over all seeded areas at the following rates:

| <u>Seeding Period</u> | <u>Rate</u> |
|-----------------------------|-----------------|
| From March 15 to October 30 | 2 Tons per acre |
| From October 31 to March 14 | 3 Tons per acre |

12. Hydroseeding is acceptable, approved tackifier shall be applied at 2 gallons per acre.

Inspection:

1. MCD will do a preliminary inspection after 4 weeks to ensure that grass is being established after final seeding.

2. MCD will inspect all seeded areas no earlier than 6 months and no later than 12 months after final seeding. For any area identified without uniform density of at least 90 percent grass cover, the grantee will be required to seed, fertilize and mulch any areas where sufficient turf has not been established.
3. If seeding of an area is not successful, MCD may require sodding of disturbed areas.
4. All property is to be properly monitored and maintained until sufficient turf has been established.
5. MCD inspection and approval must be acquired prior to obtaining all other necessary approvals.

Roads, Driveways, Sidewalks, and Trails:

1. MCD will determine whether a road, driveway, sidewalk, or trail must be removed or may remain in place.
2. All roads, driveways, sidewalks, and trails designated for removal shall be addressed as follows:
 - All materials including but not limited to asphalt, concrete, brick and other pavement material shall be removed from MCD property and legally disposed.
 - Site shall be restored to match adjacent lines and grades.
 - Any damaged sections of recreational trail or revetment shall be restored using materials and construction requirements that meet the MCD Land Use Policy APPENDIX III and V.
 - Gravel, mulch, and earthen trails shall be disked.
 - All areas shall be restored to MCD's satisfaction.
3. MCD or an MCD subdistrict may elect to assume ownership and maintenance of a road, driveway, sidewalk, or trail. The terms of the ownership transfer shall be agreed to in writing by both parties before the obligations of the Grantee are released.

Poles, Towers, Fences, Signs, Buildings, Bridges and other Above-Ground Structures:

1. All above-ground structures, improvements, and physical installations must be completely removed from MCD property.

I, THE GRANTEE OR AUTHORIZED REPRESENTATIVE FOR SAID GRANTEE, IN EXCHANGE FOR SUCH USE AS DEFINED WITHIN THIS PERMIT, DO HEREBY ACKNOWLEDGE ACCEPTANCE OF ALL TERMS AND CONDITIONS AS STATED WITHIN THIS PERMIT:

CITY OF MONROE

Date: _____

By: _____

Print Name: _____

Title: _____

* * * * *

AS AUTHORIZED REPRESENTATIVE FOR MCD I DO HEREBY GRANT APPROVAL, SUBJECT TO THE TERMS AND CONDITIONS OF THIS PERMIT, TO USE MCD PROPERTY FOR SUCH USE AS DEFINED WITHIN THIS PERMIT:

THE MIAMI CONSERVANCY DISTRICT

Date: _____

By: _____
Donald P. O'Connor, Chief Engineer

Any questions concerning this Permit or the use of MCD property shall be directed to the **MCD PROPERTY ADMINISTRATOR** Roxanne Farrier at (937) 223-1278, ext. 3230.

To contact the MCD Caretaker call (937) 414-7043.

GRANTEE'S CONTACT PERSON: Kevin Chesar (513) 539-7374

EXHIBIT 'A'

STATE OF OHIO
DEPARTMENT OF TRANSPORTATION
GREAT MIAMI RIVER TRAIL

CITY OF MONROE, OHIO
BUTLER COUNTY, OHIO

STAGE 3 PLAN REVIEW

September 30, 2021

PROJECT DESCRIPTION:
CONSTRUCTION OF A 10' WIDE MULTI-USE TRAIL ALONG A 2.3 MILE SECTION OF THE GREAT MIAMI RIVER. PROJECT INCLUDES CONSTRUCTION OF A RETAINING WALL FOR APPROXIMATELY 200 FEET AND STREAMBANK STABILIZATION AT 2 LOCATIONS EACH APPROXIMATELY 250 FEET.

MAINTENANCE CONSTRUCTION:
PROJECT EARTH DISTURBED AREA: 9,248 ACRES
ESTIMATING CONTRACTOR EDA: 2,066 ACRES
NOTICE OF INTENT EDA: 7,182 ACRES

2019 SPECIFICATIONS:
THE STANDARD SPECIFICATIONS OF THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, INCLUDING CHANGES AND SUPPLEMENTAL SPECIFICATIONS LISTED IN THE PROPOSAL SHALL GOVERN THIS IMPROVEMENT.

I HEREBY APPROVE THESE PLANS AND DECLARE THAT THE MAKING OF THIS IMPROVEMENT WILL NOT REQUIRE THE CLOSING TO TRAFFIC OF THE HIGHWAY AND THAT PROVISION FOR THE MAINTENANCE AND SAFETY OF TRAFFIC WILL BE AS SET FORTH ON THE PLANS AND ESTIMATES.

FILE NO. PROJECT NO. E191423

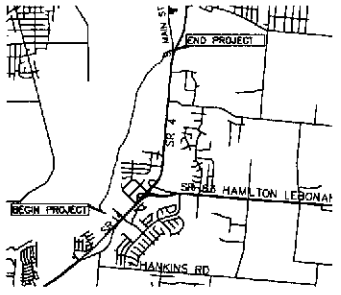
FILE NO. 109591

CONSTRUCTION PROJECT NO.

WALTON ROADWORKS NONE

GREAT MIAMI RIVER TRAIL MONROE, OH 45044

1



LOCATION MAP
LATITUDE: 39° 27' 38.22" N LONGITUDE: -84° 28' 41.72" W
PORTION TO BE IMPROVED
STATE & FEDERAL ROUTES
OTHER ROADS

INDEX OF SHEETS

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ENGINEER'S SEAL
WALL EXHIBIT NOTE
DETAILS AND SCHEDULE

SIGNED: _____
DATE: _____

ENGINEER'S SEAL
PROJECT

SIGNED: _____
DATE: _____

APPROVED _____
DATE: _____ DISTRICT, DEPUTY DIRECTOR

APPROVED _____
DATE: _____ DIRECTOR, DEPARTMENT OF TRANSPORTATION

OHIO DOT
PLAN PREPARED BY:
BRANSTETTER CARMEL, INC.
300 EAST EIGHTH STREET
CINCINNATI, OHIO 45202
REG. JOB # 18131

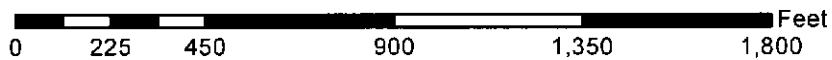
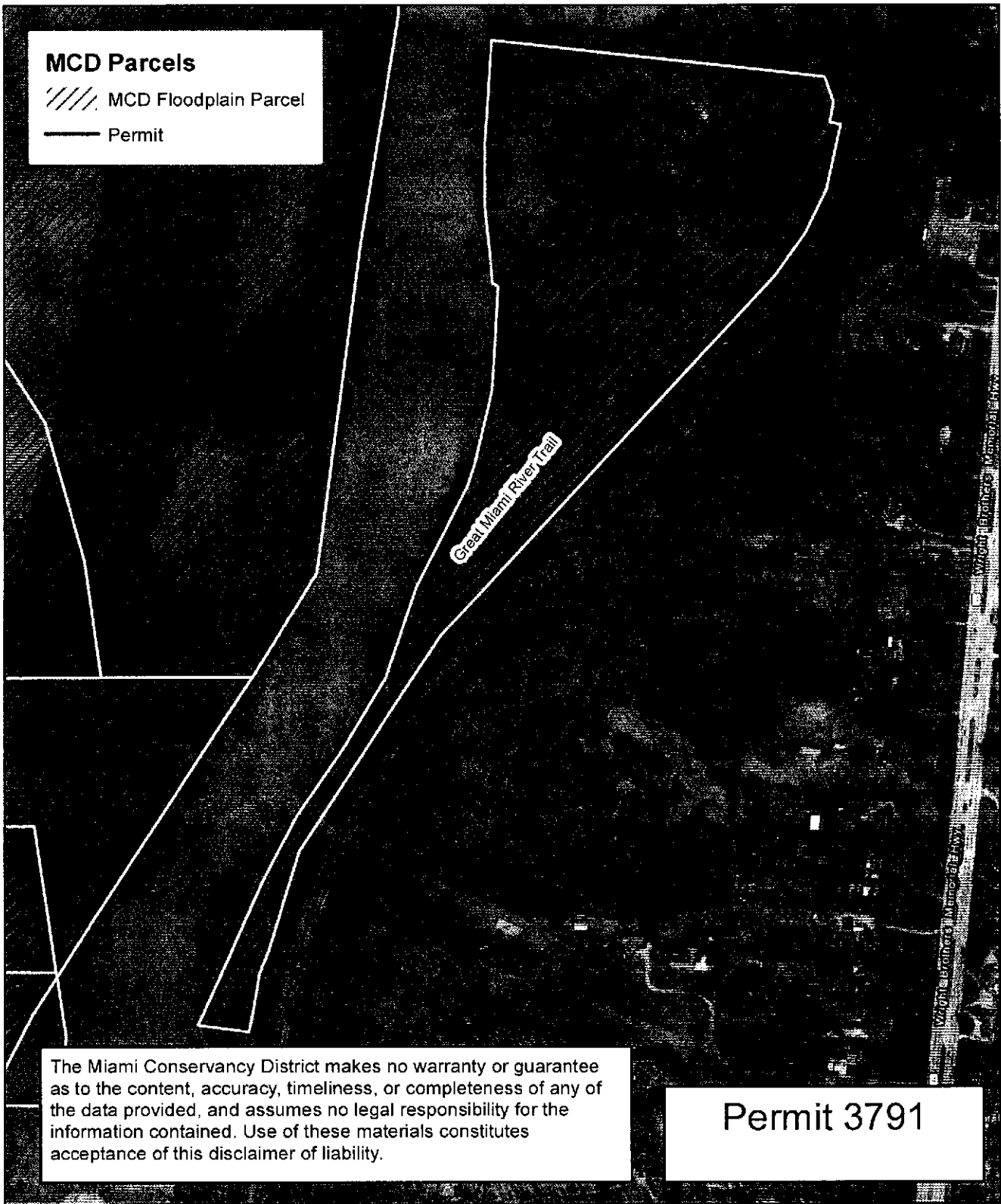
| STANDARD CONSTRUCTION DRAWINGS | | | | SUPPLEMENTAL SPECIFICATIONS | SPECIAL PROVISIONS |
|--------------------------------|----------|-----------|----------|-----------------------------|--------------------|
| ODOT | | | | 800 04-19-19 | WATERWAY PERMIT |
| | | | | 832 10-19-18 | ###/### |
| CB-1.1 | 07-19-19 | DN-1.1 | 07-21-17 | 866 04-21-17 | |
| MP-1.2 | 01-15-16 | DN-1.2 | 01-18-13 | | |
| HW-2.1 | 07-21-17 | DN-4.2 | 07-20-12 | | |
| HW-2.2 | 07-21-17 | DN-4.4 | 01-15-16 | 878 04-19-13 | |
| | | DN-4.3 | 01-15-16 | | |
| RM-3.2 | 01-18-19 | MT-105.10 | 07-19-13 | | |



EXHIBIT "B"

City of Monroe

Local Flood
Protection Middletown



Scale 1:5,200
August 2021



38 E. Monument Ave.
Dayton, OH 45402
(937) 223-1271

BOARD OF DIRECTORS
William E. Lukens
Mark G. Rentschler
Beth G. Whelley

GENERAL MANAGER
Janet M. Bly

October 1, 2021

Mr. Kevin Chesar
City of Monroe
233 South Main Street
Monroe, Ohio 45050-0330

RE: MCD Land Use Permit No. 16-3791-1

Dear Mr. Chesar:

Enclosed are two copies of the above-referenced permit. The permit grants the right to use land owned or controlled by The Miami Conservancy District (MCD) as outlined in the permit. If the terms and conditions of the permit are acceptable, please sign both copies and return to MCD.

In addition, please include the following checked items with the signed permits (See attached invoice for monies due):

| | | |
|-------------------------------------|-------------------------------------|-----------|
| <input checked="" type="checkbox"/> | Administrative Fee | \$ 150.00 |
| <input type="checkbox"/> | Permit Fee | \$ |
| <input type="checkbox"/> | Maintenance Bond | \$ |
| <input checked="" type="checkbox"/> | Certificate of Liability Insurance* | |

**Note: Please make sure the Certificate of Liability Insurance names MCD as an additional insured.*

Once all items and fees have been received by MCD, the permit will be sent to the Chief Engineer for final approval. Once approved, a copy will be forwarded to you for your records.

Thank you for your cooperation. If you have any questions or need further information, please call me at (937) 223-1278 x 3230.

Sincerely,

Roxanne H. Farrier
Property Administrator

Enclosures