

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

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# Public Notice

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In reply refer to Public Notice No.

**LRH-2007-329-TUS**

Issuance Date:

**March 6, 2008**

Stream:

**UNTrib West Branch Nimishillen Creek**

Closing Date:

**April 4, 2008**

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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

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**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:** Haines & Company  
8050 Freedom Avenue NW  
North Canton, Ohio 44720

**LOCATION:** The proposed project is located on an unnamed tributary of the West Branch Nimishillen Creek on a 13-acre site located south of Shuffel Drive, between Freedom Avenue and the Interstate 77 northbound lanes, in Jackson Township, Stark County, Ohio. Coordinates for the site are Latitude 40° 53' 49" and Longitude 81° 25' 44".

**DESCRIPTION OF PROPOSED WORK:** The applicant proposes to develop the site to construct a retail and commercial development called the Haines Freedom Project. Project plans include a 120,000 square foot multistory office space and a 4,000 square foot restaurant as well as associated parking for both facilities. The applicant proposes to impact 3.46 acres of Wetland B by excavation of a stormwater pond and placement of 8,000 cubic yards of clean earthen fill to allow for construction of parking spaces for the proposed development. Construction of the stormwater pond will eliminate 333 linear feet of intermittent stream. The applicant has stated that the proposed stormwater pond has been designed to treat the water carried by the existing stream as well as the stormwater generated at the proposed development site.

Plans of the proposed work are attached to this public notice.

**MITIGATION PLAN:** To compensate for the loss of 3.46 acres at Wetland B, the applicant has submitted a compensatory mitigation plan proposing the preservation of the remaining 0.31 acres of wetlands on the site by deed restriction and to purchase credits at an approved wetland mitigation bank that services the Tuscarawas River watershed. The applicant has proposed that mitigation for 333 linear feet of impacts to Stream 1 consists of enhanced design and size criteria (i.e. detention, sedimentation, and filtration) for the stormwater basin to provide post construction improvement in water quality downstream of the proposed development. Approximately 0.62 acre of waters of the United States would be preserved in a deed restricted area consisting of 0.31 acres of Wetland B including 218 linear feet of Stream 1 and 0.31 acres of upland buffer around the preserved wetland.

**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification is required for this project. The applicant has submitted the application to the Ohio Environmental Protection Agency (OEPA). It is the applicant's responsibility to obtain the required certification from the OEPA.

**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 copy of this public notice 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 Indiana bat (Endangered), bald eagle (Threatened), and the eastern massasauga (Candidate). The site provides very limited forested habitat and does not appear to provide suitable habitat for the Indiana bat or the bald eagle. Due to periodic mowing at the site and location in a highly urbanized area the site provides marginal habitat for the eastern massasauga. The Huntington District has consulted the most recently available information and

based on seasonal cutting restrictions, the project is not likely to adversely affect the Indiana bat and will have no effect on the bald eagle or eastern massasauga or designated Critical Habitat for these Federally listed species. This public notice serves as a request to the US Fish and Wildlife Service 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.

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. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. 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.

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. 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:

Mr. Mark Agricola  
U. S. Army Corps of Engineers, Huntington District  
ATTN: CELRH-OR-FN  
Public Notice No. LRH-2007-00329-TUS  
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 Mr. Mark Agricola of the North Regulatory Section, Dover Regulatory Field Office, at 330-364-6177.

  
Ginger Mullins, Chief  
Regulatory Branch

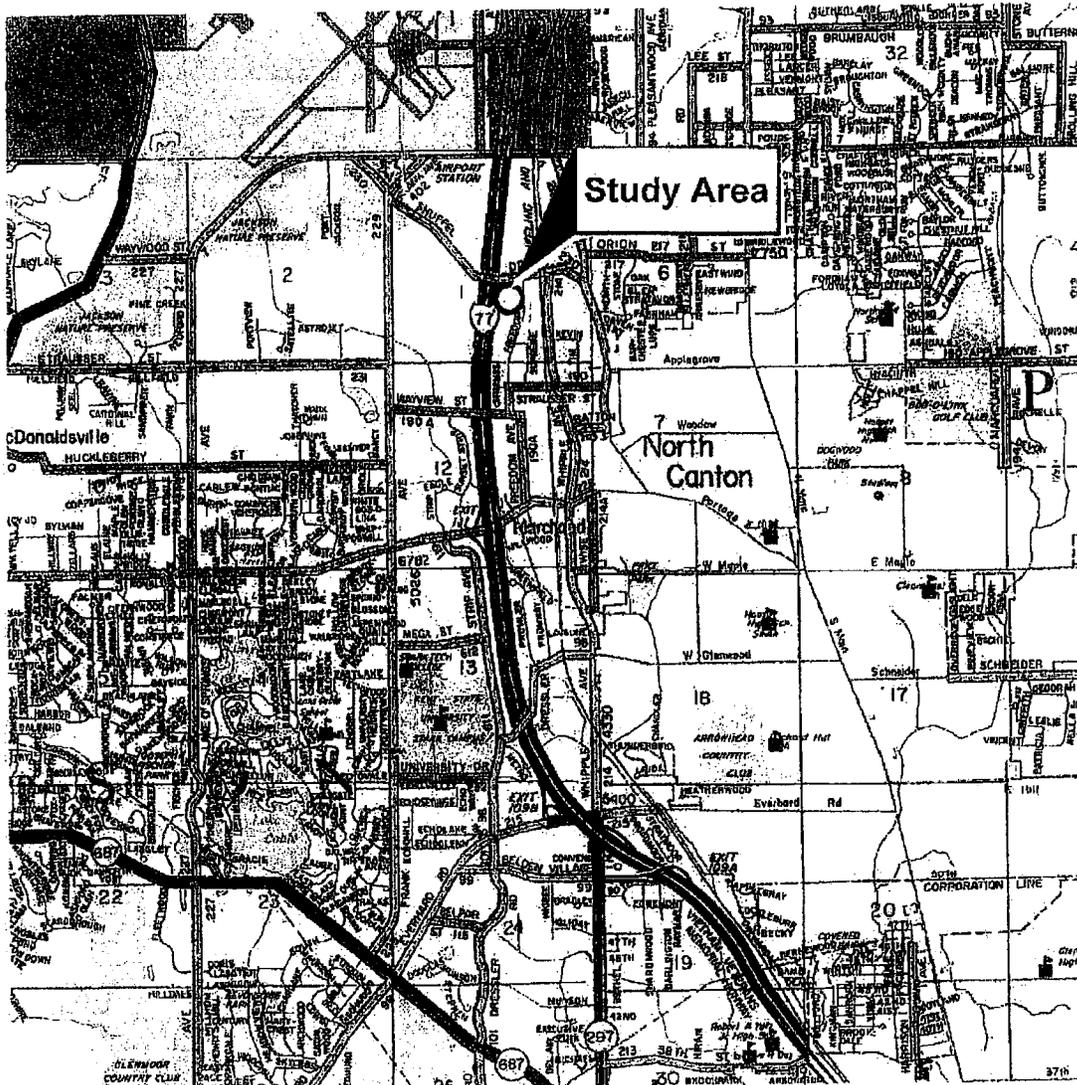
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## Location of Study Area on Highway Map

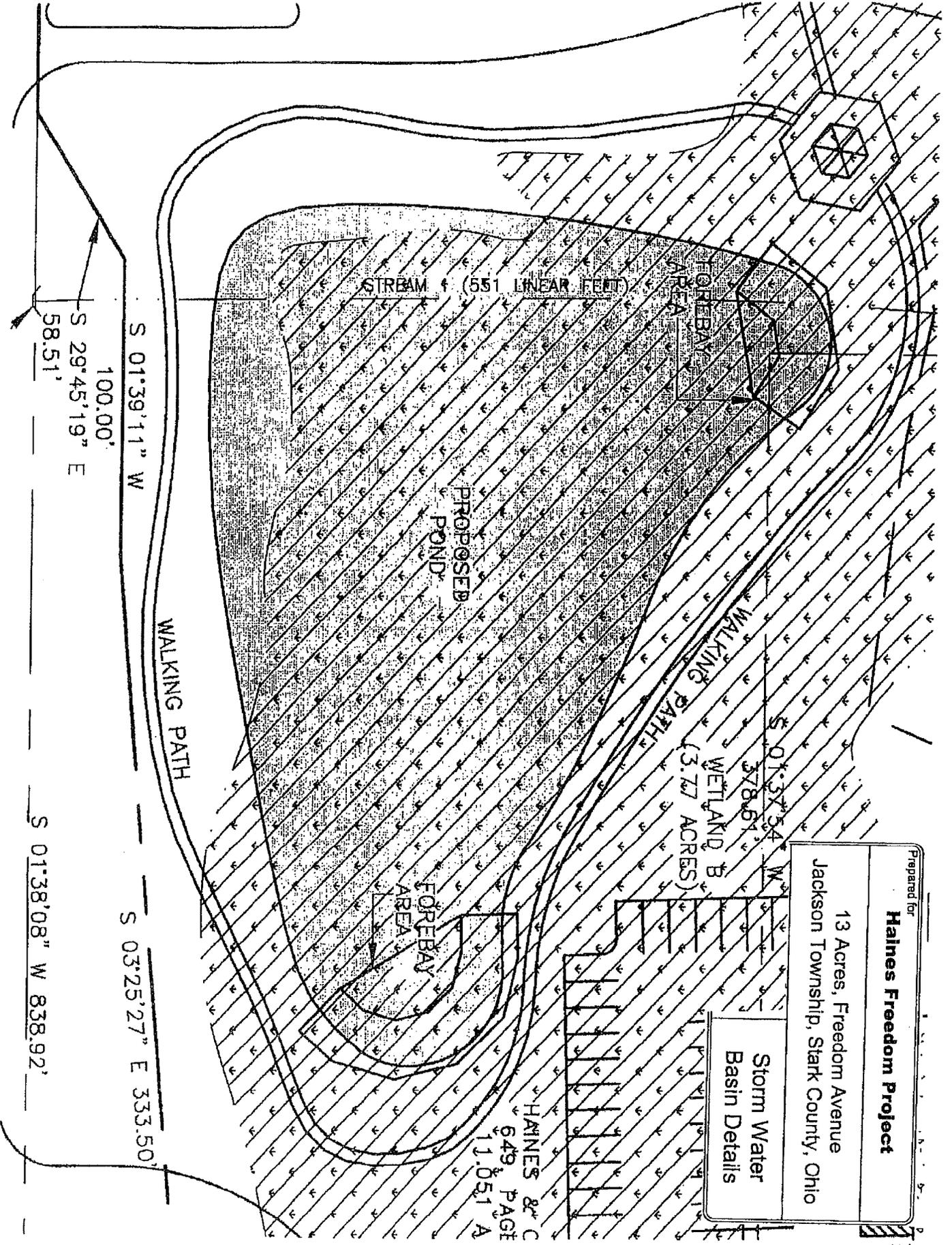


Site: 13 Acres, Freedom Avenue  
Jackson Township, Stark County, Ohio

Scale: 1" = 1 mile







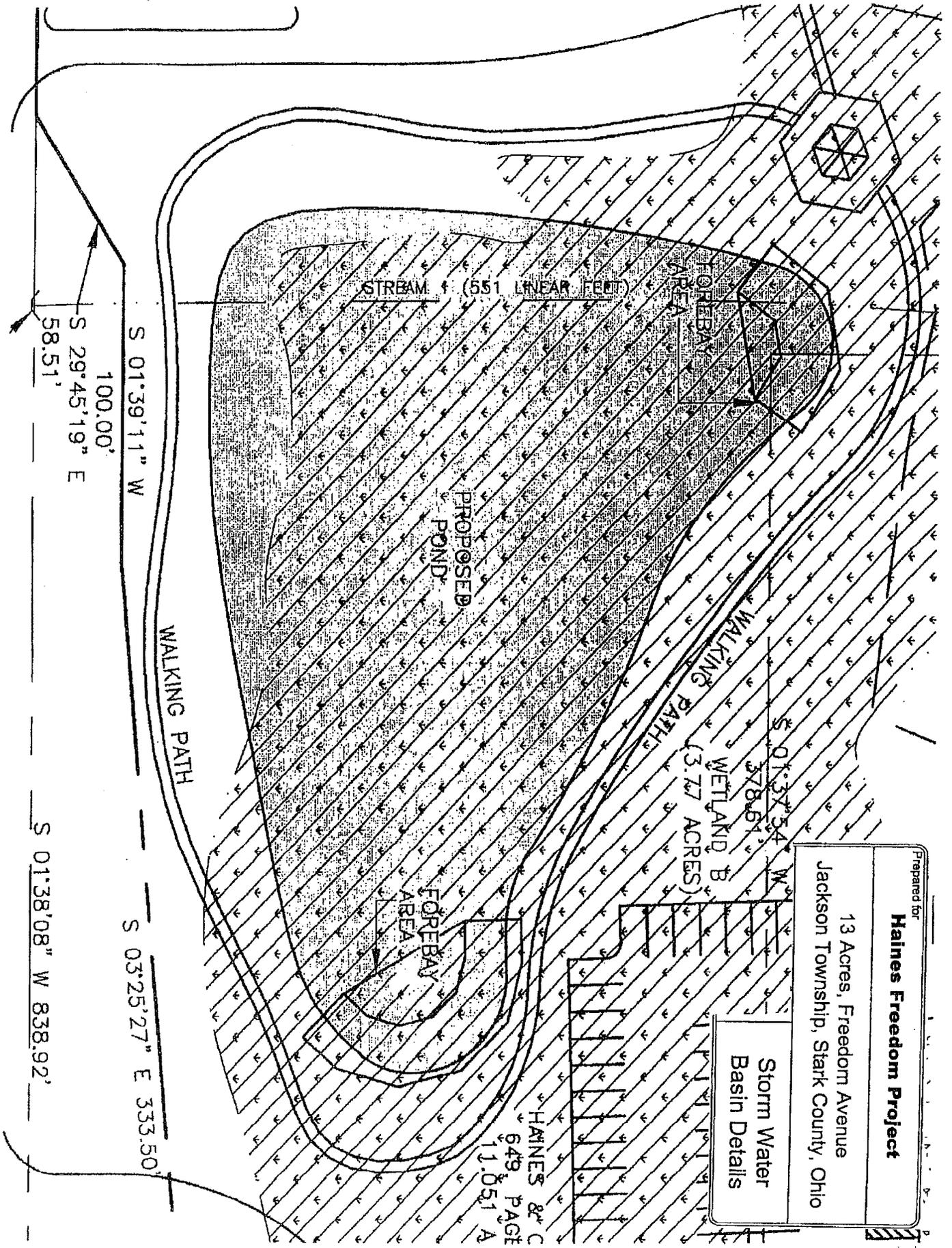
Prepared for

**Haines Freedom Project**

13 Acres, Freedom Avenue  
 Jackson Township, Stark County, Ohio

Storm Water  
 Basin Details

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