



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

Public Notice

In reply refer to Public Notice No.

199800017

Issuance Date:

07 September 2006

Stream:

U/T Mud Brook Creek

Closing Date:

10 October 2006

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: Timberidge Enterprises, Limited
5595 Massillon Road
North Canton, Ohio 44720

LOCATION: The proposed project is sited within an unnamed tributary to Mud Brook Creek and wetlands adjacent to this tributary, within a 37.784-acre site located south of Portage Street in Massillon, Stark County, Ohio. A project location map is attached as Sheet 1.

DESCRIPTION OF PROPOSED WORK: The applicant has requested a Department of the Army Permit for unauthorized and proposed discharges of dredged or fill material into waters of the United States (U.S.) in conjunction the construction of a residential development referred to as Wexford Estates. Investigations performed on behalf of the applicant in 1998 indicated the 37.784-acre site contained two jurisdictional streams (Stream 1 and Stream 2) and 7.784 acres of wetland. Under Nationwide Permit #26 (NWP #26) verification (199800017 – U/T Mud Brook Creek), the applicant was authorized to impact 1.493 acres (ac) of wetland within the site to facilitate the construction of a 41-lot residential development. Under this authorization, the remaining 6.291 ac of wetland within the site were to be preserved. The NWP #26 verification did not authorize impacts to Stream 1 or Stream 2. The previously identified stream and wetland areas and the areas of impact authorized under NWP #26 are shown on the attached Sheet 2.

This office conducted a compliance inspection for this site in June 2005 and determined wetlands within the development had been filled after the expiration date of NWP #26. This office also determined wetland areas within the site had been filled beyond the limits of the NWP #26 authorization and further determined construction of the development had included unauthorized stream impacts. Through our August 9, 2005 letter, this office issued a cease and desist order requesting the applicant cease all fill activities within waters of the US.

In response to this letter, the applicant submitted a wetland delineation for a 16-ac portion of the development. (The delineation was limited to the eastern portion of the development given the only wetland area within the western portion of the site had been filled as authorized under NWP #26. The 16-ac area contained all of the wetland preservation areas established under the NWP #26 authorization.) This delineation confirmed wetland areas within the eastern portion of the site were filled beyond the limits of the NWP #26 authorization. The delineation also indicated additional wetland areas have developed within the site. Upon submission of this information, this office has determined the site currently contains 4.01 ac of wetland and 1,605 linear feet (lf) of one stream. These areas are shown on the attached Sheet 3.

Based on this information, this office has determined construction activities within the site have resulted in unauthorized impacts to 2.21 ac of wetland. This office has further determined Stream 1 has been impacted (culverted) for its entire length within the site. Additionally, roadway construction within the development has included the installation of a culverted crossing within Stream 2. This office has determined the unauthorized impacts have resulted in 820 lf of Stream 1 and Stream 2. The areas of unauthorized wetland and stream impact are shown on the attached Sheet 4.

The applicant has submitted a wetland restoration plan for 1.28 ac of wetland as described below. Given this restoration plan would not resolve all of the unauthorized wetland and stream impacts, the applicant has also submitted an after-the-fact (ATF) permit application. The applicant's permit application also includes a request for authorization for impacts to an additional 1.08 ac of wetland associated with the development of seven vacant lots within the site.

As previously described, work within waters of the US has been 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 ATF 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.

Restoration: The applicant proposes to restore three areas of unauthorized wetland impact within lots 17, 23, 24, 27, and 28. The proposed restoration areas are shown on the attached Sheet 5.

Mitigation: As mitigation for the unauthorized wetland and stream impacts and as mitigation for the proposed wetland impacts, the applicant has submitted a conceptual mitigation plan describing on-site preservation measures and off-site mitigation options. This conceptual plan indicates the applicant proposes to preserve 4.25 ac of wetland within the site. The preserved wetlands would include the restored wetland areas described above. The proposed preservation areas are shown on the attached Sheet 6.

For additional mitigation credit, the conceptual plan indicates the applicant is currently evaluating several off-site mitigation options. The plan indicates the applicant is considering the purchase of wetland credit from the Little Scioto Wetland Mitigation Bank. The plan also states the applicant is considering wetland restoration activities within a site located north of the subject development, wetland restoration activities within a 13-acre site in Tuscarawas County, and/or wetland restoration within a 30-acre site adjacent to Nimishillen Creek. The conceptual mitigation plan does not include the amount of the proposed mitigation bank purchase or any additional details or mapping for the proposed wetland restoration areas.

As mitigation for the unauthorized stream impacts, the conceptual mitigation plan indicates the applicant will attempt to identify stream enhancement projects involving a minimum of 820 lf of stream within one or more of the above identified wetland restoration sites. Enhancement measures proposed by the applicant include sediment removal and/or bank stabilization measures.

Alternatives Analysis: Construction of the proposal has included the authorized impacts to 1.493 acres of wetland and the unauthorized impacts to 2.21 ac of wetland. The applicant also proposed to fill an additional 1.08 ac of wetland to complete site development. Construction of the proposal does not require access to or siting within wetlands to fulfill its basic purpose

and is considered a non-water dependent activity. The Section 404(b)(1) Guidelines state that for non-water dependent activities, practicable alternatives that do not involve wetlands are presumed to be available unless clearly demonstrated otherwise. All practicable alternatives not involving such discharges into special aquatic sites are presumed to have less adverse impacts to the aquatic system. The applicant is required to provide an alternative analysis that must overcome the presumption prior to receiving authorization for the placement of fill material. To date, the applicant has not provided the required alternatives. This office will be requesting the applicant prepare this information and submit it to our office for review.

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: In accordance with NWP #26 evaluation procedures, a copy of the applicant's original application was provided to the Ohio Historic Preservation Office (OHPO) by facsimile on April 28, 1998. Notification procedures in place at that time afforded this agency five days to provide comments on the proposal. No comments from the OHPO were received within this timeframe; therefore this office completed our evaluation of the proposal and determined the project met the criteria for authorization under NWP #26.

Through letter dated June 5, 1998, the OHPO stated a check of their records showed no archaeological surveys have been performed within the project area. The OHPO noted a number of archaeological sites had been identified approximately one mile east and south of the proposed project area. Based on the proximity of the identified sites within similar topography, OHPO indicated they expect archaeological sites would be located within the project area. OHPO recommended a preliminarily archaeological survey be performed within the site.

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. The comments OHPO previously provided for this project will be considered during evaluation of the current application. A copy of this public notice will also 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: A fax copy of the applicant's original application was also provided to the United States Fish and Wildlife Service (Service) on April 28, 1998. This agency was also afforded five days to provide comments on the proposal. No comments from the Service were received within this timeframe; therefore this office completed our evaluation of the proposal and determined the project met the criteria for authorization under NWP #26.

Through letter dated May 12, 1998, the Service indicated the proposed project lies within the range of the Indiana bat. Through this letter, the Service recommended potential roost trees for this species not be cut between April 15 and September 15.

This project is located within the known or historic range of the Indiana bat (endangered), Bald eagle (threatened) and the Eastern massasauga (proposed candidate species). Construction of the proposal would include tree removal. Given this information and the comments the Service previously submitted, provided the applicant does not clear suitable habitat for the Indiana bat during the designated roosting period of April 15th to September 15th, this office has preliminarily determined implementation of the proposal may affect, but would not adversely affect the Indiana bat. Given the location of the site, no effects to the bald eagle or eastern massasauga are anticipated.

This public notice serves as a request to the U.S. 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: 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.

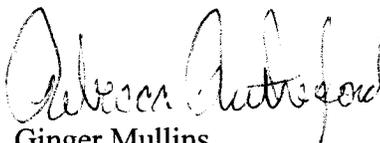
The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the

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.

Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

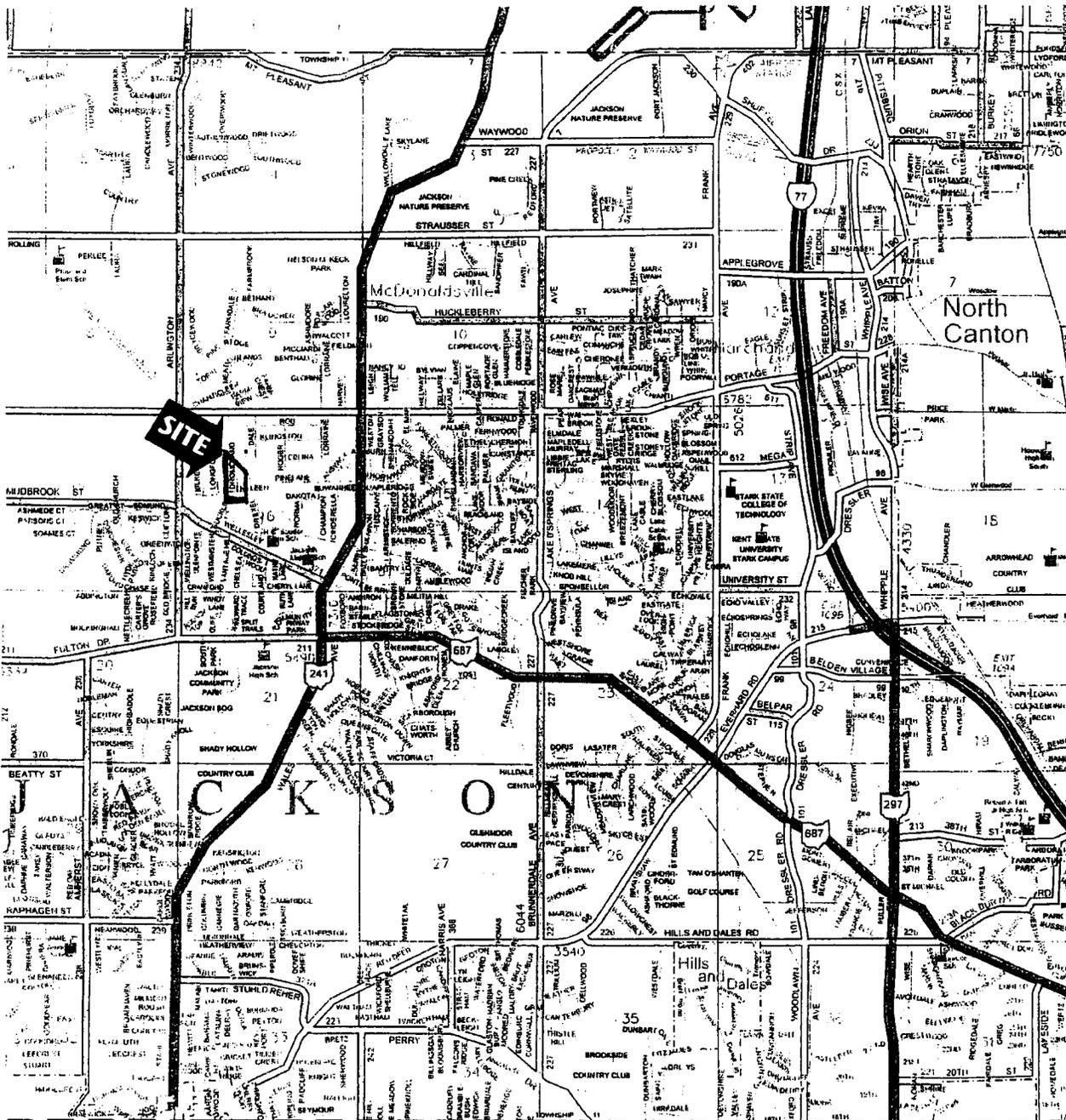
U.S. Army Corps of Engineers
ATTN: CELRH-OR-F Public Notice No. 199800017
502 8th Street
Huntington, West Virginia 25701-2070

If you have any questions concerning this public notice, please call Ms. Susan A. Fields of my staff at 304-399-5210.


for
Ginger Mullins
Chief, Regulatory Branch

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Vicinity Map Attachment "A"



N.W. ¼, SECTION 16
JACKSON TOWNSHIP
STARK, COUNTY, OHIO

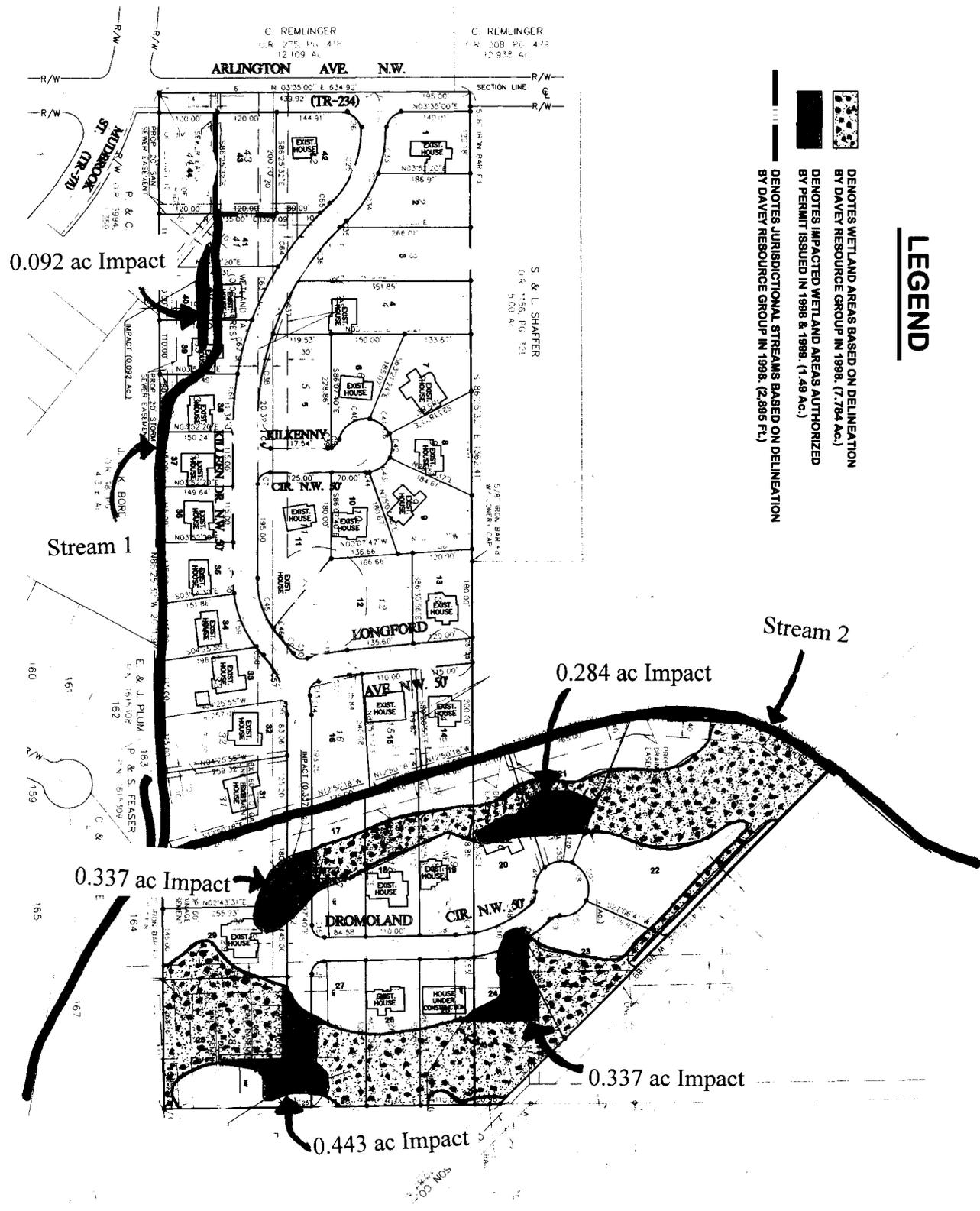
Blocks 16 & 17
Project: Wexford Estates
Applicant: Timberidge Enterprises

HAMMONTREE & ASSOCIATES, LIMITED
CONSULTING ENGINEERING & SURVEYING

Timberidge Enterprises – Wexford Estates
199800017 – U/T Mud Brook Creek
Stark County, Ohio
Site Location Map, Sheet 1 of 6

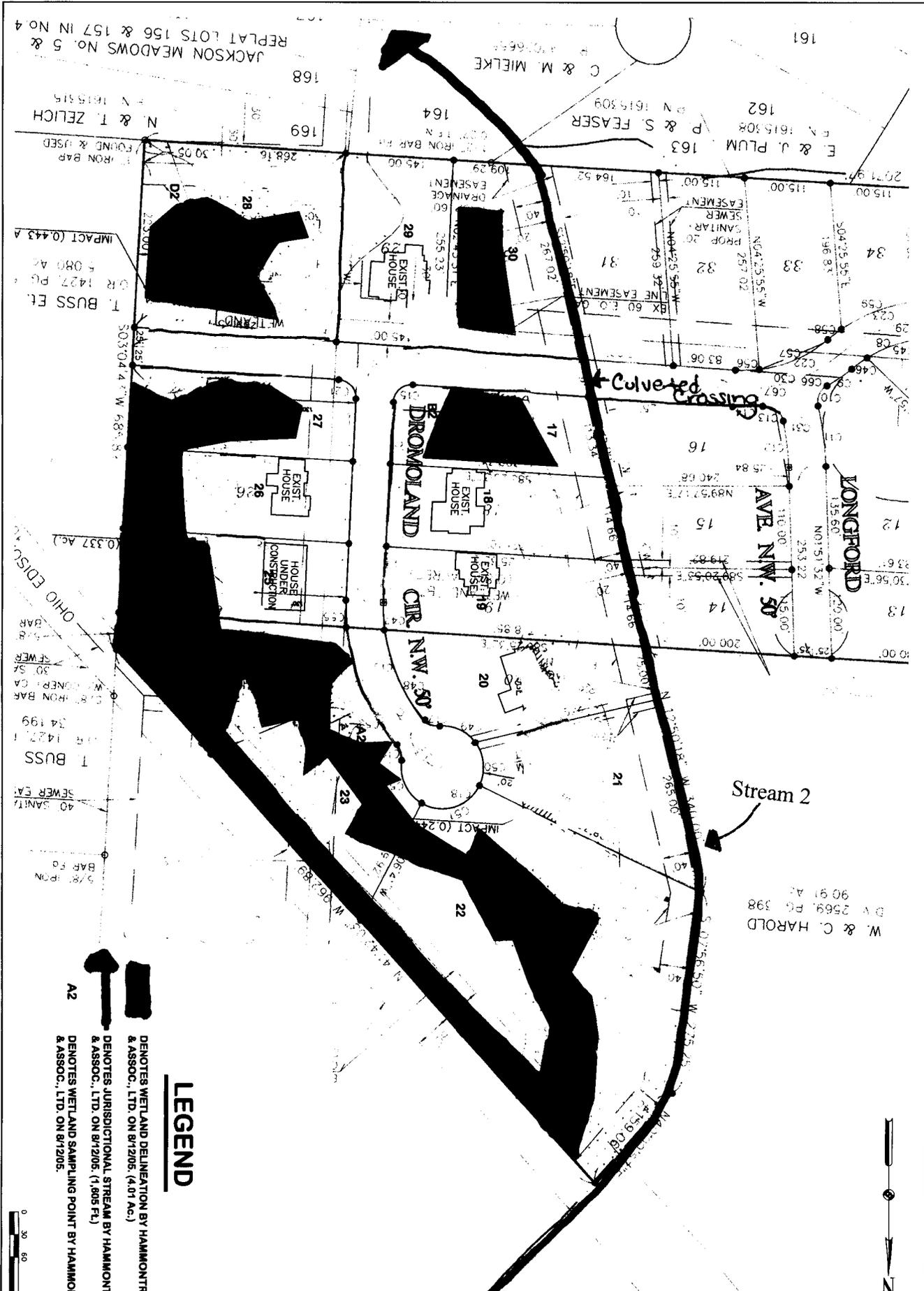
LEGEND

-  DENOTES WETLAND AREAS BASED ON DELINEATION BY DAVEY RESOURCE GROUP IN 1998. (7,784 Ac.)
-  DENOTES IMPACTED WETLAND AREAS AUTHORIZED BY PERMIT ISSUED IN 1988 & 1989. (1.48 Ac.)
-  DENOTES JURISDICTIONAL STREAMS BASED ON DELINEATION BY DAVEY RESOURCE GROUP IN 1998. (2,895 Ft.)



	JURISDICTIONAL DELINEATION & IMPACT MAP WEXFORD ESTATES - 37,784 Ac. FOR: O'BRIEN PACKAGING INC. LOCATED IN N.W. QTR., SECTION 16 JACKSON TWP., STARK COUNTY, OHIO		DESH. BY: _____ CHKD. BY: BS DRAWN BY: LTM RWVD. BY: _____ F.B. PAGE: _____ COPYRIGHT: 2004 DATE: 8/1/08 <small>© WEXFORD ENTERPRISES, WEXFORD ESTATES</small>	REV. BY: _____ DATE: _____ REV. BY: _____ DATE: _____ REV. BY: _____ DATE: _____ REV. BY: _____ DATE: _____
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Timberridge Enterprises – Wexford Estates
 199800017 – U/T Mud Brook Creek
 Stark County, Ohio
 Wetland & Stream Areas Identified in 1998 & Wetland
 Impacts Auth. under NWP #26, Sheet 2 of 6

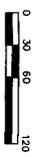


LEGEND

DENOTES WETLAND DELINEATION BY HAMMONTREE & ASSOC., LTD. ON 8/12/05 (4.01 Ac.)

DENOTES JURISDICTIONAL STREAM BY HAMMONTREE & ASSOC., LTD. ON 8/12/05 (1,895 FL.)

DENOTES WETLAND SAMPLING POINT BY HAMMONTREE & ASSOC., LTD. ON 8/12/05.



	JURISDICTIONAL DELINEATION & IMPACT MAP WEXFORD ESTATES FOR: O'BRIEN PACKAGING INC. LOCATED IN N.W. QTR., SECTION 16 JACKSON TWP., STARK COUNTY, OHIO			
	DESIGN BY: _____	CHKD. BY: BRE	REV. BY: _____	DATE: _____
	DRAWN BY: DM	RWD. BY: _____	REV. BY: _____	DATE: _____
	F.B. PAGE: _____		REV. BY: _____	DATE: _____
	COPYRIGHT: 2004	DATE: 8/1/06	REV. BY: _____	DATE: _____

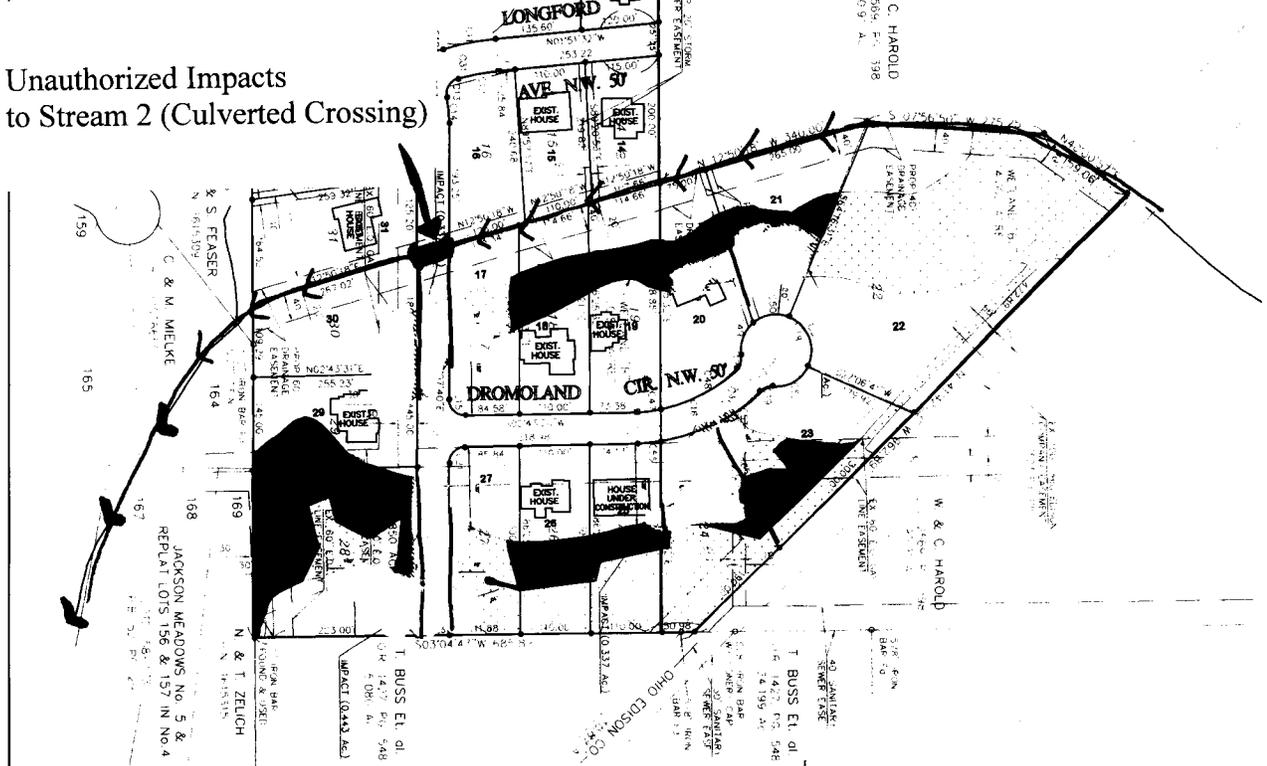
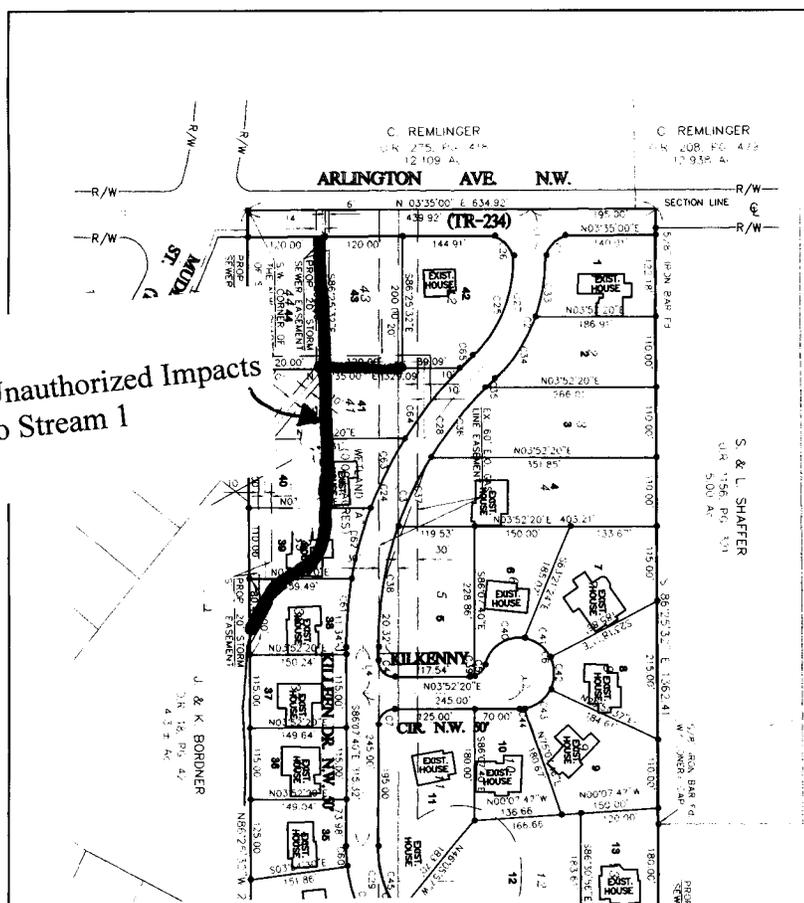
Timberidge Enterprises – Wexford Estates
 199800017 – U/T Mud Brook Creek
 Stark County, Ohio
 Wetland & Stream Areas Identified in 2005
 Sheet 3 of 6

LEGEND

-  DENOTES IMPACTED WETLAND AREAS UNAUTHORIZED BY ANY PERMIT PRIOR TO 8/1/05. (2.21 Ac.)
-  DENOTES IMPACTED JURISDICTIONAL STREAMS UNAUTHORIZED BY ANY PERMIT PRIOR TO 8/1/05. (820 Ft.)

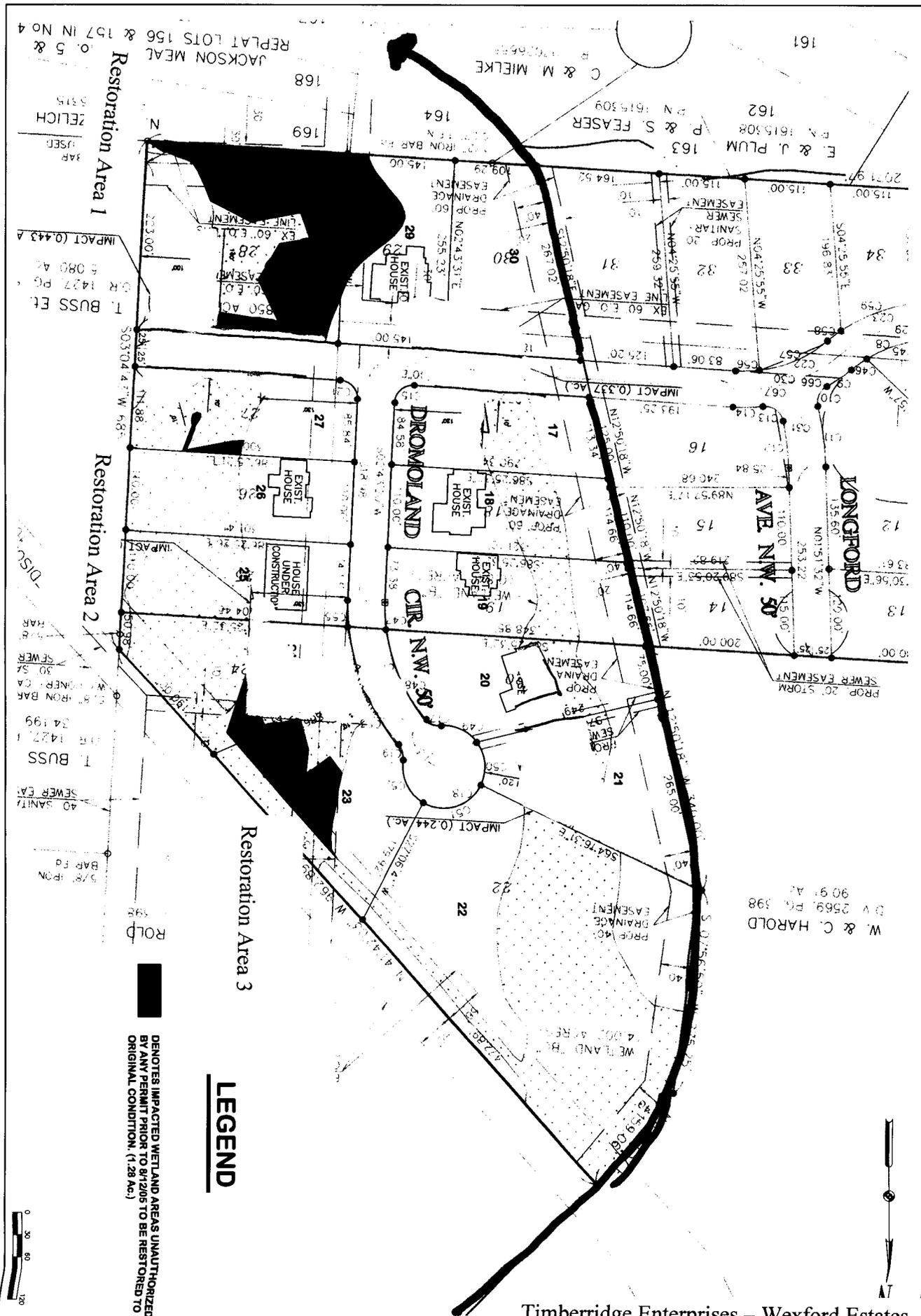
Unauthorized Impacts to Stream 1

Unauthorized Impacts to Stream 2 (Culverted Crossing)



	UNAUTHORIZED IMPACT MAP		DESIGN BY: <u>CHD</u>	REV. BY: _____ DATE: _____
	WEXFORD ESTATES - 37.784 Ac.		DRAWN BY: <u>DM</u>	REV. BY: _____ DATE: _____
	FOR: O'BRIEN PACKAGING INC.		F.B. _____ PAGE: _____	REV. BY: _____ DATE: _____
	LOCATED IN N.W. QTR., SECTION 16 JACKSON TWP., STARK COUNTY, OHIO		COPYRIGHT: 2004 DATE: 6/1/08	REV. BY: _____ DATE: _____

Timberidge Enterprises – Wexford Estates
 199800017 – U/T Mud Brook Creek
 Stark County, Ohio
 Unauthorized Wetland Impact Areas
 Sheet 4 of 6

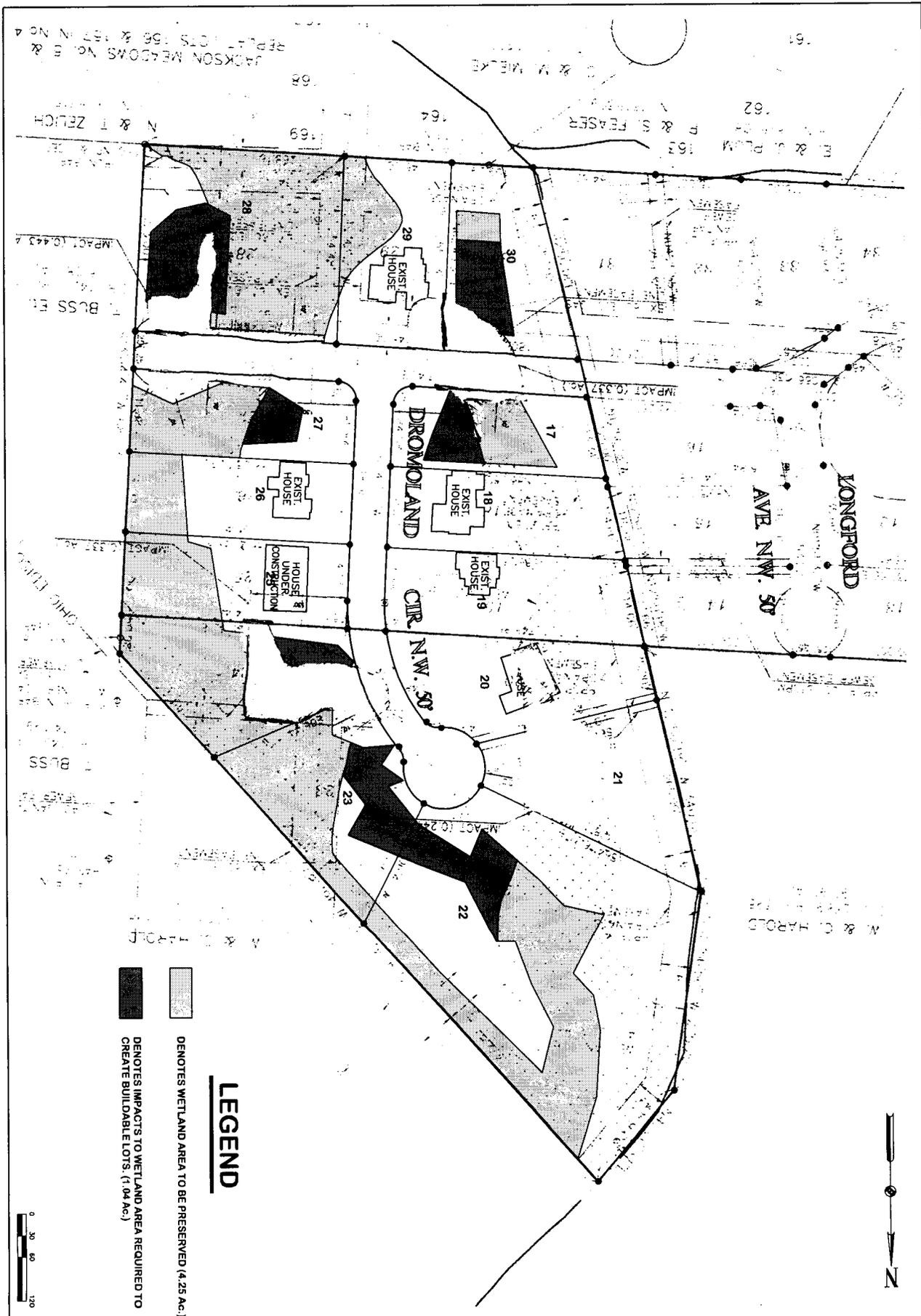


■ DENOTES IMPACTED WETLAND AREAS UNAUTHORIZED BY ANY PERMIT PRIOR TO 8/12/05 TO BE RESTORED TO ORIGINAL CONDITION. (1.28 Ac.)

LEGEND

	RESTORATION PLAN			
	WEXFORD ESTATES			
	FOR: O'BRIEN PACKAGING INC.			
	LOCATED IN N.W. QTR., SECTION 16			
	JACKSON TWP., STARK COUNTY, OHIO			
DESIGN: BY: <u>CHKO</u> BY: <u>BRE</u>	DRAWN: BY: <u>DTM</u> RWD: BY: <u> </u>	REV. BY: <u> </u> DATE: <u> </u>		
F.B. PAGE: <u> </u>	COPYRIGHT: 2004 DATE: 8/1/08	REV. BY: <u> </u> DATE: <u> </u>		
SCALE: HORIZ: 1"=40'				

Timberridge Enterprises – Wexford Estates
 199800017 – U/T Mud Brook Creek
 Stark County, Ohio
 Proposed Wetland Restoration Areas
 Sheet 5 of 6



LEGEND

 DENOTES WETLAND AREA TO BE PRESERVED (4.25 AC.)
 DENOTES IMPACTS TO WETLAND AREA REQUIRED TO CREATE BUILDABLE LOTS (1.04 AC.)

	FINAL DEVELOPMENT PLAN		DESIGN BY: _____	CHKD. BY: SM	REV. BY: _____	DATE: _____	
	WEXFORD ESTATES		DRWN. BY: DTM	RVWD. BY: _____	REV. BY: _____	DATE: _____	
	FOR: O'BRIEN PACKAGING INC.		F.B. PAGE: _____	REV. BY: _____	DATE: _____	REV. BY: _____	DATE: _____
	LOCATED IN N.W. QTR., SECTION 16		COPYRIGHT: 2004 DATE: 6/1/04	REV. BY: _____	DATE: _____	REV. BY: _____	DATE: _____
	JACKSON TWP., STARK COUNTY, OHIO		SCALE: HORIZONTAL: 1"=40'	REV. BY: DTM	DATE: 8/30/06	REV. BY: _____	DATE: _____

Timberridge Enterprises – Wexford Estates
 19980017 – U/T Mud Brook Creek
 Stark County, Ohio
 Proposed Preservation Areas
 Sheet 6 of 6