

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

# Public Notice

In reply refer to Public Notice No.  
**200300426**

Issuance Date: **May 1, 2006**

Stream:

Closing Date: **May 31, 2006**

**Ewing 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.

**APPLICANT:** DBI Land Company, LLC  
Mr. Tim Rini  
1537 Brice Road  
Reynoldsburg, Ohio 43068

**LOCATION:** The project area is located in unnamed tributaries of and wetlands adjacent to Ewing Run. The 117 acre site is located east of State Route 188 and north of Pleasant Road in Lancaster, Fairfield County, Ohio.

**DESCRIPTION OF PROPOSED WORK:** The applicant has requested an After-The-Fact Permit to authorize completed and proposed activities in association with the construction of a residential development. According to the applicant, the purpose of the project is to construct a subdivision of single family homes.

The applicant has placed fill material into 146 linear feet of perennial stream and 340 linear feet of intermittent stream in association with the construction of internal access roads. The applicant requests authorization to impact an additional 139 linear feet of stream in association with an additional internal road crossing and 0.08 acre of wetlands in association with lot development.

Remaining waters of the United States on-site total 4,145 linear feet of perennial stream, 260 linear feet of ephemeral stream and 0.20 acre of jurisdictional wetlands. To compensate for completed and proposed impacts to waters of the United States, the applicant proposes to preserve remaining waters on-site in their natural state in perpetuity. The applicant proposes to place a conservation easement on 1,700 linear feet of Ewing Run and adjacent upland buffers to ensure its protection in perpetuity. Remaining waters on-site, as well as upland buffers, are proposed to be protected through the use of a deed restriction.

As previously described, the work was completed without prior authorization. As required by the rules and regulations governing the Department of the Army permit program, it was determined that since this work does not present an immediate threat to life or property, an after-the-fact application would be accepted and processed. All investigations and legal proceedings will be suspended pending the outcome of the permit review process. This application will be evaluated on its own merits and no consideration will be given to the applicant's unauthorized work activities or prior expenditures.

**ALTERNATIVE ANALYSIS:** A total of 0.08 acre of jurisdictional wetlands would be filled as a result of the proposal. The project does not require access to or siting within the wetlands to fulfill its basic purpose and is considered a non-water dependent activity. The Section 404(b)(1) Guidelines state for non-water dependent activities, practicable alternatives that do not involve wetlands are presumed to be available unless clearly demonstrated otherwise. The applicant is required to provide an alternative analysis that must overcome the presumption prior to receiving authorization for the placement of fill material. A preliminary alternative analysis has been submitted to this office for review.

**ATTACHMENTS:** Plans of the proposed work 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 that certification from the Ohio Environmental Protection Agency.

**HISTORIC & CULTURAL RESOURCES:** The applicant has conducted Phase I and Phase II Archaeological Surveys within the 117 acre site. The results of these surveys have been reviewed by this office and coordinated with the Ohio Historic Preservation Office. It has been determined one eligible historic property is located within the proposed project area and is proposed to be adversely affected in association with construction activities. Pursuant to 36 CFR 800.11(e), the Corps of Engineers, as the lead federal agency for this project, will notify the Advisory Council on Historic Preservation of this proposed adverse effect and invite them to participate in the resolution of these effects. A copy of this public notice will be sent to the Ohio Historic Preservation Office (OHPO) for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

**THREATENED & ENDANGERED SPECIES:** This project is located within the known or historic range of the Indiana bat (Endangered); clubshell mussel (E); eastern massasauga (Candidate).

Habitat that may be suitable for the Indiana bat is located along the on-site stream corridors. The majority of these corridors are proposed to be protected in perpetuity in their natural state through the use of conservation easements and deed restrictions. One wooded stream corridor located in the southeastern portion of the site would be impacted in association with development activities. Based on information provided by the applicant, three trees within this area exhibit suitable habitat for the Indiana bat. Limited tree clearing has occurred in the northern portion of the site in association with the stream crossing that occurred without authorization from this office, as described above. Based on a description of habitat that remains adjacent to this crossing, remaining habitat in this particular portion of the site does not exhibit suitable habitat characteristics. It is expected suitable habitat would not have occurred in that area which has been affected by clearing activities. Based on the proposed avoidance of impacts to the majority of forested areas on-site, and because impacts to suitable habitat trees have been minimized to a total of three trees, it has been determined this proposal is not likely to adversely affect the Indiana bat.

Based on project location and the lack of suitable habitat for the clubshell mussel and the eastern massasauga, it has been determined this project would have no affect on these species.

This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

**PUBLIC INTEREST:** Any person who has an interest, which 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, which 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; among 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. Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

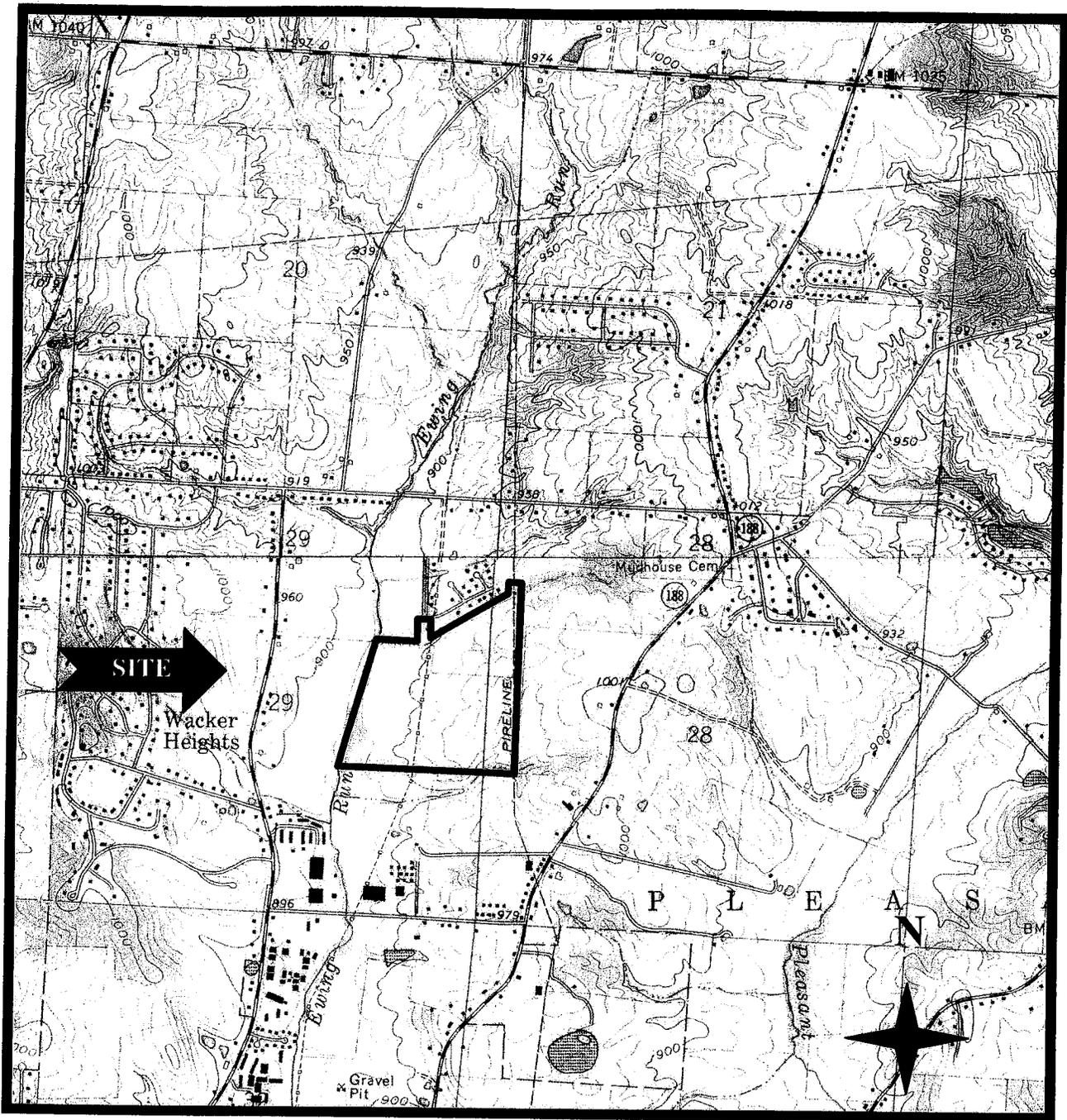
U.S. Army Corps of Engineers  
ATTN: CELRH-OR-F Public Notice No. 200300426  
502 8<sup>th</sup> Street  
Huntington, West Virginia 25701-2070

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 call Ms. Desiree L. Hann of the North Regulatory Section at 304-399-5210.

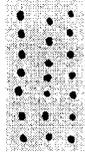
  
Ginger Mullins  
Chief, Regulatory Branch

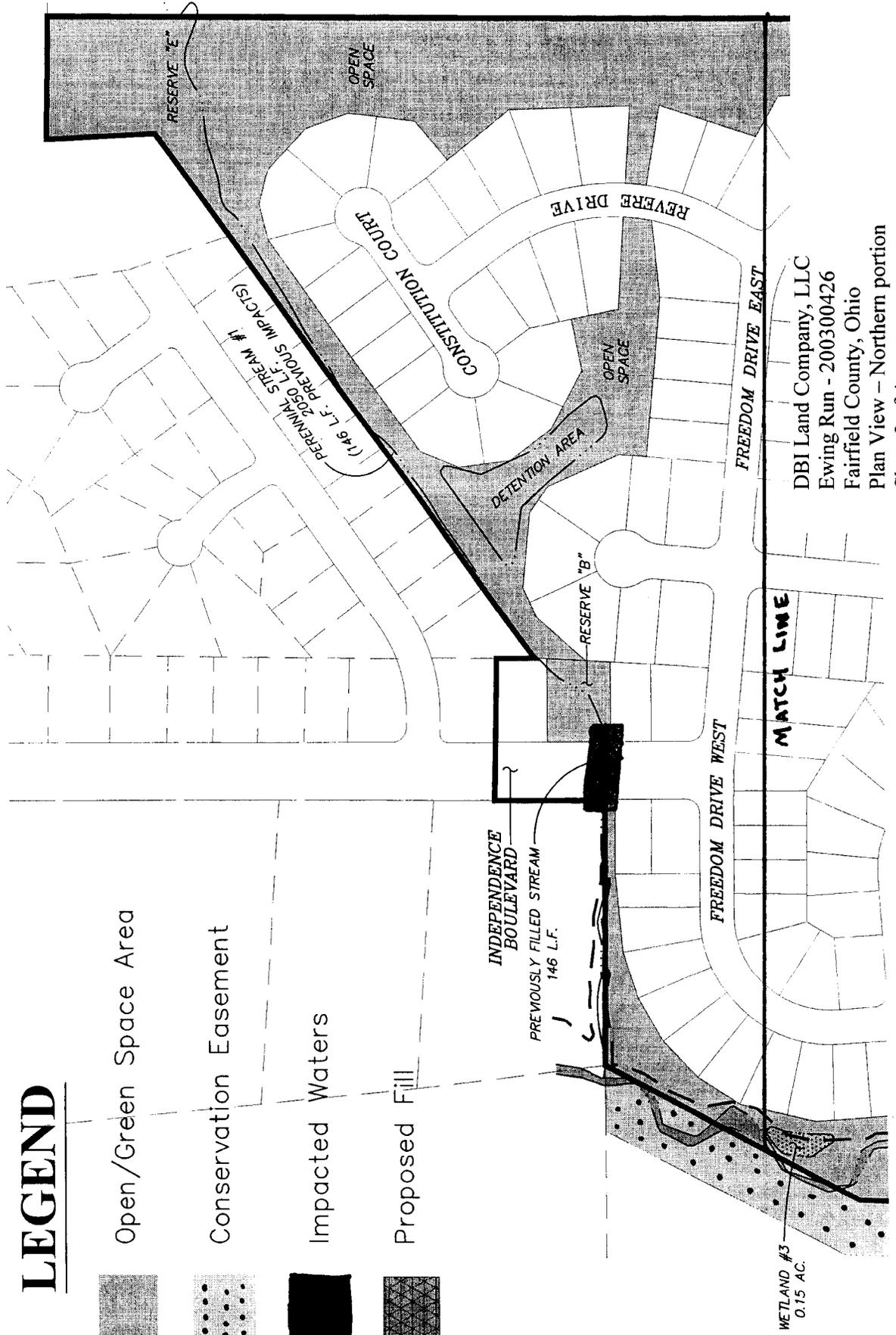
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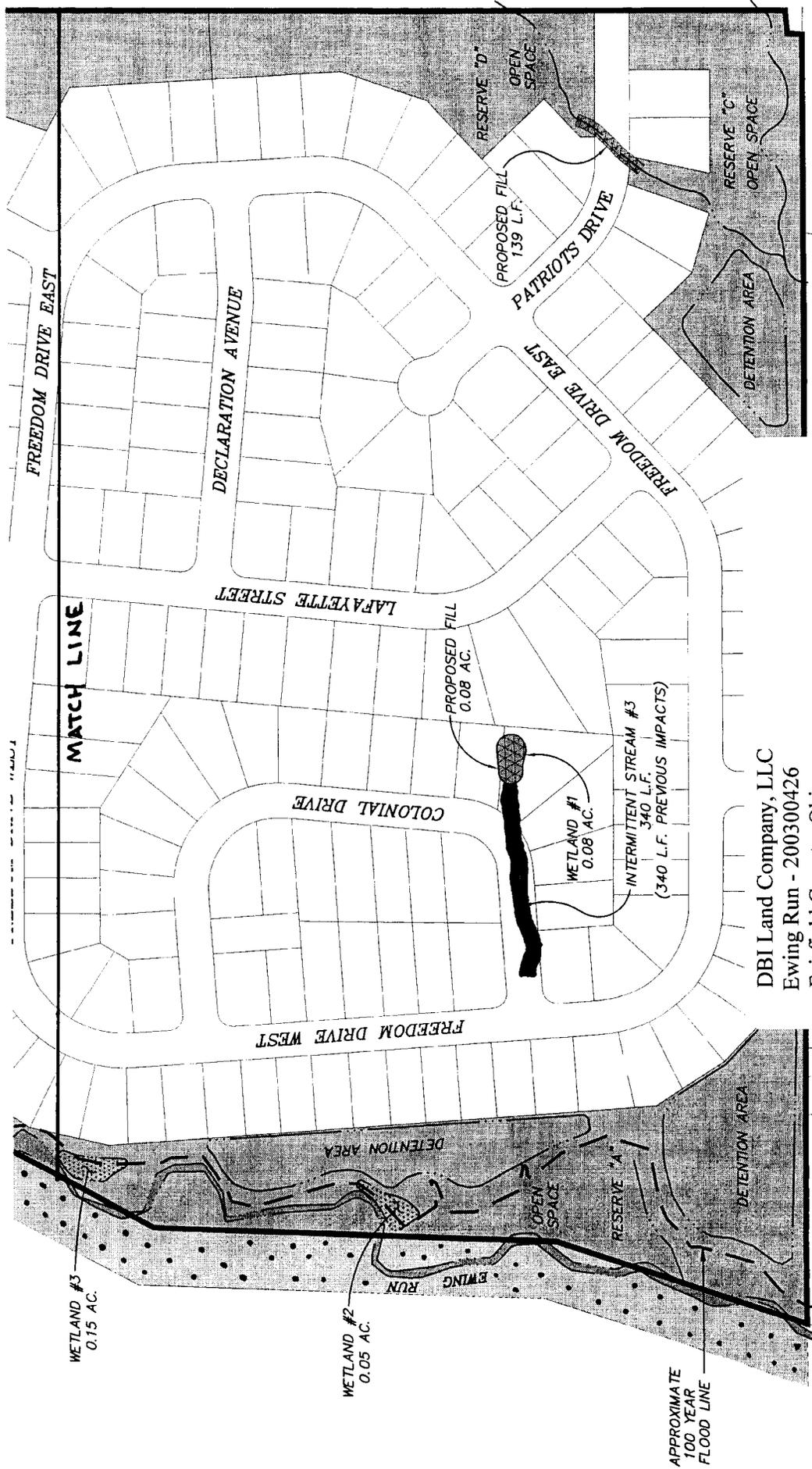
**FIGURE 2**  
 USGS Topographical Map  
 1"=2000'  
 Baltimore, Ohio (Photinspected 1987)  
 Lancaster, Ohio (Photorevised 1985)

# LEGEND

-  Open/Green Space Area
-  Conservation Easement
-  Impacted Waters
-  Proposed Fill



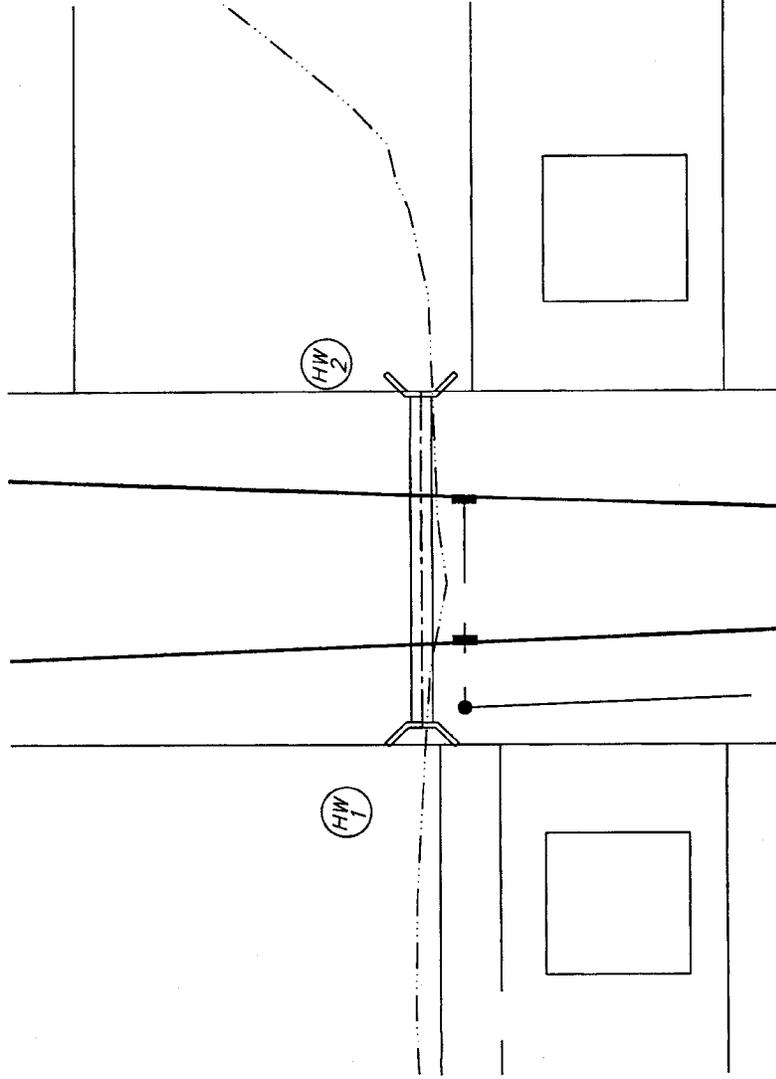
DBI Land Company, LLC  
 Ewing Run - 200300426  
 Fairfield County, Ohio  
 Plan View - Northern portion  
 Sheet 2 of 4



DBI Land Company, LLC  
 Ewing Run - 200300426  
 Fairfield County, Ohio  
 Plan View - Southern portion  
 Sheet 3 of 4

**Brentwood Subdivision  
City of Lancaster  
Fairfield County, Ohio**

Independence Boulevard  
Stream 1



1:50

Owner/Developer  
D.B.I Land Co. L.L.C.  
1537 Brice Road  
Reynoldsburg, Ohio  
43068

DBI Land Company, LLC  
Ewing Run - 200300426  
Fairfield County, Ohio  
Cross-Section view  
Sheet 4 of 4



Cross Section of Stream Crossing

