



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

Issuance Date: **January 15, 2008**

LRH-2006-526-LMR

Stream:

Closing Date: **February 14, 2008**

UNTriB Bear Run

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the Ohio Environmental Protection Agency to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Otterbein Retirement Living Communities
20311 Pemberville Road
Pemberville, Ohio 43450

LOCATION: The proposed project is located on an unnamed tributary of Bear Run, a tributary to the Little Miami River, on the east side of State Route 48 north of Fosters-Maineville Road in Hamilton Township, Warren County, Ohio. Latitude 39° 19' 13", Longitude 84° 13' 10".

DESCRIPTION OF PROPOSED WORK: The applicant proposes to place fill material in waters of the United States to facilitate the construction of a retirement community. The applicant proposes to fill 758 linear feet of the intermittent stream with approximately 10 cubic yards of gravel and 100 cubic yards of earthen fill. Flow would be intercepted at the eastern edge of the property and conveyed through a 43" by 68" elliptical pipe north of the existing channel. The applicant's stated purpose is to construct a retirement living community to provide long-term assisted living care in close proximity to the Village of Maineville. Plans of the proposal are attached to this notice.

MITIGATION PLAN: To offset intermittent stream impacts associated with the project, the applicant proposes stream preservation and riparian enhancement at an off-site location. Approximately 2,366 linear feet of an unnamed tributary to Little Muddy Creek and its riparian buffer, located on a 54-acre forested tract, would be protected in perpetuity by conservation easement to be held by a third party. Riparian enhancements would include removal of non-native species and planting of native shrubs and trees within a 50-meter wide strip centered on the stream. The proposed mitigation site is located on an unnamed tributary to Little Muddy Creek, an indirect tributary to the Little Miami River, southeast of the intersection of State Routes 63 and 741 in Union Township, Warren County, Ohio.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the Ohio Environmental Protection Agency.

HISTORIC & CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A Phase I Cultural Resources Management Investigation has been performed by the applicant for the 5-acre site. Our office is currently reviewing this survey. A copy of this public notice and a copy of the Phase I Cultural Resources Management Investigations Report will be furnished to the State Historic Preservation Office for their review. Comments concerning archaeological sensitivity of the project area should be based on collected data.

THREATENED & ENDANGERED SPECIES: The project is located within the known or historic range of the following candidate, threatened, or endangered species:

Indiana bat (E)
Running buffalo clover (E)
Eastern massasauga (C)
Rayed bean (C)

To determine if the proposed project would have any affect on threatened or endangered species,

the applicant has consulted the United States Fish and Wildlife Service (USFWS). The USFWS provided information regarding suitable habitat for these species. The Huntington District has consulted the most recently available information and information provided by the applicant, including results of an August 2007 mist-net survey during which no Indiana bats were collected, and has determined the proposal is not likely to adversely affect the Indiana bat, provided the applicant does not cut suitable habitat trees during the designated summer roosting months for this species. Based on the lack of periodic disturbance and habitat availability, the project is not likely to adversely affect running buffalo clover. Due to site location and habitat availability, it has been determined there would be no effect on the eastern massasauga and rayed bean. Based on this information, the proposed project is not likely to adversely affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical. This public notice serves as a request to the USFWS for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding

of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

Ms. Denise Marmer, Project Manager
U. S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-FN Public Notice No. LRH-2006-526-LMR
502 Eighth Street
Huntington, West Virginia 25701-2070

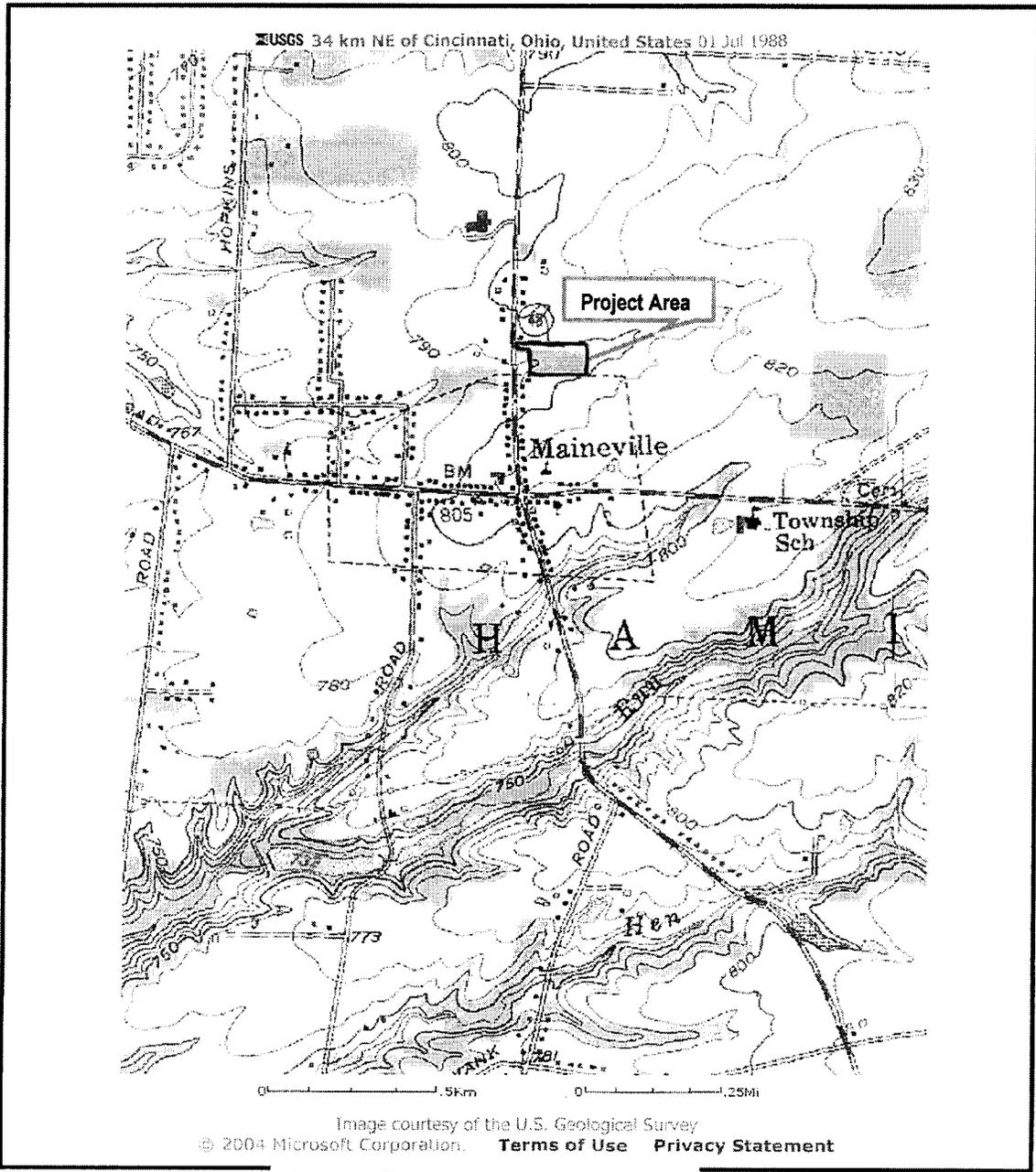
Please note, the names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please contact Ms. Denise Marmer of the North Regulatory Section, Cincinnati Regulatory Field Office, at 513-825-4518.


Ginger Mullins
Chief, Regulatory Branch

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Figure 2: Topographical Map
Otterbein Retirement Living Community
Hamilton Township
Warren County, Ohio

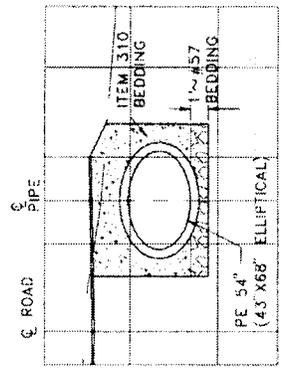
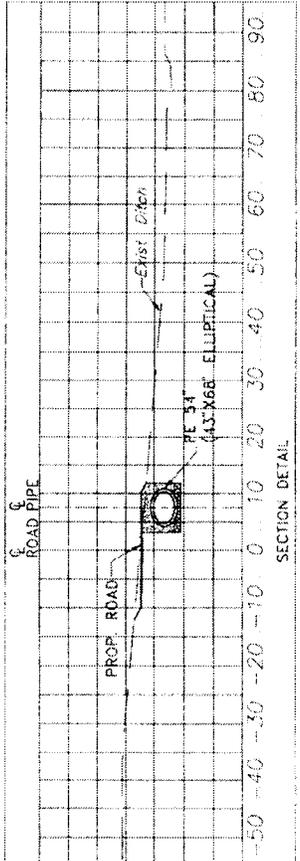
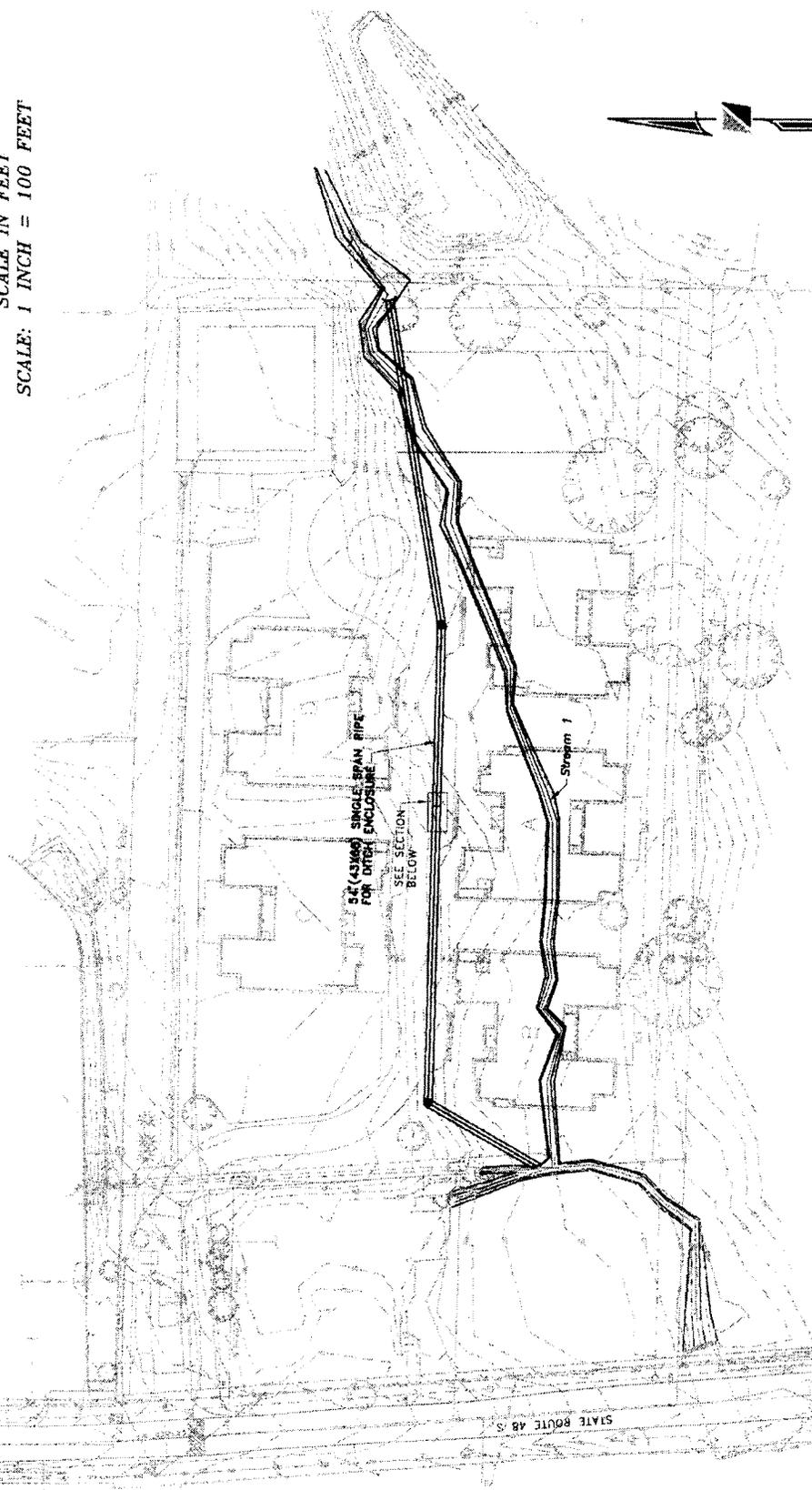
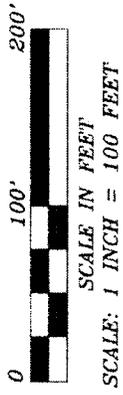
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| SITE: Maineville, Ohio JOB: T1662.3 MAP: USGS 7.5 Minute Topo | DATE: October 2007 QUAD: South Lebanon SCALE: Not to Scale | N  |
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Otterbein Retirement Living Community
 UNtrib Bear Run 2006-526-LMR
 Warren County, Ohio
 Project Location Map
 Figure 1 of 3

R.D. Zander & Associates

OTTERBEIN NEIGHBORHOOD AT MAINEVILLE
 PREFERRED ALTERNATIVE
 EXHIBIT 2



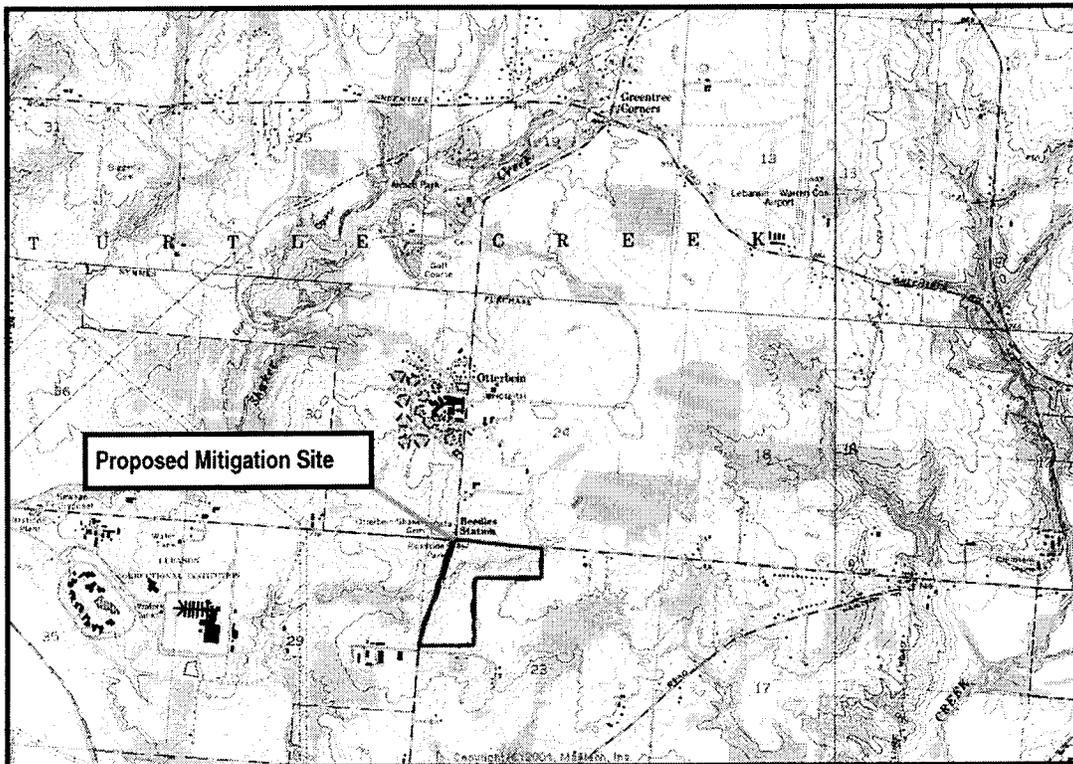
PREPARED BY:
R.D.Zande & Associates
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 Toledo, Ohio 43615
 Phone (419) 887-6686
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PROJECT NUMBER
 11662.3.3

Otterbein Retirement Living Community
 UNTriB Bear Run 2006-526-IMR
 Warren County, Ohio
 Site Development Plan
 Figure 2 of 3

Topographical Map - Appendix A
Proposed Otterbein Retirement Living Community Mitigation Site
Stream Mitigation
Warren County, Ohio

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|---------------------------------------|----------------------------|---|
| SITE: Proposed Mitigation Site | DATE: October 2007 | N  |
| JOB: T1662.3 | QUAD: Monroe | |
| MAP: USGS 7.5 Minute Topo | SCALE: Not to Scale | |



Otterbein Retirement Living Community
UN Trib Bear Run 2006-526-IMR
Warren County, Ohio
Mitigation Location Map
Figure 3 of 3