



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

Public Notice

In reply refer to Public Notice No.

LRH-2007-959-GMR

Issuance Date:

OCT 27 2008

Stream:

UN Trib to Holes Creek

Closing Date:

NOV 26 2008

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 (OEPA) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Oberer Land Developers, Ltd.
2800 East River Rd
Dayton, Ohio 45439

LOCATION: The proposed project is located in unnamed tributaries to Holes Creek on the southeast corner of the intersection of Social Row Rd and Yankee St in Centerville, Montgomery

County, Ohio.

DESCRIPTION OF PROPOSED WORK: According to information provided by the applicant, the project would involve the placement of fill material into approximately 878 linear feet (lf) of stream (unnamed tributaries of Holes Creek) and 0.2 acre (ac) of wetland to facilitate the construction of a retail and commercial development on the subject property. The development would consist of a bank, restaurant, four commercial/retail outlots, two office outlots and associated parking areas. Approximately 113.7 cubic yards of fill material obtained from other parts of the property would be utilized to fill the existing stream. Specifically, approximately 450 lf of one tributary would be relocated on the site in association with the development. The remaining 428 lf of this tributary would be enclosed in a pipe to facilitate site development. An additional approximately 100 lf of a second tributary would be piped to discharge into a proposed stormwater detention basin to be located in the approximate middle of the site. The remaining 90 lf of the second tributary would be filled in association with site development.

In total, approximately 878 lf of stream and 0.2 ac of wetland would be permanently impacted by the proposed project.

Plans of the proposal are attached to this Notice.

MITIGATION PLAN: In order to compensate for the proposed impacts to streams on the project area, the applicant has provided a proposed stream mitigation plan. A total of 450 lf of stream mitigation would be provided by relocating a portion of the impact stream on the site utilizing natural channel design techniques. In addition, the applicant would restore a total of approximately 1,100 lf of an unnamed tributary to Crane Run located west of the project site in Miamisburg, Ohio. The off-site restoration activities would include reconfiguring the mitigation channel to include a meandering channel, establishment of a stream bed composed of rocky substrate and enhancement of the riparian area adjacent to the stream. The off-site mitigated stream (unnamed tributary to Crane Run) would be protected in perpetuity by a conservation easement or deed restriction that would also cover the riparian area, varying in width from 30 to 50 feet. The objectives of this plan would be to replace the function and loss of the proposed impact area. The on-site mitigation area was chosen by the applicant as it would be located in the same geographic area as the proposed impacts and the land is under ownership of the applicant. The applicant has proposed to enter into a conservation easement to protect the on-site mitigation in perpetuity. The applicant assessed the streams on the site and these streams received Headwater Habitat Evaluation Index (HHEI) scores ranging from 20 to 49. The applicant has proposed that both the relocated on-site stream and off-site restored stream would achieve an HHEI score of 55 by the end of the proposed five-year monitoring period. The riparian areas of both mitigation streams would be planted with native tree and shrub species.

The proposed mitigation streams would be monitored for a total of three years following the mitigation activities. These areas would be periodically inspected during the monitoring period in order to ensure the success of the proposed mitigation as well as to perform any necessary maintenance within the mitigated areas.

In order to mitigate for the proposed wetland impacts of 0.2 ac, the applicant has proposed to create 0.3 ac of wetland at the Medlar Mitigation Site located in Miamisburg, Ohio west of the proposed project area.

Plans of the proposed mitigation are attached to this Notice.

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 the proposed project would have no effect on any property listed on the Register. The applicant conducted pre-application consultation with the Ohio Historic Preservation Office (OHPO) and based upon the letter received from OHPO dated June 19, 2008, the proposed project would have no effect on properties listed in or eligible for listing in the National Register. 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 following candidate, threatened, or endangered species:

Indiana bat (E)
 eastern massasauga rattlesnake (candidate species)
 rayed bean mussel (candidate species)
 snuffbox mussel (proposed candidate species)

The Huntington District has determined that the project may affect, but would not likely adversely affect the Indiana bat as the project would involve the removal of some trees along the existing stream banks; however, if the applicant removes these trees between October 1 and March 31, the removal would not likely adversely affect the Indiana bat. The proposed project would have no effect on the eastern massasauga rattlesnake, rayed bean mussel or snuffbox mussel as the impacted streams, wetlands and adjacent upland areas would not support these species and proper implementation of stormwater management principles would ensure indirect impacts due to sedimentation off-site would be avoided. This public notice serves as a request to the USFWS for any additional information they may have on whether any federally listed or proposed species may be present in the area which would be affected by the activity. This information will be used to assist the Huntington District in making final effect-determinations pursuant to Section 7(a) (2) of the Federal Endangered Species Act of 1973 (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 320-332, 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:

Mr. Jim Spence
North Regulatory Section, CELRH-OR FN
U. S. Army Corps of Engineers Huntington District
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. Jim Spence of the North Regulatory Section at 304-399-5210.


Ginger Mullins, Chief
Regulatory Branch

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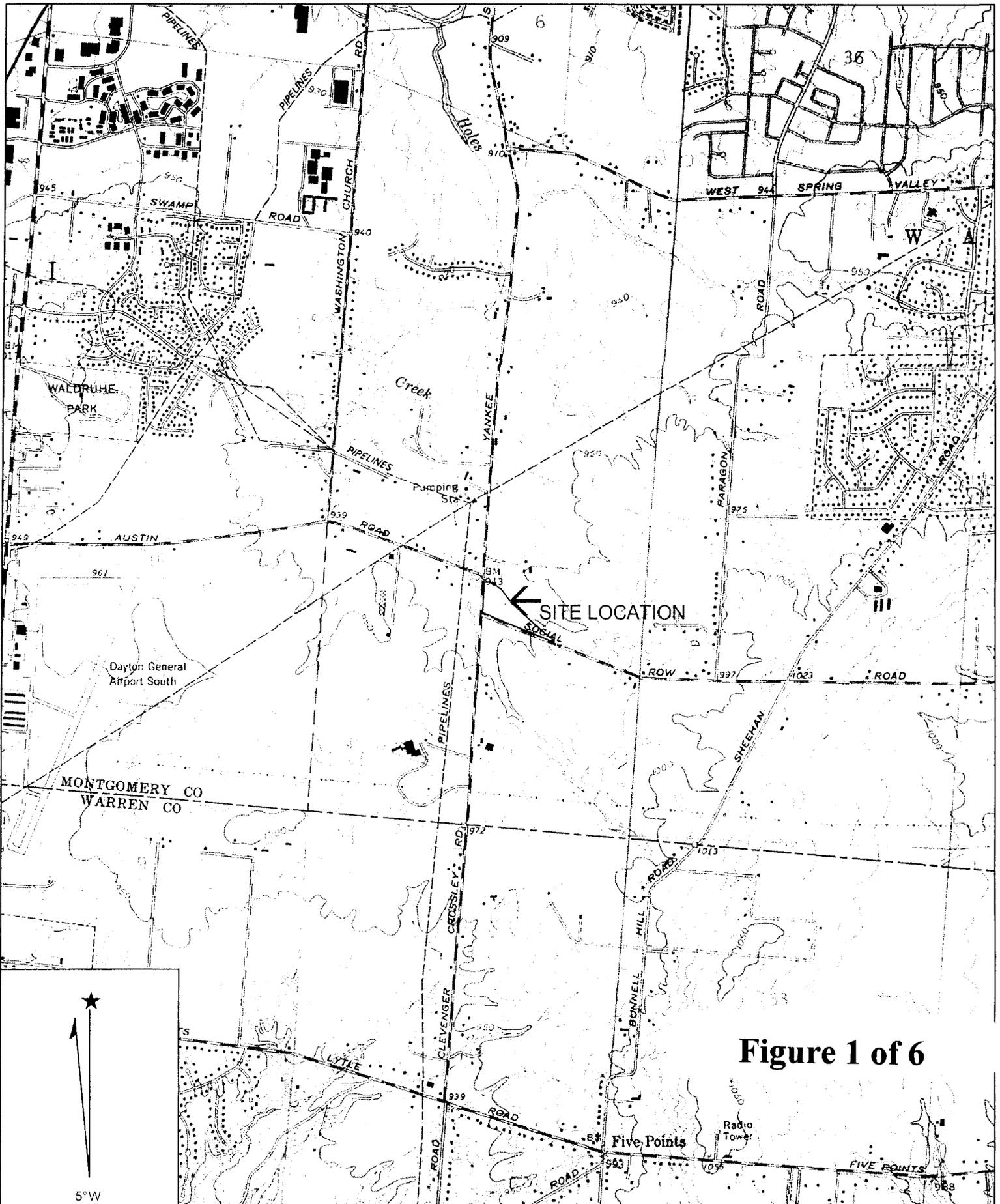
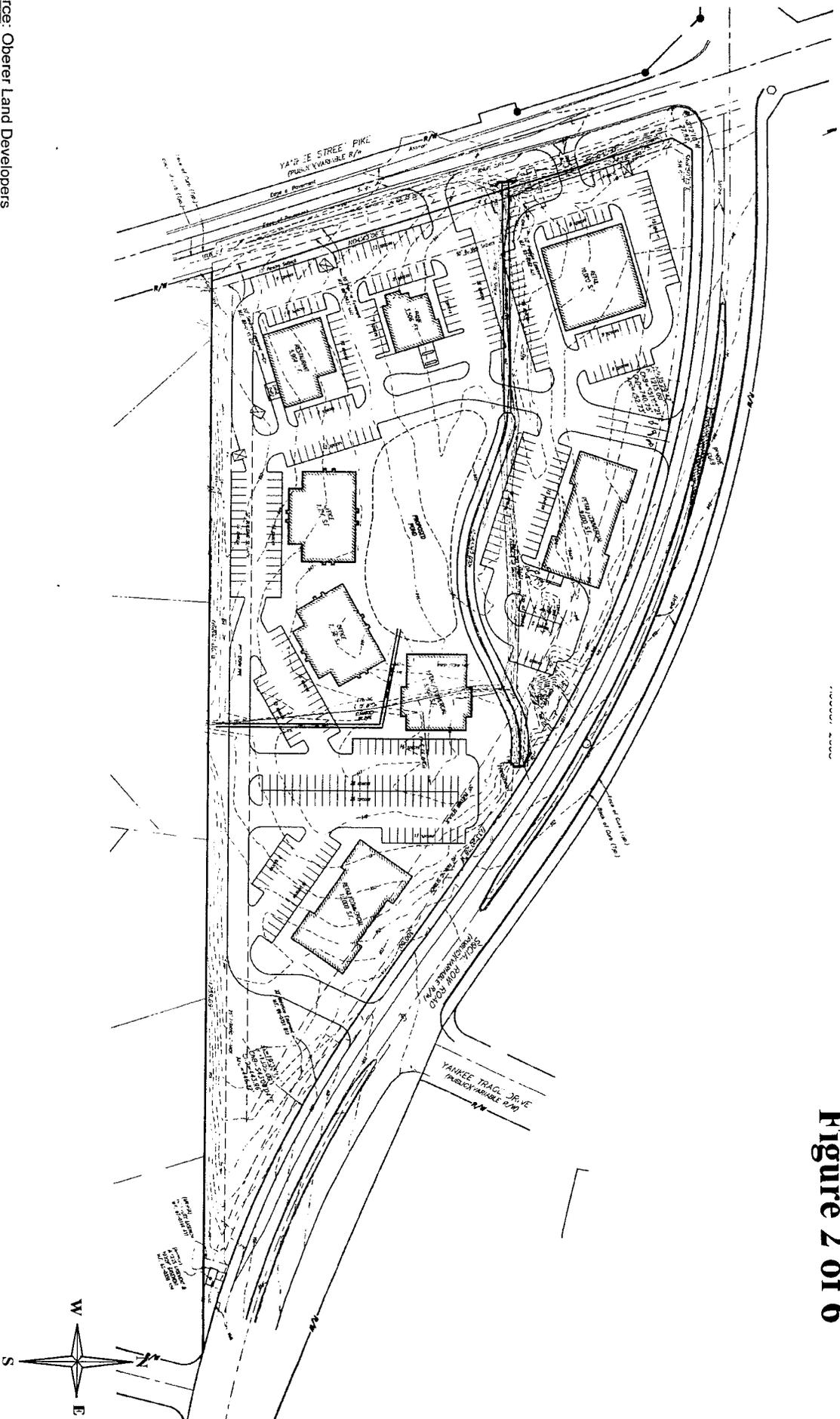


Figure 1 of 6

Name: SPRINGBORO
 Date: 9/25/2007
 Scale: 1 inch equals 2000 feet

Location: 039°35' 37.8" N 084°11' 58.1" W
 Caption: FIGURE 1: SITE LOCATION MAP
 Centerville, Montgomery Co, OH
 Project Number: 21564

Figure 2 of 6



Source: Oberer Land Developers



9341 Seward Road
Fairfield, OH 45014

FIGURE 4
SITE FOOTPRINT
(2008)

Oberer Land Developers
Yankee and Social Row Road
Centerville, Montgomery Co, OH

KEI Project No: 21564

Prepared By	No.	Date
CAF	00	6/20/2008

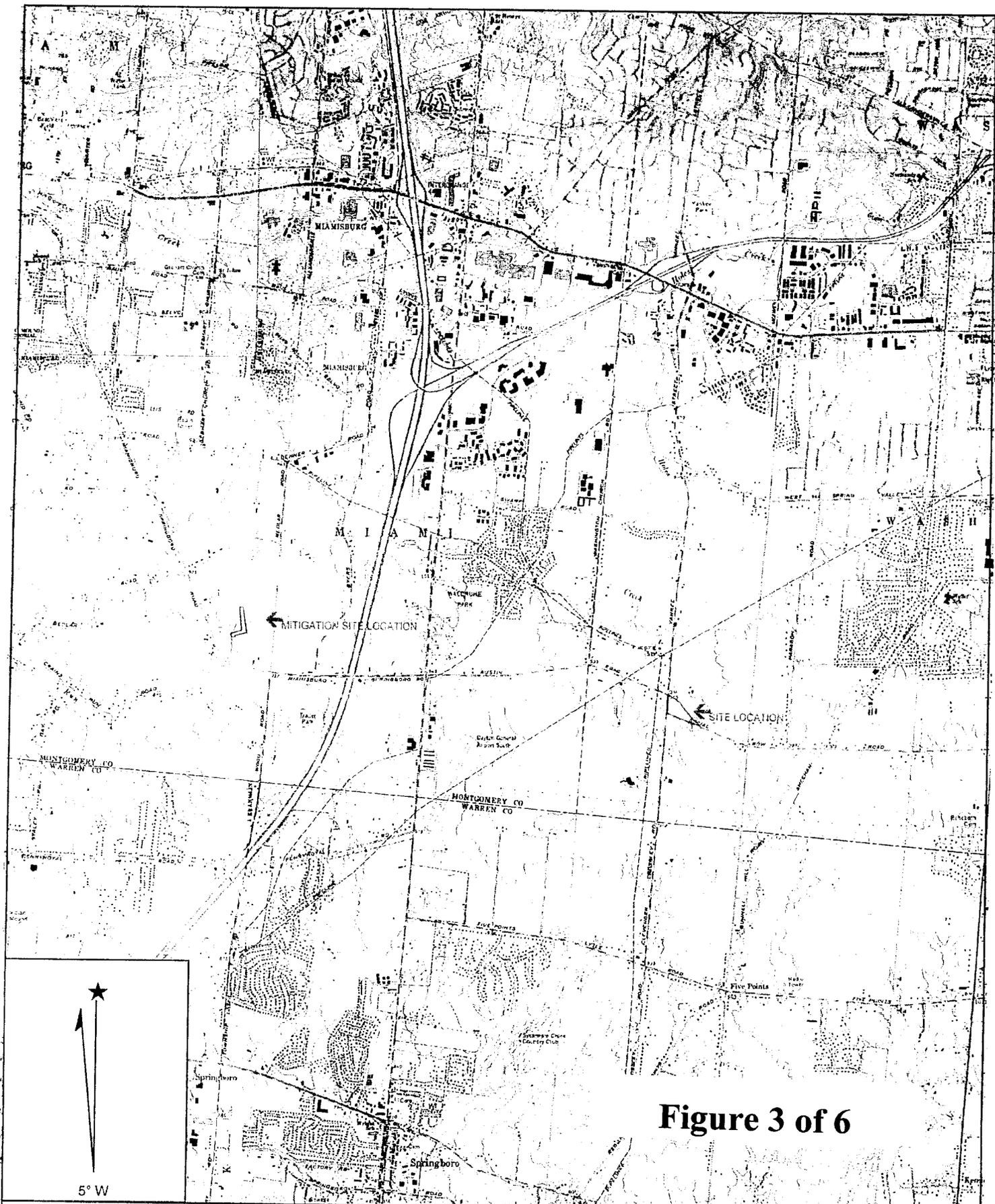


Figure 3 of 6

Name: SPRINGBORO
 Date: 7/17/2008
 Scale: 1 inch equals 4000 feet

Location: 039° 36' 09.2" N 084° 13' 13.4" W
 Caption: FIGURE 6
 IMPACT AND MITIGATION SITE LOCATION MAP
 21564-3

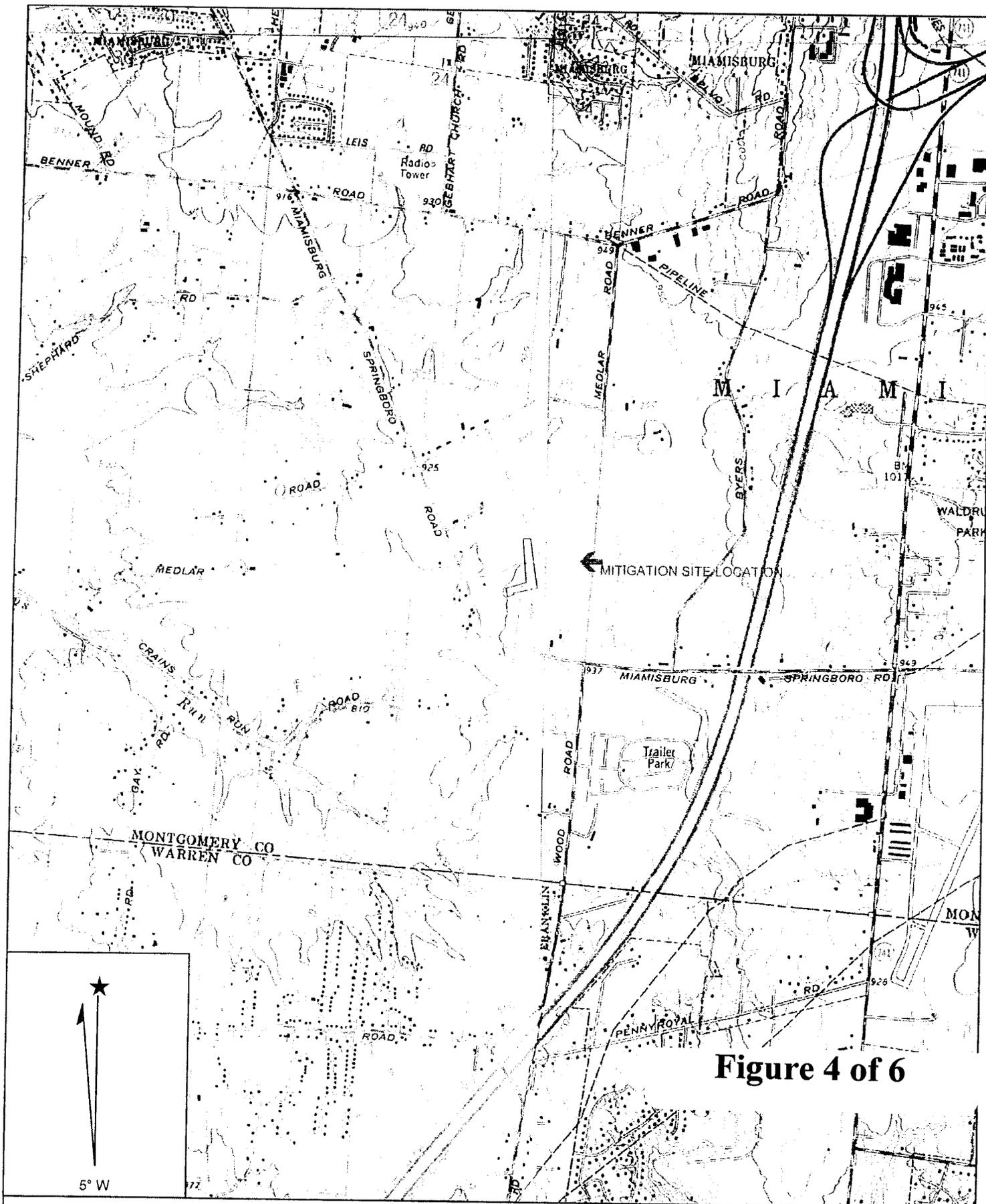


Figure 4 of 6

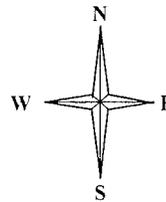
Name: FRANKLIN
 Date: 7/10/2008
 Scale: 1 inch equals 2000 feet

Location: 039° 35' 57.6" N 084° 15' 09.4" W
 Caption: FIGURE 3
 STREAM MITIGATION SITE LOCATION
 21564



Figure 5 of 6

Source: Microsoft Virtual Earth



KEY

Wetland Area

Enhanced Stream

Riparian Area

KILBANE
Environmental, Inc.

9341 Seward Road
Fairfield, OH 45014

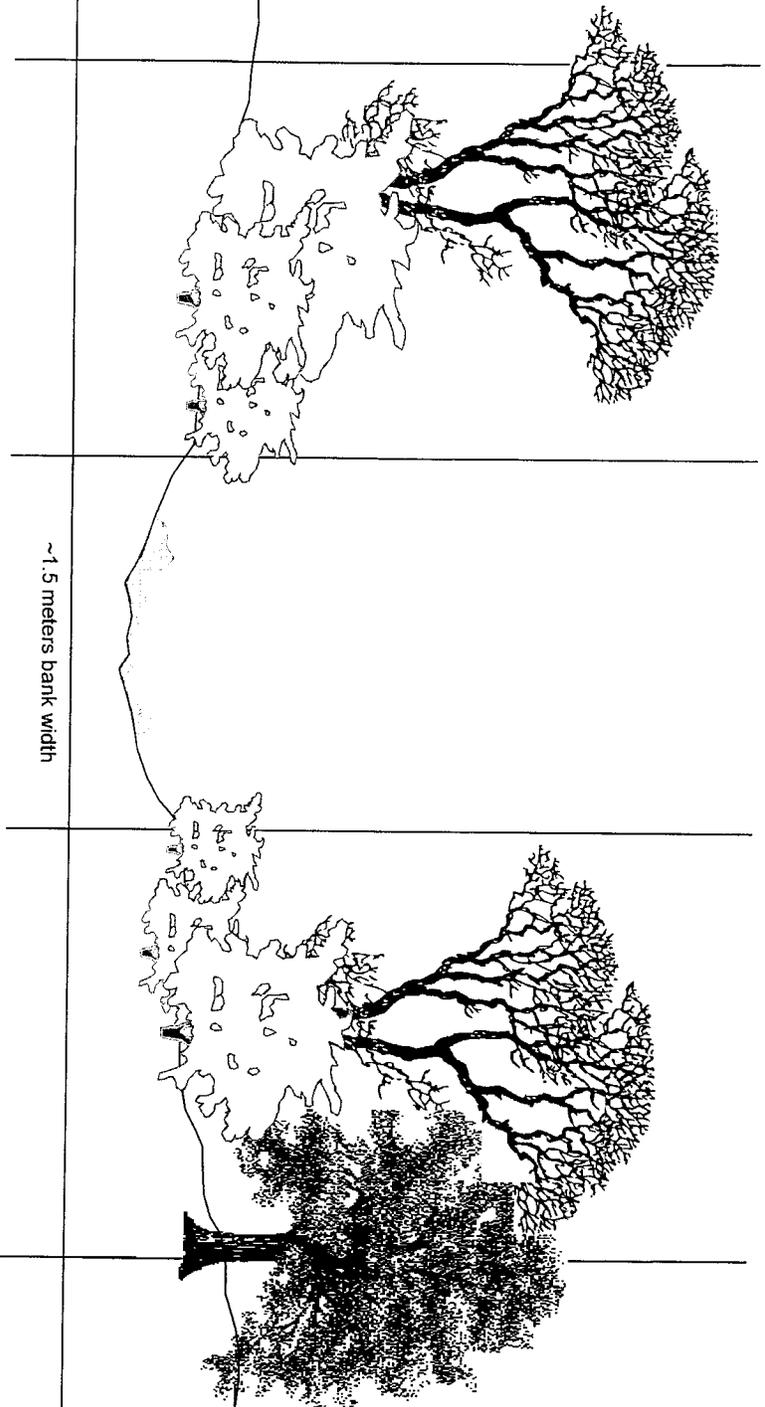
FIGURE 8
Mitigation Schematic Map

Oberer Land Developers, LLC
Yankee and Social Row Road
Miamisburg, Montgomery Co., Ohio

KEI Project No.: 21564-3

Prepared By	No.	Date
CAF	00	April 22, 2008

Figure 6 of 6



9341 Seward Road
Fairfield, OH 45014

FIGURE 11
STREAM MITIGATION CROSS SECTION
(2008)

Oberer Land Developers Ltd.
Yankee and Social Row Road
Centerville, Montgomery Co., Ohio

KEI Project No: 21564-3

Prepared By No. Date

CAF 00 May 28, 2008