

**STUDY OF SHORT AND LONG TERM SOLUTIONS
TO FLOOD CONTROL GOVERNANCE IN
NORTHWEST OHIO**

By Baker & Daniels LLP

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CONTACT INFORMATION

Scott Chinn

Baker & Daniels LLP
Partner

317.237.1291 Work
scott.chinn@bakerd.com
300 N. Meridian Street Suite 2700
Indianapolis, Indiana 46204
<http://www.bakerdaniels.com>

David U. Gogol

B&D Consulting
Vice Chair

202.312.7402 Work
david.gogol@bakerd.com
1050 K Street NW Suite 400
Washington, D.C. 20001
<http://www.bakerdconsulting.com>

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I. INTRODUCTION

Background

The business community and local governments in the Blanchard River Watershed are working to address flooding problems through planning and implementation of flood mitigation projects and through long-term planning. The Northwest Ohio Flood Mitigation Partnership, Inc. (NWOFP) "was established to expedite the design and development of a long-range flood mitigation plan to help alleviate flooding throughout the Blanchard River Watershed."¹ The NWOFP has seen solid initial progress since its establishment in January 2008, including in the areas of technical review, funding, and project planning. The NWOFP has taken the lead on most aspects of the flood mitigation efforts. At the appropriate time, that leadership is to be transitioned to a public body that has all the legal powers and flexibility to accomplish the aims of the NWOFP and to serve the region.

Purpose and Scope of Review

The purpose of this study is to recommend one or more public structures for superintending flood mitigation efforts in the Blanchard River Watershed. To make those recommendations, the study first identifies the characteristics of reported successful public structures from around the country. With those characteristics identified, the study provides a comprehensive review of the available legal structures under Ohio law in which the necessary authority and responsibilities may be reposed. That review is reflected in part by a chart comparing the essential elements of public governance among the available legal structures.

Materials Reviewed

In conducting our analysis, we reviewed or consulted the following materials and sources:

- The contents of the NWOFP website, and its 2008 Year-End Report
- The Ohio Revised Code, Chapters 1511, 1515, 1710, 4582, 6101, 6105, 6115, 6117, 6119, and 6131
- The structures of the flood control districts in Harris County, Texas; Napa County, California; and Grand Forks, North Dakota/East Grand Forks, Minnesota and public reports regarding their successes

¹ See <http://www.floodpartnership.org/default.asp>

- Interview of NWOFFMP President Anthony P. Iriti regarding the recent history of flooding in the Blanchard River Watershed, and the background and goals of the NWOFFMP
- Timothy T. Loftus and Henry G. Rennie, Analysis of Enabling Legislation From A Multi-jurisdictional Watershed Perspective, Water Quality Lab, Heidelberg College (2005)

II. SELECTED EXAMPLES OF FLOOD CONTROL GOVERNANCE

Reviewed here are three local flood control models from around the country: Harris County, Texas; Napa, California; and Grand Forks, North Dakota/East Grand Forks, Minnesota. These are jurisdictions that have been discussed with NWOFFMP. Upon review of the characteristics of these jurisdictions, we can make the following observations:

1. The forms of governance differ among the three jurisdictions, but in each case elected officials play a prominent role.
2. There is not uniformity among the local sources of revenues relied upon.
3. Two of the three entities are county-based, one is multi-jurisdictional.
4. Each jurisdiction appears to promote its partnerships with federal and state government agencies with jurisdiction over flood control and disaster emergency preparedness issues.
5. Each has undertaken large-scale projects with federal funding.

HARRIS COUNTY, TEXAS

1. Creation/Establishment²
 - a. Harris County Flood Control District (the "District") is a special purpose District created by the Texas Legislature in 1937.
 - b. Mission:
 - i. "Provide flood damage reduction projects that work, with appropriate regard for community and natural values. Flood damage reduction is accomplished by:
 1. Devising the flood damage reduction plans;
 2. Implementing the plans; and
 3. Maintaining the infrastructure"
 - c. The District is organized into 4 primary divisions:
 - i. Communications,
 - ii. Operations,
 - iii. Administrative Services, and
 - iv. Infrastructure
2. Governance
 - a. The Harris County Commissioners Court is the governing body with the authority to appoint an Executive Director of the District. The Commissioners Court is made up of five elected officials (four commissioners and the county judge).
 - b. As a special purpose district, the District does not have regulatory authority over development. Each municipality within Harris County and the County Engineer have limited regulatory authority through their respective construction and building permit programs.
 - c. The Executive Director's message includes the following reference signaling the apparent importance of the support of elected leadership and responsiveness to the

² See <http://www.hcfcfd.org/>

citizenry: "With the strong support of the Harris County Commissioners Court, we are on a clear path to continue our efforts to reduce the risk of future flood losses and to continue to work responsibly for the citizens of Harris County."³

3. Funding
 - a. The District's income is derived primarily from a dedicated ad valorem property tax. The rate is variable, depending on funding needs, and is currently set at just 3.3 cents per \$100 valuation (the statutory limit for the District's tax rate is 30 cents per \$100 valuation)
 - b. Other Local Funds
 - c. Federal Funds
 - d. Capital Projects:
 - i. Each year, the District submits an annual 5-year Capital Improvement Program (CIP) to the Commissioners Court for approval.
4. Partnerships
 - a. Three of the most important types of partnerships for the District are:
 - i. Federal partnerships:
 1. U.S. Army Corps of Engineers
 2. Federal Emergency Management Agency (FEMA)
 - ii. Multi-use partnerships
 - iii. Local partnerships
5. Recognitions
 - a. Winner of the "Large Population Conservation Award", see: <http://www.hcfcd.org/news/2008-0208.html>
 - b. Praised for "Tree Planting Record", see <http://www.hcfcd.org/news/2009-1124.html>

NAPA COUNTY, CALIFORNIA

1. Creation/Establishment⁴
 - a. Napa County Flood Control & Water Conservation District (the "Flood District")
 - b. Mission:
 - i. "The conservation and management of flood and storm waters to protect life and property; the maintenance of the County watershed using the highest level of environmentally sound practices; and to provide coordinated planning for water supply needs of the community."
2. Governance
 - a. The Flood District is governed by a Board of 11 elected officials. The Board consists on the 5 Napa County Supervisors, the Mayors of Napa, St. Helena, American Canyon, Yountville and Calistoga, and one Napa City Council member
 - b. The Board is augmented by 2 appointed citizen committees:
 - i. The Technical Advisory Panel; and
 - ii. The Financial Oversight Committee.

³ See <http://www.hcfcd.org/about.html>

⁴ See <http://www.countyofnapa.org/FloodDistrict/>

1. Residents, businesses, over 27 local/state/regional and Federal government entities, the Chambers of Commerce, environmental organizations, and the U.S. Army Corps of Engineers conducted a community based planning process known as the "Community Coalition for Napa Flood Management."
 2. The Plan is a multi-objective and restorative approach to flood protection.
3. Funding
- a. Measure A was passed by Napa County voters creating the Napa Valley Watershed Authority, the Financial Oversight Committee and the Technical Advisory Panel, and establishing the half-cent sales tax to fund the local share of projects in Napa County.
 - i. Each incorporated City or town receives a share of measure A revenue, and a share goes to Napa County for use in the unincorporated area as well.
 - ii. Measure A includes specific approved projects and allows the funding of other projects to improve flood protection, water supply and the health of the watershed.
 - iii. All the Napa County local governments involved in Measure A also signed a Joint Powers Agreement to spell out structure and responsibilities.
 - b. The Board approved the Maintenance and Watershed Management Programs Project that allows the District to annually approve a budget for the maintenance and management of the Napa River watershed.
 - i. In order to finance the budget, the District must annually levy assessments on the properties that directly benefit from the maintenance and management programs.
 - c. Federal and State flood protection program grants.
4. Partnerships
- a. U.S. Army Corps of Engineers
5. Recognitions
- a. Acknowledged with a "Proclamation of Appreciation" from the California Regional Water Quality Control Board, *see* <http://www.co.napa.ca.us/GOV/Departments/DeptPage.asp?DID=6&LID=1684>
 - b. Won the "2009 Public Works Project of the Year Award" from the Northern California Chapter of the American Public Works Association, *see* <http://www.army.mil/-news/2009/02/13/16928-sacramento-district-project-wins-public-works-project-of-the-year/>

GRAND FORKS, NORTH DAKOTA/EAST GRAND FORKS, MINNESOTA

1. Flood Protection Management⁵
 - a. The City of Grand Forks as adopted, as part of the City code, regulations on development in flood districts.

⁵ See <http://www.grandforksgov.com/gfgov/home.nsf/Pages/Flood+Recovery>

- i. Two types of flood hazard areas:
 - 1. Floodway;
 - 2. Flood fringe
- 2. Governance
 - a. This effort is multi jurisdictional in the sense that it is comprised of two cities (in different states) working jointly.
 - b. However, to alleviate flooding issues, flood control projects are financed primarily through state and federal funds. One example is the Grand Forks and East Grand Forks "Flood Protection Project." The governance for each project is either at the state and local political subdivision level (in the absence of a single-purpose flood control district having been created).
 - c. Example: "Greenway" Concept
 - i. In December 1998, the cities of Grand Forks, and East Grand Forks jointly agreed to develop an Action Plan for the design and development of the Greenway.
 - 1. The Greenway is an essential component of the flood protection system.
 - ii. The Greenway was proposed by the North Dakota Congressional delegation after the flood of 1997
- 3. Flood Protection Project
 - a. In June 2000, the cities of Grand Forks and East Grand Forks broke ground for a \$409 million flood protection project
 - i. Federal cost share: \$203 million
 - ii. Local (Grand Forks, ND) cost share: \$135 million
 - 1. State of North Dakota is funding 45% of Grand Forks cost share up to \$52 million
 - iii. Local (East Grand Forks, MN) cost share: \$65 million
 - 1. Majority of funding from State of Minnesota
- 4. Recognitions
 - a. Grand Forks, North Dakota/East Grand Forks, Minnesota, "Flood Protection Project" praised by the "Grand Forks County Historical Society", *see* http://grandforkshistory.com/about_us/flood_protection.html
 - b. Grand Forks, North Dakota, honored at the "2007 U.S. Army Corps of Engineers: Design and Environmental Awards Program", *see* <http://www.hdrinc.com/13/38/1/default.aspx?projectID=787>

III.

IDENTIFICATION OF AVAILABLE OPTIONS UNDER OHIO LAW

As is generally true of statutory public works asset or program management structures across the country, Ohio has several potential available legal structures that could be used to govern the flood mitigation efforts in the Blanchard River Watershed. Absent the passage of special legislation, the public structures identified here represent the most likely legal vehicles. As would be expected, the comparative chart in the following section demonstrates that not all the structures have the same characteristics, and some of the structures are more directly tailored to large-scale flood control governance.

In reviewing these legal structures, we have been mindful of the important (and sometimes competing) interests that would likely inform decision-making by the NWOFP and the communities of interest with which it works. The interests we considered were:

1. Ability to raise necessary funds for projects and administration of the flood district;
2. Ability to receive federal, state and other funds;
3. Flexibility in adapting to new or changed circumstances;
4. Ability to be composed of all local participating jurisdictions, encompassing a regional approach;
5. Availability of public review, input and accountability over governing body and decision making;
6. Possession of all legal powers necessary and appropriate to carry out goals of flood mitigation efforts and associated projects;
7. Ability to work with private-sector partners;
8. Standing and nature of relationship with federal regulatory bodies, *e.g.*, Army Corp of Engineers;
9. Clear consequences and effects of termination or dissolution, including ability to transition to successor entity; and
10. History of use of structure for similar flood mitigation efforts.

IV. COMPARATIVE CHART OF PUBLIC ENTITIES

The comparative chart presented here is of nine different public entities potentially available under Ohio law to superintend flood mitigation efforts.⁶

List of Entities

1. Soil and Water Conservation District
2. Conservancy District
3. Watershed District
4. Sanitary District
5. County Sewer District
6. Regional Sewer District
7. Special Improvement District
8. Ditch District
9. Port Authority

Comparison Criteria

1. Purpose
2. Geographic Boundaries
3. Establishment Procedures
4. Governance
5. Funding Sources
6. Legal Status
7. Dissolution/Termination
8. Operational Status

⁶ This chart is based on an earlier analysis completed by Heidelberg College. *See* <http://www.ohioswa.com/documents/FinalReport-OSTF-319-Grant-StormWater-MGT-Watershed-Basis.pdf>.

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #1, Entities 1-4)**

	Soil and Water Conservation District	Conservancy District	Watershed District	Sanitary District
Ohio Revised Code	Chapters 1511 and 1515	Chapter 6101	Chapter 6105	Chapter 6115
Purpose/Description	Soil conservation, water conservation, soil erosion prevention, flood prevention, disposal of water, natural resource conservation, planning and constructing improvement works	Preventing floods, regulating stream channels, reclaiming or filling wet and overflowed lands, providing for irrigation, regulating the flow of streams, diverting or eliminating watercourses, providing a water supply for domestic, industrial, and public use, collection and disposal of sewage and other liquid wastes arresting erosion along Lake Erie	Development and control of water resources for promoting the beneficial use of water, resolve water conflicts	Prevent/correct pollution of streams; clean/improve channels and flow regulation for sanitary purposes; sewage collection, disposal; public drinking water supply; garbage and other refuse collection/disposal; reduce populations of biting arthropods
Geographic Extent	Each county shall have a soil and water conservation district coextensive with the geographic area of the county	Any area located within 1 or more counties, the territories need not be contiguous, provided it is so situated that the public health, safety, convenience, or welfare will be promoted by the organization as a single district of the territory. The territory shall not be included wholly within the limits of a single municipal corporation	Not less than 15 nor more than 18 proposed watershed districts in the state	Territory shall include 2 or more political subdivisions or portions thereof. Territory need not be contiguous
Establishment/ Creation Procedures	Mandated pursuant to ORC 1515.03	<ul style="list-style-type: none"> • Petition filed in the office of the clerk of the court of common pleas of one of the counties containing territory within the proposed district • Petition shall be signed 	<ul style="list-style-type: none"> • An accurate map and description of the territorial boundaries of the proposed watershed district shall be prepared by the environmental protection agency • Once the map and 	<ul style="list-style-type: none"> • Petition filed in the office of the clerk of the court of common pleas of one of the counties containing territory within the proposed district • Petition shall be signed either by 500 freeholders, or by a majority of the freeholders, or

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #1, Entities 1-4)**

	Soil and Water Conservation District	Conservancy District	Watershed District	Sanitary District
		<p>either by 500 residents, or by a majority of the residents, or by the owner of more than half of the property, in either acreage or value</p> <ul style="list-style-type: none"> • Petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district and when so signed by any such governing body such a petition on the part of the governing body shall fill all the requirements of the representation upon the petition of the residents of the public corporation • A judge of the county in which the petition was filed shall determine whether the petition meets all requirements • Petitioners' bond must be filed in a sufficient amount to pay all expenses of the proceeding if the court refuses to organize the conservancy district • Written notice shall be 	<p>description is completed by the environmental protection agency, they are filed with the presidents or representatives of the board of county commissioners of each county contained in the proposed territory and with the Secretary of the State.</p> <ul style="list-style-type: none"> • The president of the board of county commissioners of the county with the largest population shall call a meeting of the presidents or authorized representatives of the board of county commissioners of each watershed county in the proposed district • Presidents and/or authorized representatives will appoint board of directors for the watershed district to govern the watershed district. 	<p>by the owner of more than half of the property, in either acreage or value, within the limits of the territory proposed to be organized into a district</p> <ul style="list-style-type: none"> • Petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district and when so signed by any such governing body such a petition on the part of the governing body shall fill all the requirements of the representation upon the petition of the residents of the public corporation • Petitioners' bond must be filed in a sufficient amount to pay all expenses of the proceeding if the court refuses to organize the conservancy district • Hearing on petition • Court determines if district shall be created

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #1, Entities 1-4)**

	Soil and Water Conservation District	Conservancy District	Watershed District	Sanitary District
		<p>given to the director of the department of natural resources, the director of environmental protection, and to the board of directors of any conservancy district having jurisdiction over all or part of the territory affected by the proceeding or within the same major watershed area</p> <ul style="list-style-type: none"> • Hearing on petition • If court finds a need for the district, the court will appoint at least 3 persons as directors of the conservancy district (see 6101.10 (B) –(C)) • Court appoints 3 appraisers for the purpose of appraising the lands or other property within and outside the district to be acquired for rights of way, reservoirs, and other works of the district, and shall appraise all benefits and damages accruing to all affected lands 		

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #1, Entities 1-4)**

	Soil and Water Conservation District	Conservancy District	Watershed District	Sanitary District
Governance	<ul style="list-style-type: none"> • Board of Supervisors (5)—elected by the Ohio Soil and Water Conservation Commission pursuant to Chapter 119 of the ORC • 3 year terms for the Supervisors • Powers of the District include but not limited by the following: conduct surveys, develop plans for the conservation of soil resources and for works of improvement for flood prevention, enter into agreements with any occupier of lands within the district in the carrying on of works of improvement for flood prevention 	<ul style="list-style-type: none"> • Board of Directors (3)—appointed by the court • Initially, 1 member for a term of 3 years, 1 member for a term of 5 years, 1 member for a term of 7 years. • After initial board member terms, each member will serve a term of 5 years • Within 2 years of the establishment of the district, the Board must prepare and file with the environmental protection agency, a plan for the part or parts of the improvements for which the district was created • Powers of the Board consist of the power to contract, right of eminent domain, may charge user fees, levy special assessment, and issue bonds 	<ul style="list-style-type: none"> • Board of Directors (5)—appointed by presidents and/or authorized representatives of the counties • Initially, 1 member for a 1 year term ending June 30th following appoint, 1 member for a 2 year term ending June 30th, 1 member for a 3 year term ending June 30th, etc. • After initial board member terms, each board member will serve a term of 5 years 	<ul style="list-style-type: none"> • Board of Directors—appointed by the court • 1 director for each county contained in the district • Directors appointed for 5 year terms • A separate board of directors is created depending upon the purpose the sanitary district (See 6115.101 and 6115.103)

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #1, Entities 1-4)**

	Soil and Water Conservation District	Conservancy District	Watershed District	Sanitary District
Funding Source	<ul style="list-style-type: none"> • Tax levies; • Money collected from the fee for the disposal of debris at construction and demolition debris facility • Money collected from a \$.25 per ton fee imposed on the transfer or disposal of solid wastes in the state from August 1, 2009 through June 30, 2012 	<ul style="list-style-type: none"> • Levy assessments; • User fees; • Issue bonds 	<ul style="list-style-type: none"> • Annual budget expenditure meeting with each president or authorized representative all of counties in the watershed district adopt an annual budget • Total amount of such budget shall be apportioned among the several watershed counties in the ratio that the taxable value of the real and personal property within such county and within the territorial boundaries of the district bears to the taxable value of all real and personal property within the territorial boundaries of the district 	<ul style="list-style-type: none"> • Ad valorem property taxes; • Levy assessments; • Levy taxes; • Issue bonds
Legal Status	Political subdivision of the state	Political subdivision of the state and a body corporate with all the powers of a corporation	Political subdivision of the state	Political subdivision and a public corporation of the state

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #1, Entities 1-4)**

	Soil and Water Conservation District	Conservancy District	Watershed District	Sanitary District
Dissolution/ Termination of District	N/A	Follow procedures for establishment/creation; however, for dissolution	<ul style="list-style-type: none"> • At any time following the 3rd year of creation, a referendum may be held on the question of dissolution of district. • Petition signed by 200 qualified electors residing in the county with the largest population within the territory of the district • Petition must be filed at least 75 days prior to the general election 	See 128 th General Assembly Regular Session 2009-2010; H.B. No. 35, proposed section 6115.096
Operational	Yes, 1 in each county	Yes	No	Yes

**General Attributes of Special Districts in Ohio
with a Role in Water-Resource Management
(Chart #2, Entities 4-8)**

	County Sewer District	Region Sewer District	Special Improvement Districts	Ditch Districts
Ohio Revised Code	Chapter 6117	Chapter 6119	Chapter 1710	Chapter 6131
Purpose/Description	Collection of sewage, other wastes; operate sanitary or drainage facilities	Supply water; provide for collection, treatment, disposal of waste water	Developing and implementing plans for public improvements and public services that benefit the district	Constructing, maintaining, repairing, cleaning, enclosing ditches
Geographic Extent	Within the county and outside municipal corporations	Any area situated in any unincorporated part of 1 or more contiguous counties or in 1 or more municipal corporations or both	Created within the boundaries of any 1 municipal corporation, any 1 township, or any combination of contiguous municipal corporations and townships <ul style="list-style-type: none"> • More than 1 district may be created within a participating political subdivision, but no real property may be included within more than 1 district unless the owner of the property files a written consent with the clerk of the legislative authority, the township fiscal officer, or the village clerk 	Located within the boundaries of a municipal corporation

**General Attributes of Special Districts in Ohio
with a Role in Water-Resource Management
(Chart #2, Entities 4-8)**

	County Sewer District	Region Sewer District	Special Improvement Districts	Ditch Districts
Establishment/ Creation Procedures	<ul style="list-style-type: none"> Legislative authority of any municipal corporation authorized the board of county commissioners to lay out, establish, and maintain 1 or more sewer districts within its county to include a part or all of the territory within such municipal corporation as the whole or a part of such district 	<ul style="list-style-type: none"> Petition filed in the office of the clerk of the court of common pleas of 1 of the counties all or part of which lies within the proposed district Petition shall be signed by 1 or more municipal corporations, 1 or more counties, or 1 or more townships, or by any combination of them Prior to filing a petition, a municipal corporation, county or township shall hold a public meeting for the purpose of receiving comments on the proposed establishment of the district 	<ul style="list-style-type: none"> Petition of the owners of real property within the proposed district, or by an existing qualified nonprofit corporation 	<ul style="list-style-type: none"> Any owner may file a petition with the clerk of the board of county commissioners of the county in which is located a part of the land that is averred to be benefited by the construction of a proposed improvement Petitioner shall file a bond in the sum of \$500, plus \$2 for each parcel of land in excess of 200 parcels averred in the petition to be benefited, with at least 2 sureties who are freeholders of the county, or with surety by a surety company authorized to do business in the state, or with cash Hearing on the petition Owners who are opposed to the improvement may file remonstrances against the granting of the improvement and state their reasons County engineer shall prepare a preliminary estimate of the cost of the proposed improvement If the board of county commissioners finds that a proposed improvement is

**General Attributes of Special Districts in Ohio
with a Role in Water-Resource Management
(Chart #2, Entities 4-8)**

	County Sewer District	Region Sewer District	Special Improvement Districts	Ditch Districts
				necessary, it may grant the petition <ul style="list-style-type: none"> The board shall order the county auditor to transfer from the general revenue funds of the county, to the general drainage improvement fund an amount not more than 25% of the engineer's preliminary estimate after the 21-day period for appeal
Governance	<ul style="list-style-type: none"> Board of County Commissioners—elected 	<ul style="list-style-type: none"> Board of Trustees—elected or appointed as provided in the petition 	<ul style="list-style-type: none"> Board of Trustees of a nonprofit corporation (5)—the board of trustees shall be known as the board of directors of the special improvement district 	<ul style="list-style-type: none"> Legislative authority of a municipal corporation
Funding Source	<ul style="list-style-type: none"> User rates and fees; Levy assessments; Levy taxes; Issue bonds 	<ul style="list-style-type: none"> User fees; Levy assessments; Levy taxes; Issue bonds 	<ul style="list-style-type: none"> Levy assessments; Issue bonds (any participating political subdivision of a special improvement district) 	<ul style="list-style-type: none"> Levy assessments; Levy taxes
Legal Status	Authority vested in Board of County Commissioners and county sanitary engineer	Political subdivision of the state	Political agency and a political authority under the laws of the state (not a political subdivision except to take advantage of free service or reduced rates under ORC 4905.34)	A municipal corporation

**General Attributes of Special Districts in Ohio
with a Role in Water-Resource Management
(Chart #2, Entities 4-8)**

	County Sewer District	Region Sewer District	Special Improvement Districts	Ditch Districts
Dissolution/ Termination of District		Dissolution subject to decision of court of common pleas	<ul style="list-style-type: none"> • Petition signed by members of the district who own at least 25% of the appraised value of the real property located in the district, excluding church property or real property owned by the federal government, the state, or a county, township, or municipal corporation, unless the church, county, township, or municipal corporation has specifically requested in writing that the property be included in the district and filed with the municipal executive • Upon the affirmative vote of members who collectively own more than 50% of the appraised value of the real property in the district that may be subject to assessment, the district shall be dissolved 	
Operational	Yes	Yes	Yes	Yes

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #3, Entity 9)**

	Port Authority	Port Authority
Ohio Revised Code	<p>Chapter 4582.02 – 4582.20</p> <p>Applies exclusively to a port authority in existence on July 9, 1982.</p>	<p>Chapter 4582.22 – 4582.59</p> <p>Applies exclusively to a port authority created after July 9, 1982, and to a port authority in existence on July 9, 1982, if the subdivision or subdivisions that created the port authority adopt a resolution or ordinance permitted under 4582.201(B) but have not adopted a resolution ordinance under 4582.201(C) to resume operating under sections 4582.01 – 4582.20.</p>
Purpose/Description	<p>Provide and participate in activities that "enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research."</p>	<p>Provide and participate in activities that "enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research."</p> <p>Blanchard Valley Port Authority: Improve the economic health of the Hancock County area through the retention and creation of jobs and injection of private capital investments, and the mission is to provide assistance to private and public entities using all elements of the Ohio Port Authority Act and the Ohio Constitution.</p>

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #3, Entity 9)**

	Port Authority	Port Authority
Geographic Extent	<p>The area of jurisdiction of a port authority created in accordance with section 4582.02 shall include all of the territory of the political subdivision or subdivisions creating it, provided that in no case other than as may result from the determination of a port authority under 4582.201(C) to change the provisions of Chapter 4582 that govern its operation, shall the same area be included in more than one port authority.</p>	<p>The area of jurisdiction of a port authority created in accordance with section 4582.22 shall include all of the territory of the political subdivision or subdivisions creating it and, if the port authority owns or leases a railroad line or airport, the territory on which the railroad's line, terminals, and related facilities or the airport's runways, terminals, and related facilities are located, regardless of whether the territory is located in the political subdivision or subdivisions creating the port authority.</p> <p>A municipal corporation with a population of at least 100,000 may create a port authority w/in a county that previously created an existing port authority, if the municipal corporation did not join w/ the county in creating the port authority or thereafter join that port authority.</p> <p>A county may create a port authority the area of jurisdiction of which excludes any territory that is located in that county and is in the area of jurisdiction of any port authority created in accordance with section 4582.02 or 45822 that is then existing in the county.</p> <p>Except as provided in 4582.30 (B)(2) or (3), a political subdivision that has created a port authority or joined an existing port authority shall not be included in any other port authority.</p> <p>4582.30(B)(2) – A municipal corporation with a population of less than 100,000 that has joined an existing port authority in a county with a population of 500,000 or less may create a port authority w/in the territorial jurisdiction of the municipal corporation.</p> <p>4582.30(B)(3) – A municipal corporation and a county jointly may create a new port authority if both of the following apply: (1) the municipal corporation created a port authority after July 9, 1982, and that port authority operates an airport; (2) the county joined a port authority after July 9, 1982, and that port authority operated an airport.</p>

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #3, Entity 9)**

	Port Authority	Port Authority
Establishment/Creation Procedures	<p>Any municipal corporation, township, county, or any combination of a municipal corporation, municipal corporations, township, townships, county, or counties, none of which was included in a port authority in existence on December 16, 1964, may create a port authority.</p>	<p>Any municipal corporation, township, or county not included in a port authority in existence on December 16, 1964, may create, or any combination of a municipal corporation, municipal corporations, township, townships, county, or counties, no one of which has been included in a port authority in existence on December 16, 1964, may create, and any of the foregoing together with any other political subdivision or subdivisions may create a port authority.</p> <p>At the time a port authority is created under 4582.201(A) or (B), the subdivisions who created the port authority may restrict the powers granted to the port authority pursuant to the chapter.</p> <p>Subdivisions which created a port authority whose powers have been restricted pursuant to 4582.22(B) may, at any time, adopt a resolution or ordinance to grant additional powers, so long as the powers so granted to not exceed the powers permitted pursuant to Chapter 4582.</p>

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #3, Entity 9)**

	Port Authority	Port Authority
Governance	<p>Board of Directors—</p> <ul style="list-style-type: none"> • Shall consist of such number of members it considers necessary and shall be appointed by the mayor with advice and consent of the council, or appointed by the township trustees of the township, or appointed by the county commissioners • When created by a combination of political subdivisions, the number of directors comprising the board shall be determined by agreement between the political subdivisions • The Directors of any port authority first appointed shall serve staggered terms; thereafter, each successor shall serve for a term of 4 years. 	<p>Board of Directors—</p> <ul style="list-style-type: none"> • Shall consist of such number of members it considers necessary and shall be appointed by the mayor with advice and consent of the council, or appointed by the township trustees of the township, or appointed by the county commissioners • When created by a combination of political subdivisions, the number of directors comprising the board shall be determined by agreement between the political subdivisions • The Directors of any port authority first appointed shall serve staggered terms; thereafter, each successor shall serve for a term of 4 years.
Funding Source	<ul style="list-style-type: none"> • Levy taxes; • Issue bonds; • Service/Rental charges 	<ul style="list-style-type: none"> • Levy taxes; • Issue bonds; • Service/Rental charges
Legal Status	Separate, independent unit of local government and not a part of the state, county, or city governments.	Separate, independent unit of local government and not a part of the state, county, or city governments.

**Legal Structures Potentially Available Under
Ohio Law for Regional Flood Mitigation Efforts
(Chart #3, Entity 9)**

	Port Authority	Port Authority
Dissolution/ Termination of District	A port authority may be dissolved by the subdivision or subdivisions creating it, and in that event the properties of the port authority shall be transferred to the subdivision creating it or, if created by more than one subdivision, to the subdivisions creating it in such manner as may be agreed upon between the subdivisions prior to the dissolution of the port authority.	A port authority may be dissolved by the subdivision or subdivisions creating it, and in that event the properties of the port authority shall be transferred to the subdivision creating it or, if created by more than one subdivision, to the subdivisions creating it in such manner as may be agreed upon between the subdivisions prior to the dissolution of the port authority.
Established/Operational in Ohio?	Yes	Yes

V. SHORT AND LONG TERM RECOMMENDATIONS

Analysis

1. Conservancy Districts. Conservancy Districts under Ohio Rev. Code Chapter 6101 are designed to be public entities with broad authority over various aspects of flood control. While other public entities have – or could be molded to provide – aspects of flood control management, Conservancy Districts appear to have the most comprehensive powers. (Compare to Regional Sewer District, which is designed primary for collection and treatment of wastewater).
 - a. They are multi-jurisdictional (compare to the more limited jurisdictions of Soil and Water Conservation Districts, County Sewer Districts, and Ditch Districts)
 - b. They may issue tax levies and issue bonds.
 - c. They may receive and use federal and state funds.
 - d. They may enter into all necessary contracts for development and implementation of flood mitigation efforts.
 - e. Conservancy Districts are in use for these purposes in Ohio.⁷
 - f. However, the establishment and supervision by the court system, as opposed to elected officials, will not comport with all views of providing a responsive and publicly accountable system. (Note, however, that Sanitary Districts must also be approved by a court.)
 - g. Moreover, the three-member appointed board of directors is comparatively small both as compared to the more typical five or more for other Ohio public asset management districts and as compared to the Napa County, California district, which has an 11-member board and Harris County, Texas, which has a five-member board (of elected officials).⁸
 - h. One possibility to minister to the concern of political accountability and representation is the creation of a multi-jurisdictional advisory board with specific procedural powers in the order establishing the Conservancy District.
2. Watershed District. A potential alternative for a comprehensive approach to flood mitigation is the Watershed District under Ohio Revised Code Section 6105. This law

⁷ For a list of active Conservancy Districts in Ohio, *see* <http://www.dnr.state.oh.us/Portals/7/pubs/pdfs/fctsht25.pdf>.

⁸ Note that part of the Blanchard River Watershed sits in an already established conservancy district – the Maumee Watershed Conservancy District. Thus, theoretically, the Maumee district could carry out (or be expanded to carry out) the functions that would have been assumed by a Blanchard River watershed entity. However, (1) the governance of the Maumee district suffers from the same concerns raised about a putative Blanchard River conservancy district; (2) its purpose is attenuation from Blanchard River Watershed concerns, and (3) it is not clear the scope of the Maumee district encompasses the same types of project focus as proposed for the Blanchard River watershed. *See* http://www.floodpartnership.org/media/Conservancy_Fact_Sheet.pdf.

envisions that the Ohio Environmental Protection Agency (OEPA) would devise a map of 15-18 watershed districts across the state.

- a. A potential advantage of this approach from a governance perspective is that the Board of Directors is appointed by the presidents of the boards of county commissioners from the counties in the watershed district. Thus, in terms of public accountability for and comity among the elected leadership in the region, this model might be desirable.
 - b. But Watershed Districts appear not to have been fully enabled as contemplated in the legislation. Formation of the districts depends on the OEPA to create the district maps and file them with the affected counties. We have been able to find no evidence that this has been done.
 - c. In establishing a watershed district the OEPA needs to prepare and complete a territorial map of the proposed watershed district pursuant to 6111.42. The law is silent as to whether (i) the OEPA takes the initiative to prepare the map; (ii) the counties ask the OEPA to prepare a map; or (iii) the counties prepare a map and description and then have the OEPA review the proposal and then the OEPA creates/completes a "final" proposed watershed map. After the OEPA finishes the map and description it is filed by the OEPA with (1) the Secretary of State; and (2) with each county board contained in the proposed district. Again, the law is silent as to any additional steps required by the Secretary of State after the map and description are filed with the Secretary of State. Finally, the presidents/authorized representatives call a meeting and vote on specifics regarding the establishment and governance of the watershed district.
 - d. There may be some limitations in creating a Watershed Districts designed primarily for flood mitigation planning and projects – as opposed to water quality enhancement and resource management. Loftus and Rennie argue that, "as outlined in Ohio Revised Code, Chapters 6105 and 6111, seem to offer both a legal mechanism and some semblance of an institutional structure for enabling a true watershed approach to managing water resources; particularly as they might entail the effects of land-use activities on Ohio water quality standards."
3. Special Improvement Districts (SIDs). SIDs present an interesting possibility, because of their flexibility.
- a. On the face of the statutory language, Special Improvement Districts have a broad purpose that include planning for public improvements.
 - b. They also may be multi-jurisdictional.
 - c. Most significantly – especially in terms of the involvement of the NWOFPMP in the Blanchard River Watershed flood mitigation efforts – SIDs may be formed by non-profit corporations that have public powers, including the power to tax a special assessment on property in the district. They may be considered public-private partnership approach to public improvement development.
 - d. However, the method of establishment may present a high hurdle. They are formed by a petition filed by owners of either 60% of the "front footage" or 75% of the area of real property in the district. Thus, these entities appear more tailored for smaller development projects than anticipated here.
4. Port Authority. Another potentially interesting alternative to Conservancy Districts and Watershed Districts is the Port Authority.

- a. While the primary purpose of Port Authorities appears to be economic development, such authorities have broad powers over infrastructure improvements, land acquisition, and public finance.
- b. Perhaps most significantly regarding flood control, Port Authorities have the express power to "[s]traighten, deepen, and improve any canal, channel, river, stream, or other water course or way that may be necessary or proper in the development of the facilities of the port authority".
- c. Significantly, the City of Findlay Council and the Board of Hancock County Commissioners have established the Blanchard Valley Port Authority.⁹
- d. If an existing Port Authority were to cover the entire watershed, the contiguous political subdivisions in the watershed (and not already part of the Port Authority) would need to join. The statute provides expressly for a process of joinder.
- e. A question arises whether adding flood mitigation planning and implementation – especially on a regional basis – to the existing Port Authority will create challenges in mission or administration. One possible way to lessen those concerns would be to have the expanded Port Authority contract with an organization for operation of most or all flood control program management.

Recommendations

1. In the long term, the option that provides the opportunity to utilize the most direct set of powers for flood mitigation and allows the most flexibility for regional development and funding is the Conservancy District.
2. No other currently enabled statutory scheme in Ohio appears to provide a textually complete set of powers and regional jurisdiction to accomplish the goals the NWOFPMP is presently working toward.
3. In the short term, if a decision were made to hold off in the creation of a Conservancy District, the best option might be working with the State EPA to determine whether it is position to establish a Watershed District in the Blanchard River Watershed that would meet the region's needs from a flood mitigation standpoint.
4. Another alternative is to utilize the Port Authority statute (and perhaps the existing Blanchard Valley Port Authority) as a short-term and/or long-term public entity for flood mitigation. While not created specifically for the purpose of flood control, it appears to have powers that are broad and flexible enough to accomplish the purposes NWOFPMP has set forth. The most important initial concern would be making the Port Authority regional to cover all the jurisdictional stakeholders in the watershed.

⁹ See <http://www.blanchardvalleyportauthority.org/>