



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

Public Notice

In reply refer to Public Notice No.
200600509

Issuance Date: July 18, 2006

Stream:

Closing Date: August 17, 2006

Unnamed Tributary to Dry 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: Bear Creek Capital, LLC
9549 Montgomery Road, 3rd Floor
Cincinnati, Ohio 45242

LOCATION: The proposed project is located on an unnamed tributary to Dry Run within a 24.5-acre site just east of State Route 48 and south of Interstate 71 in South Lebanon, Warren County, Ohio. Approximately 0.5 mile south of the site, Dry Run flows into Turtle Creek, just upstream of Turtle Creek's confluence with the Little Miami River, a Section 10 navigable water of the U.S.

DESCRIPTION OF PROPOSED WORK: The applicant proposes to place fill material in waters of the United States to facilitate the construction of a commercial development consisting of a supermarket, retail outlots, and associated access roads and parking. To facilitate the construction of this development, the applicant proposes to impact 1,350 linear feet of an unnamed intermittent tributary to Dry Run. The existing stream enters the site from a culvert beneath State Route 48 at the northwestern property boundary. The applicant proposes to intercept this stream at this location and convey the flow through an estimated 800 linear feet of culvert proposed to run along the northern property boundary. This culvert would discharge into an open channel constructed with a meandering stream design. The flow would be conveyed through the proposed channel for approximately 640 linear feet and then filtered through a detention basin prior to its discharge to an unnamed tributary to Dry Run. The existing 1,350-foot stream channel would be filled with an estimated 1,750 cubic yards of native soil fill material from onsite earthwork.

MITIGATION PLAN: To offset intermittent stream impacts associated with the project, the applicant proposes both onsite and offsite mitigation. Approximately 640 linear feet of new stream channel would be constructed onsite incorporating a naturalized stream channel design with riffles and pools and a vegetated buffer. Offsite mitigation is proposed downstream of the project site, along about 1,300 linear feet of Dry Run and 300 linear feet of Turtle Creek downstream of its confluence with Dry Run. The applicant has submitted a conceptual mitigation plan involving the restoration and preservation of the above mentioned 1,600 linear feet of perennial stream. The proposal includes the removal of trash and debris, the planting of native shrubs and trees, implementation of erosion control measures, and the placement of a conservation easement or deed restriction of a 40 to 50-foot corridor along the 1,600-foot reach. The streams and vegetated buffers would be protected in perpetuity. It is noted that this proposed mitigation is open to comment and subject to change. The Corps will make a determination of appropriate mitigation upon review of all submitted information.

Plans of the proposal 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 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 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 has determined that the project is not likely to 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.

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:

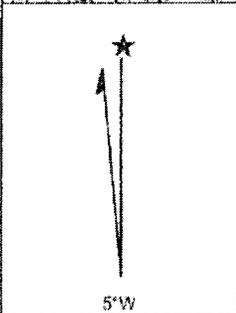
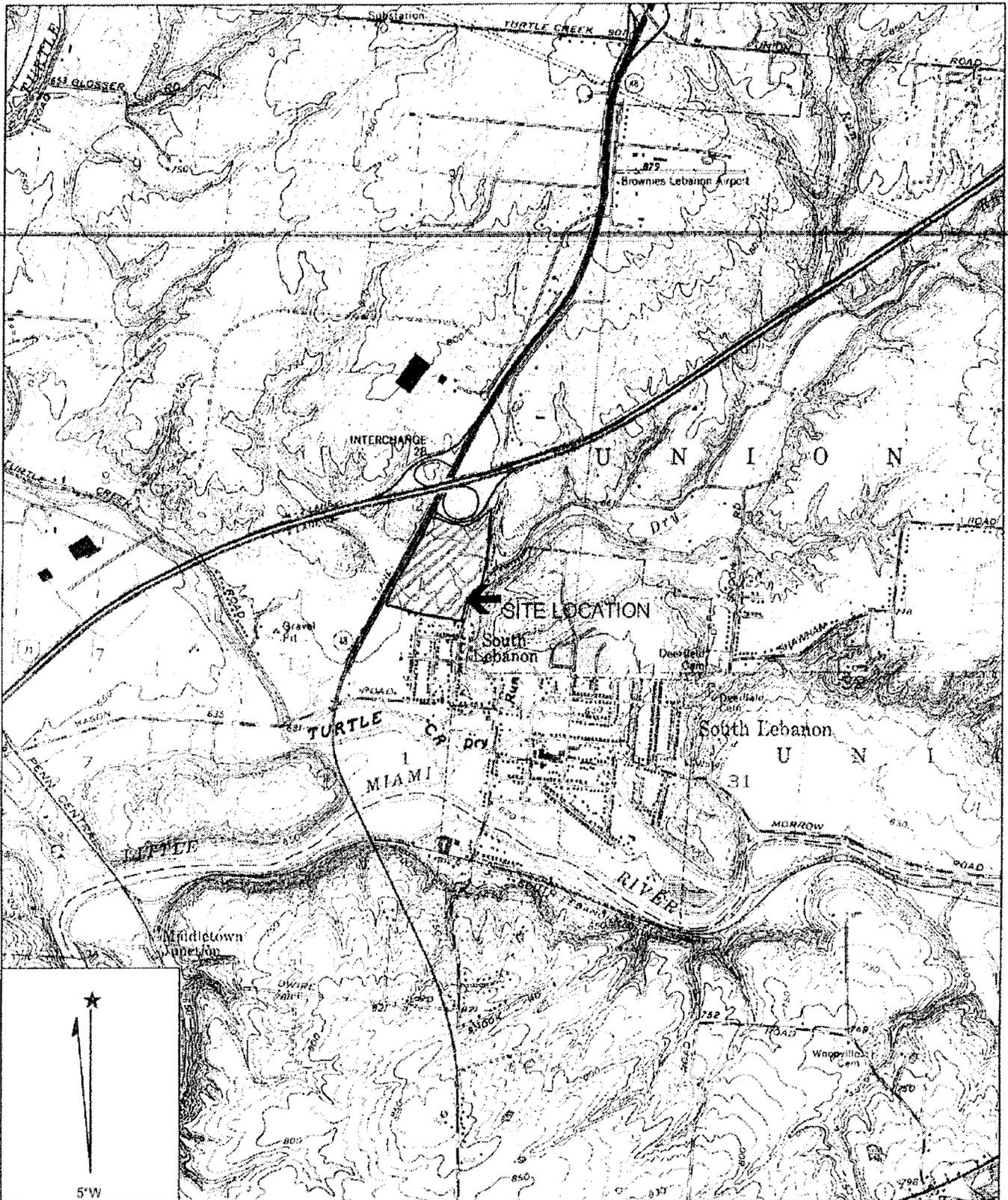
Ms. Denise Marmer, Project Manager
U. S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-FN Public Notice No. 200600509
502 Eighth Street
Huntington, West Virginia 25701-2070

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.



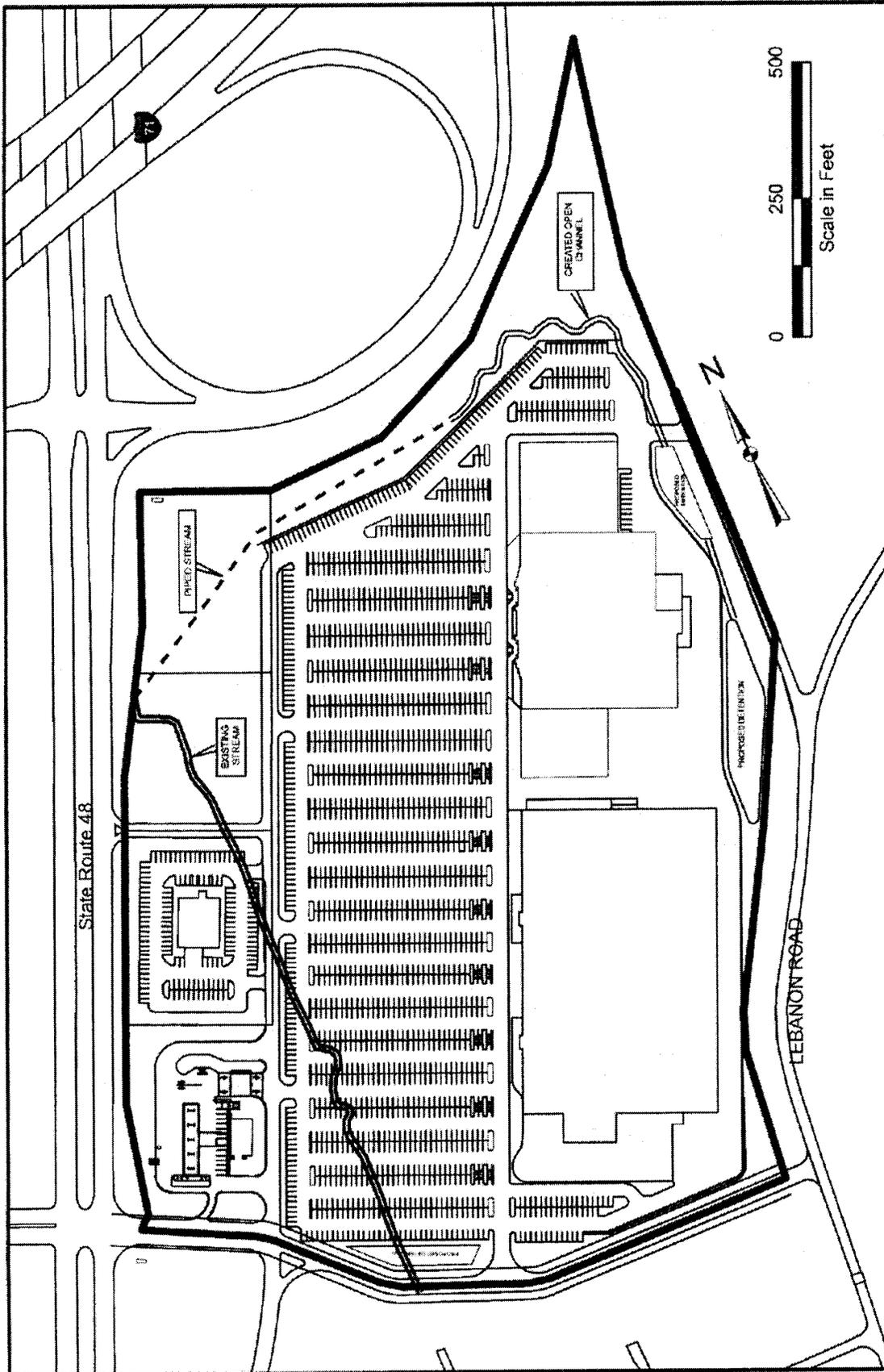
Ginger Mullins
Chief, Regulatory Branch

(L)



Name: LEBANON
 Date: 3/7/2006
 Scale: 1 inch equals 2000 feet

Location: 039°22' 41.0" N 084° 12' 59.5" W
 Caption: FIGURE 1: SITE LOCATION MAP
 S. Lebanon, Warren Co., OH
 Project Number: 21218305

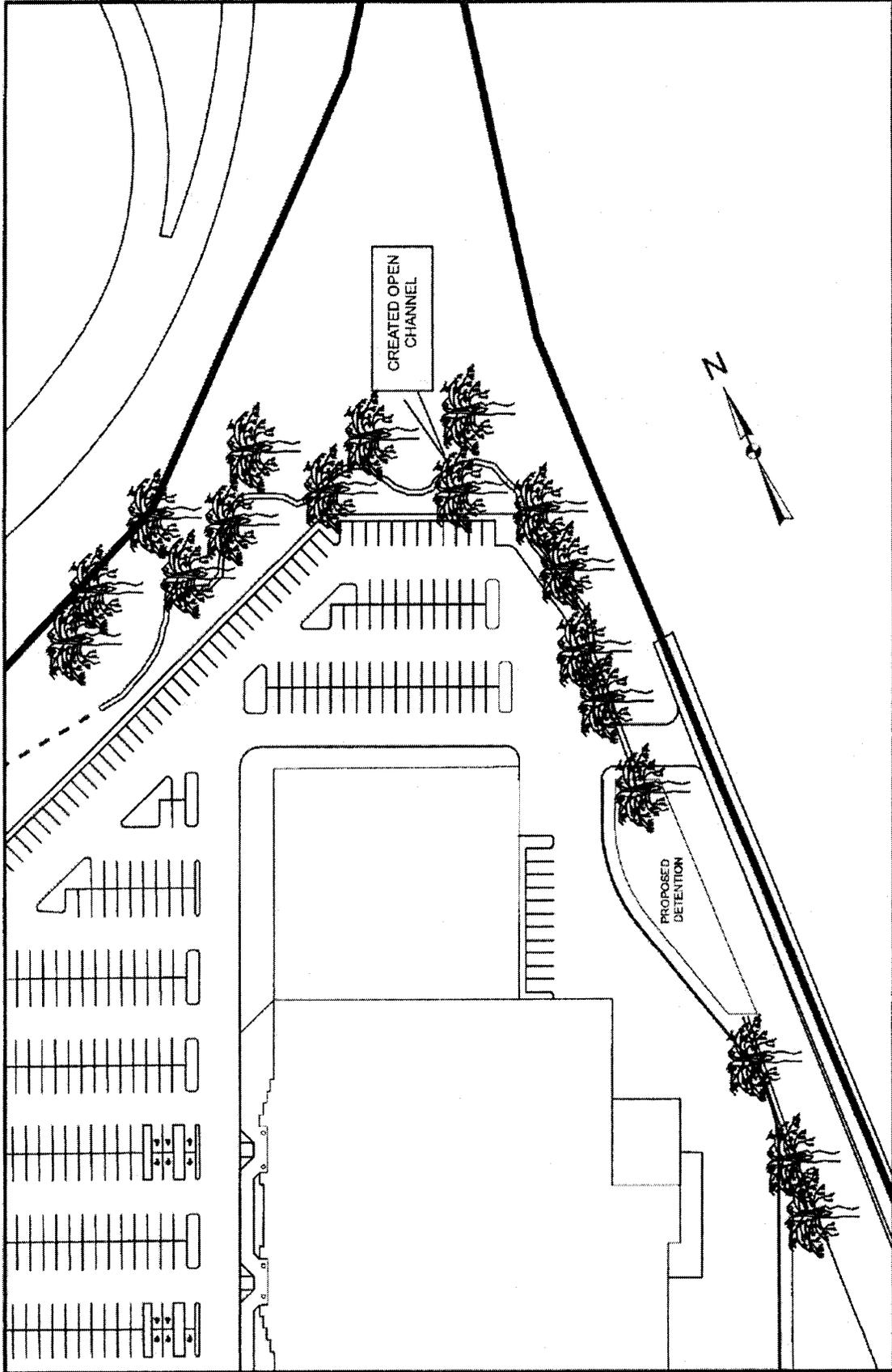


Legend

- Property Boundary
- Mitigation Stream
- Stream
- Pipe

NOTES:
 ALL LOCATIONS ARE APPROXIMATE
 AND SUBJECT TO CHANGE
 ORIGINAL DRAWING: Civ. & Environmental
 Consultants, Inc. (2006)

FIGURE 2
PROPOSED ALTERNATIVE SITE FOOTPRINT
 Bear Creek Capital, LLC
 Rivers Crossing I
 South Lebanon, Warren County, Ohio
 Project Number: 21218305 May 2006



Legend

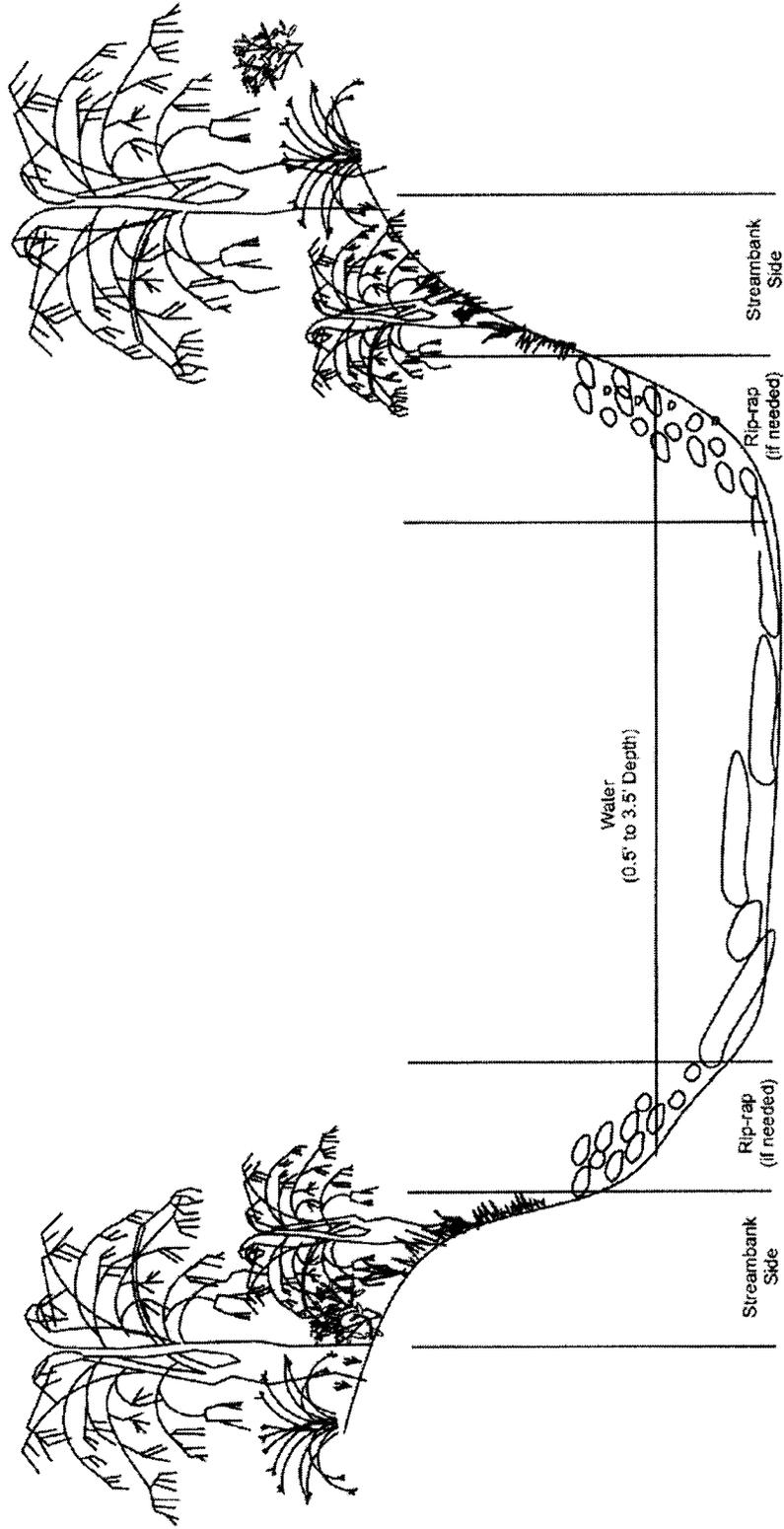
-  Property Boundary
-  On-Site Mitigation Stream



NOTES:
 ALL LOCATIONS ARE APPROXIMATE
 AND NOT TO SCALE.
 CONSULT DRAWING: C&E & Environmentals
 Consultants, Inc. (2005)



**FIGURE 3:
 PROPOSED ON-SITE MITIGATION CHANNEL**
 Bear Creek Capital, LLC
 Rivers Crossing I
 South Lebanon, Warren County, Ohio
 Project Number: 21218305
 May 2006



Legend



Riparian Vegetation



Rock

NOTES
 NOT TO SCALE
 ALLOCATIONS ARE APPROXIMATE
 AND SUBJECT TO CHANGE



FIGURE 4 of 4
STREAM MITIGATION CROSS SECTION

Bear Creek Capital, LLC
 Rivers Crossing I
 South Lebanon, Warren County, Ohio
 Project Number: 21218305
 May 2008