Public Notice

U S Army Corps of Engineers
Huntington District

In reply refer to Public Notice No.	Issuance Date:
200600845	January 25, 2007
Stream:	Closing Date:
Un Trib Blacklick Creek	February 26, 2007

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 provision 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: Warner Farms, LLC
10039 Hollow Road
Pataskala, OH 43062

LOCATION: The proposed project is located in wetlands adjacent to an unnamed tributary to Blacklick Creek southeast of the intersection of 1-70 and SR-310 in Pataskala, Licking County, Ohio.

DESCRIPTION OF THE PROPOSED WORK: Work in waters of the United States was initiated without authorization from Department of the Army. Approximately 5.66 acres of forested wetland was impacted by mechanized land clearing. The applicant submitted a request for an After-the-Fact (ATF) permit for the placement of dredged or fill material into 5.66 acre of forested wetland for the purpose of constructing a 133 acre commercial retail and distribution park. Approximately thirty-one buildings, associated parking lots and access roads are proposed for the project area. A section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain the certification from the Ohio Environmental Protection Agency.

As required by the rules and regulations governing the Department of the Army permit program, it was determined the work did not present an immediate threat to life or property and an ATF application was accepted. All investigations and legal proceedings will be suspended pending 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 5.66 acres of jurisdictional wetlands would be impacted 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; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. 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. The applicant is required to provide an alternative analysis that must overcome the presumption prior to receiving authorization for the placement of fill material. The applicant has submitted the required alternative analysis and it is currently under review. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

MITIGATION PLAN: To mitigate for the impacts to 5.66 acre of forested wetland, the applicant proposes to restore approximately 12 acres of prior converted wetland to forested wetland at the Palmer Road Swamp Reserve located within close proximity to proposed project. The applicant proposes to preserve the remaining 0.28 acre of wetland and open water pond on site within a deed restricted preservation area. In addition the applicant proposes to preserve and enhance approximately 2,973 linear feet (6.83 acres) of stream and riparian buffer on site. Copies of the mitigation plan are available for review upon request.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined that there no properties eligible for the register in the area affected by the project. A copy of this public notice will be furnished to the Ohio State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: The project is located within the known or historic range of the following endangered species:

Indiana Bat
Bald Eagle
Eastern Massasauga

The Huntington District has consulted the most recently available information and based on the proposed avoidance and minimization measures and seasonal cutting restrictions, the project is not likely to adversely affect the Indiana bat and will have no effect on the Bald eagle and Eastern massasauga or designated Critical Habitat for these Federally listed species. 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 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.

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:

North Regulatory Permit Section - CELRH-OR-FN-200600845
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 Ms. Lee A. Pittman of the North Regulatory Section at 304-399-5210.

Ginger Mullins
Regulatory Branch

(O)

EMH&T
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LICKING COUNTY, OHIO

PERMIT AND OFFSITE MITIGATION LOCATION MAP

Date: January, 2007	Job No. 2006-0859	Scale: 1" = 3000'

Figure 1 (3)

\\CMHDATA2\ENVIRON\MY DOCUMENTS\JCRAMER\BLOCK\SHEETS\EX8-8X11.DWG<MODEL> - NO XREFS - LAST SAVED BY JCRAMER [3/30/2006 1:23:01 PM] - PLOTTED BY JCRAMER [3/30/2006 1:27:39 PM]

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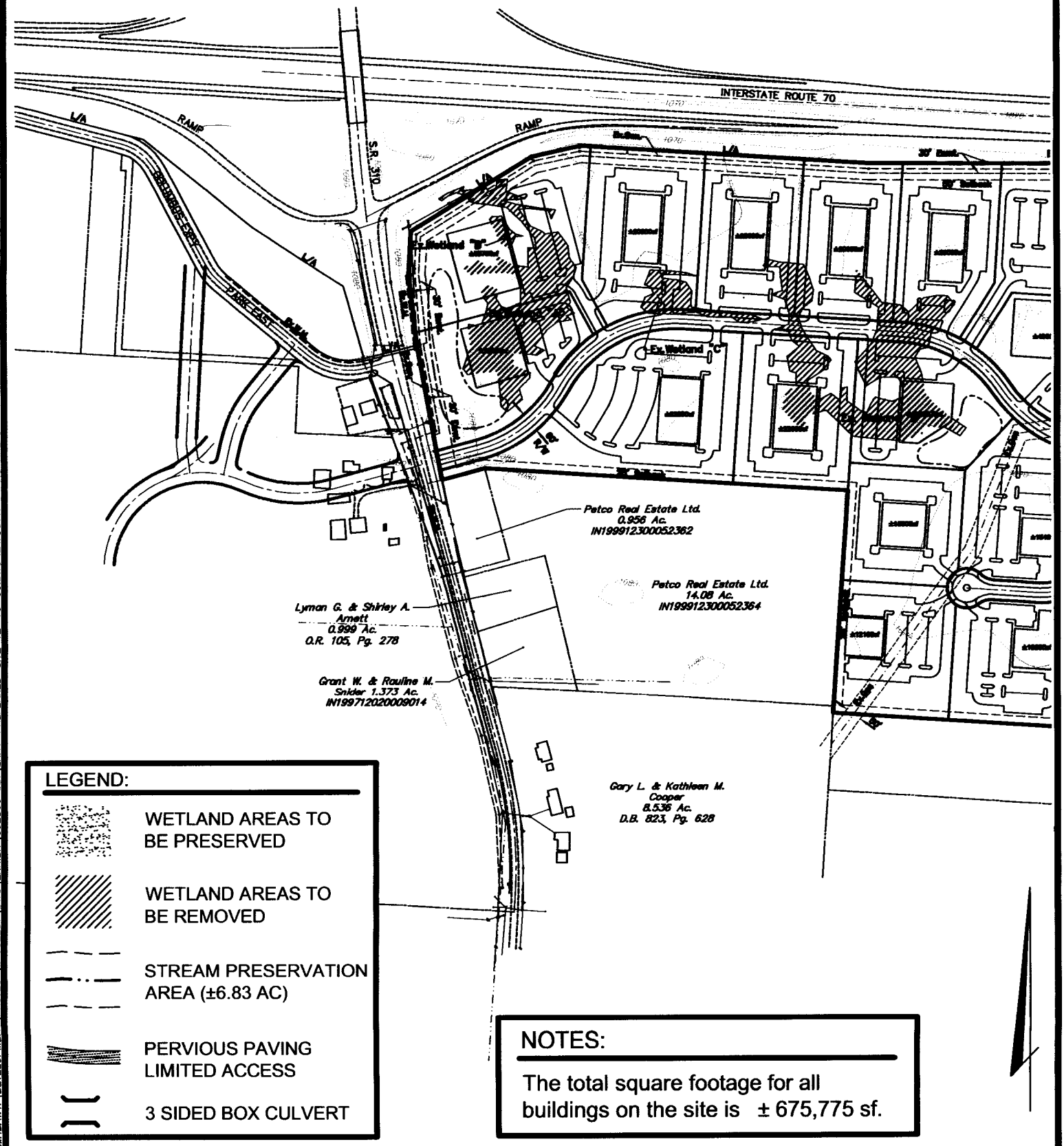
LICKING COUNTY, OHIO

I/70/ETNA COMMERCE PARK

PREFERRED LAYOUT

FIGURE 6A

Date: December 2006	Job No. 2005-2257	Scale: 1" = 400'



LEGEND:

- WETLAND AREAS TO BE PRESERVED
- WETLAND AREAS TO BE REMOVED
- STREAM PRESERVATION AREA (±6.83 AC)
- PERVIOUS PAVING LIMITED ACCESS
- 3 SIDED BOX CULVERT

NOTES:

The total square footage for all buildings on the site is ± 675,775 sf.

Figure 2 (3)

\\CMH\DATA1\DEVELOPMENT\PROJECT\20052257\DWG\EXHIBIT\092806 SET\EXH1-PREFERRED-SITE 12-16-06.DWG<LAYOUT1> - NO XREFS - LAST SAVED BY GTHOMAS [12/19/2006 7:46:13 AM] - PLOTTED BY GTHOMAS [12/19/2006 7:47:30 AM]

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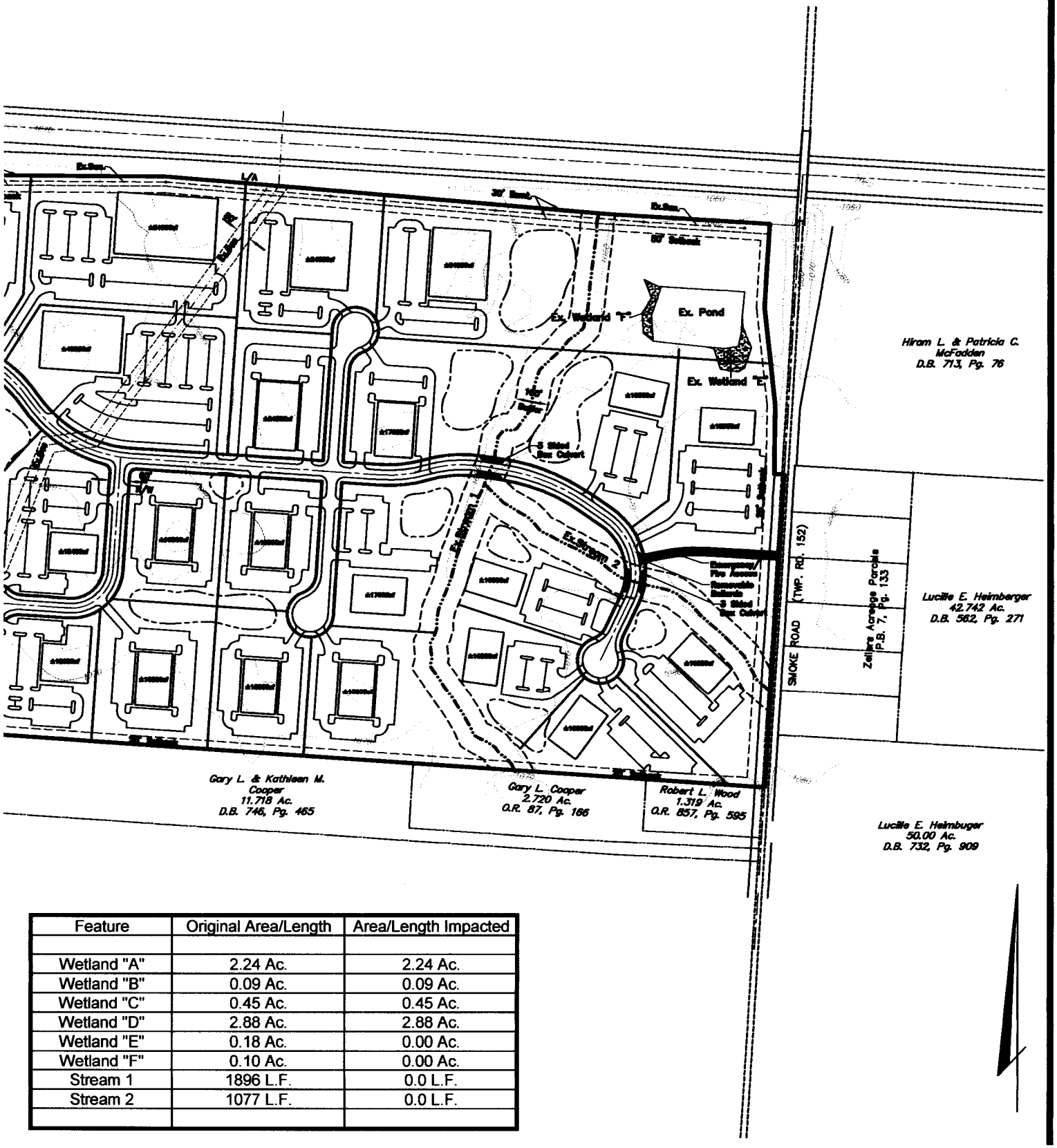
PREFERRED LAYOUT
FIGURE 6B

Date: December 2006	Job No. 2005-2257	Scale: 1" = 400'



Feature	Original Area/Length	Area/Length Impacted
Wetland "A"	2.24 Ac.	2.24 Ac.
Wetland "B"	0.09 Ac.	0.09 Ac.
Wetland "C"	0.45 Ac.	0.45 Ac.
Wetland "D"	2.88 Ac.	2.88 Ac.
Wetland "E"	0.18 Ac.	0.00 Ac.
Wetland "F"	0.10 Ac.	0.00 Ac.
Stream 1	1896 L.F.	0.0 L.F.
Stream 2	1077 L.F.	0.0 L.F.

\\CMHDATA1\DEVELOPMENT\PROJECT\20052257\DWG\EXHIBIT\092806 SET\EXH1-PREFERRED-SITE 12-16-06.DWG<LAYOUT1> - NO XREFS - LAST SAVED BY GTHOMAS [12/19/2006 7:46:13 AM] - PLOTTED BY GTHOMAS [12/19/2006 7:47:30 AM]

Figure 3 (3)