



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

Public Notice

In reply refer to Public Notice No.

200400894

Issuance Date:

April 13, 2005

Stream:

Closing Date:

UN Tributary of the Tuscarawas River May 13, 2005

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 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: Smail Property Development, Ltd.
496 Water Street
Canal Fulton, OH 44614

LOCATION: The proposed project site is located on approximately 29 acres of vacant land located in Canal Fulton, in Lawrence Township, Stark County, Ohio. The proposed project is located in wetlands adjacent to unnamed tributaries of the Tuscarawas River, at latitude 40° 53' 27.49" and longitude 81° 35' 4.24".

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to construct a residential development called Lakewood Estates consisting of 45 single family properties. There are three wetlands totaling 1.9 acres and 1.6 acres of open water located on the property. The 1.6 acres of open water is part of a 10 acre open water impoundment located just south of the proposed development site. The applicant proposes to place approximately 4,700 cubic yards of sand, silt, and clay excavated onsite into 1.3 acres at the two wetlands on the northern portion of the site. The applicant has avoided impacts to 1.6 acres of open water and 0.6 acres of wetland adjacent to the open water on the southern portion of the site. The wetlands to be filled have been classified as Category 1 and 2 wetlands using the Ohio Rapid Assessment Method (ORAM).

MITIGATION PLAN: To offset wetland impacts associated with the project, the applicant proposes to purchase between 2 and 4 mitigation credits at an approved wetland mitigation bank.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. The applicant has submitted a Section 401 Water Quality Certification application to the Ohio Environmental Protection Agency (OEPA). It is the applicant's responsibility to obtain the certification from OEPA.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant has submitted an alternatives analysis, which is currently under review. No permit will be issued until our review of the alternatives analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined that there are no listed 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 the 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 candidate, threatened, or endangered species:

Indiana Bat (E)
Bald Eagle (T)
Eastern Massasauga (C)

The Huntington District has consulted the most recently available information. With the implementation of avoidance and minimization measures, the project is not likely to adversely affect the Indiana Bat. Because the only known Bald Eagle nest within the county is not located within ½ mile of the project, the project will have no effect on this species or designated Critical Habitat. Available evidence indicates the project will not affect the Eastern Massasauga, a Federally listed candidate species, and/or suitable habitat for this 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.

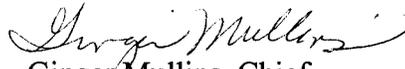
SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative 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:

Mr. Mark T. Agricola
Project Manager, CELRH-OR-FN
U. S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070.

Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please contact Mr. Mark T. Agricola of the North Regulatory Section, Dover Regulatory Field Office, at (330) 364-6177.

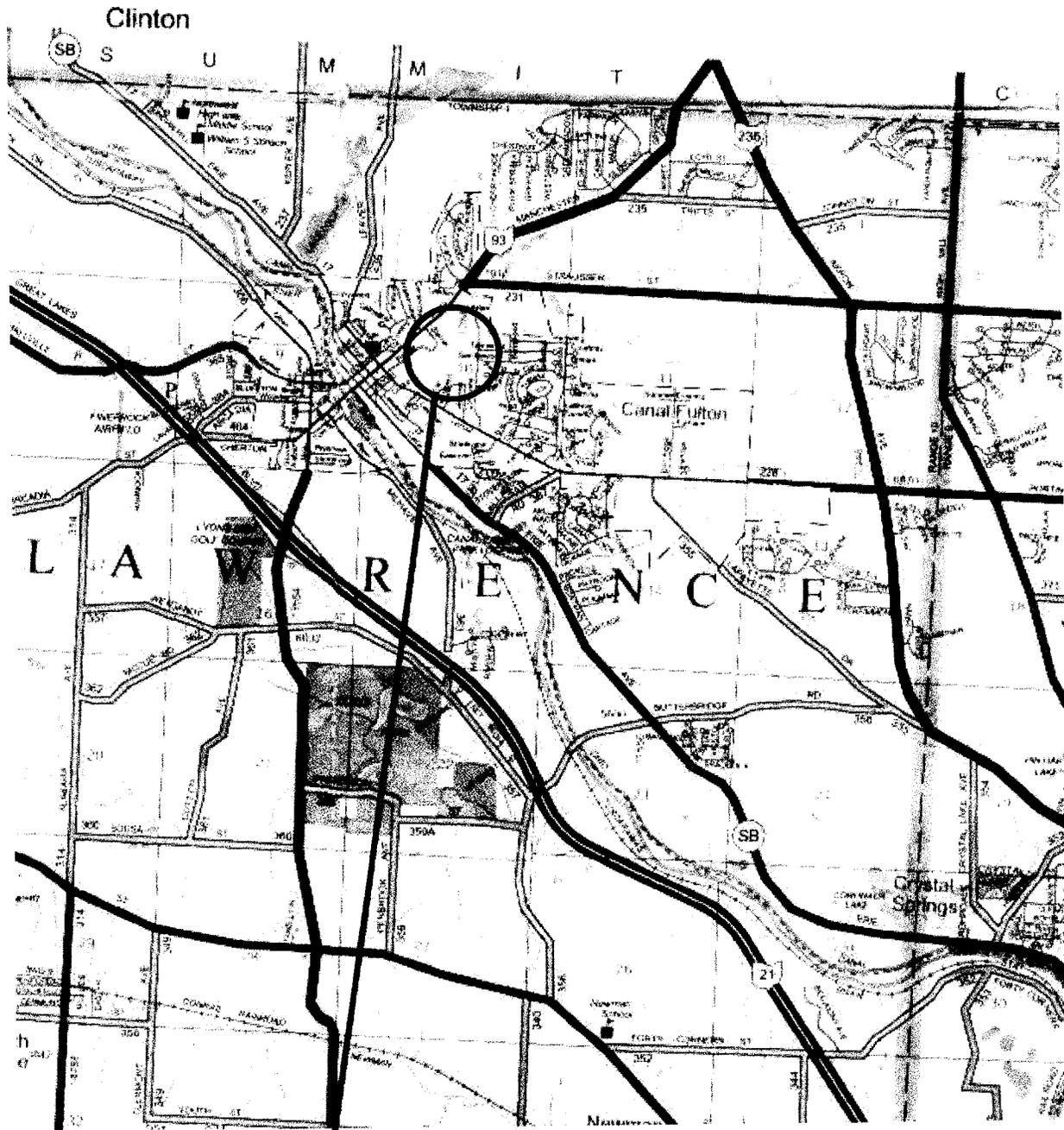

Ginger Mullins, Chief
Regulatory Branch

(O)

Project Location Map

Counties





— SUBJECT PROPERTY

SITE LOCATION MAP—VICINITY

USGS TOPOGRAPHIC MAP - CANAL FULTON/MASSILLON QUADRANGLE



VADOSE RESEARCH, INC.

1435 MARKET AVENUE, NORTH
CANTON, OHIO 44714

888-454-6706

www.vadose.com

VADOSE Job#: 2004046.1

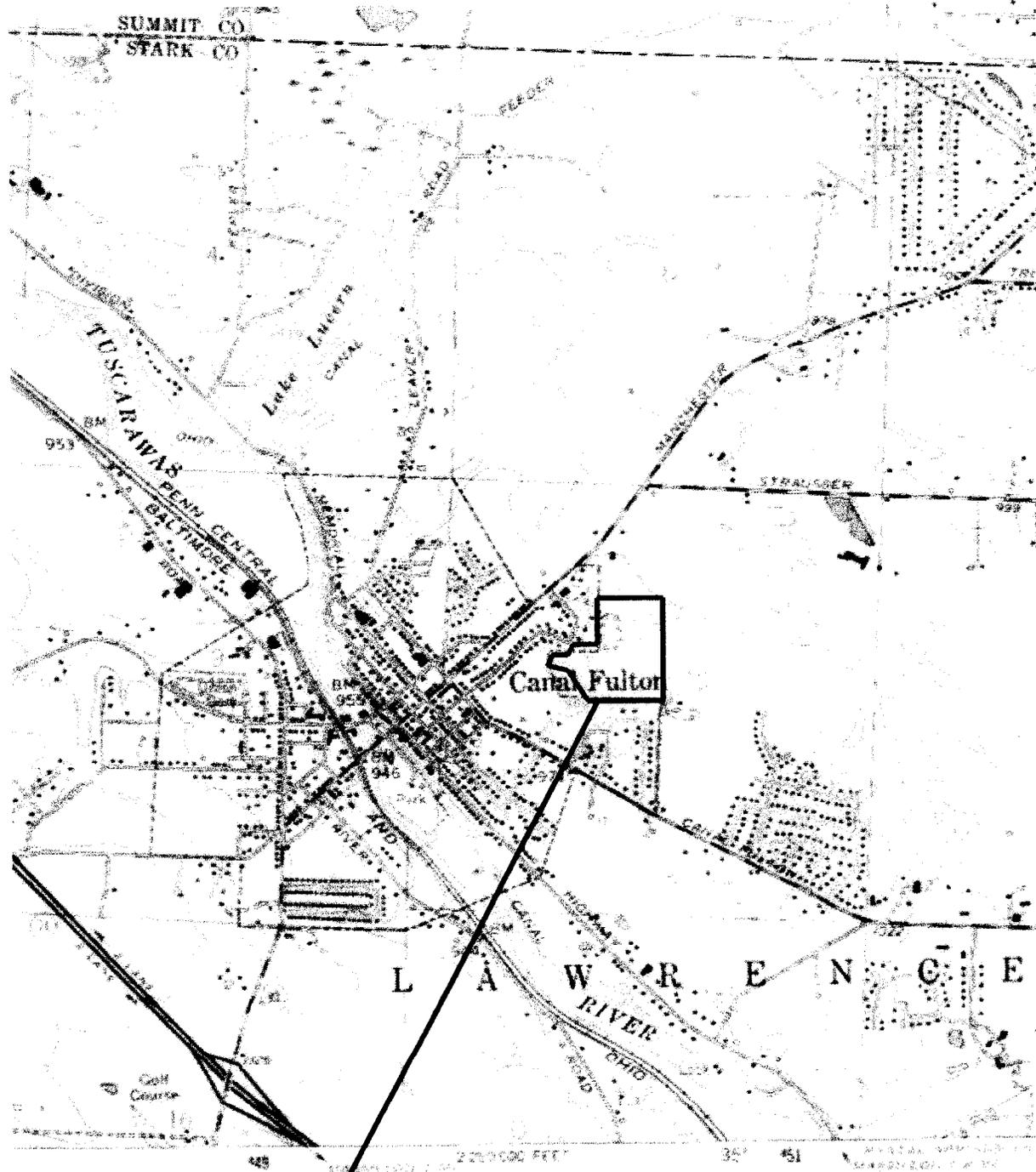
Applicant: Smail Property Development
Lakewood Estates

Lawrence Township

Canal Fulton, Stark County, Ohio

Map Scale: 1" = 4,700'





— SUBJECT PROPERTY

SITE LOCATION MAP

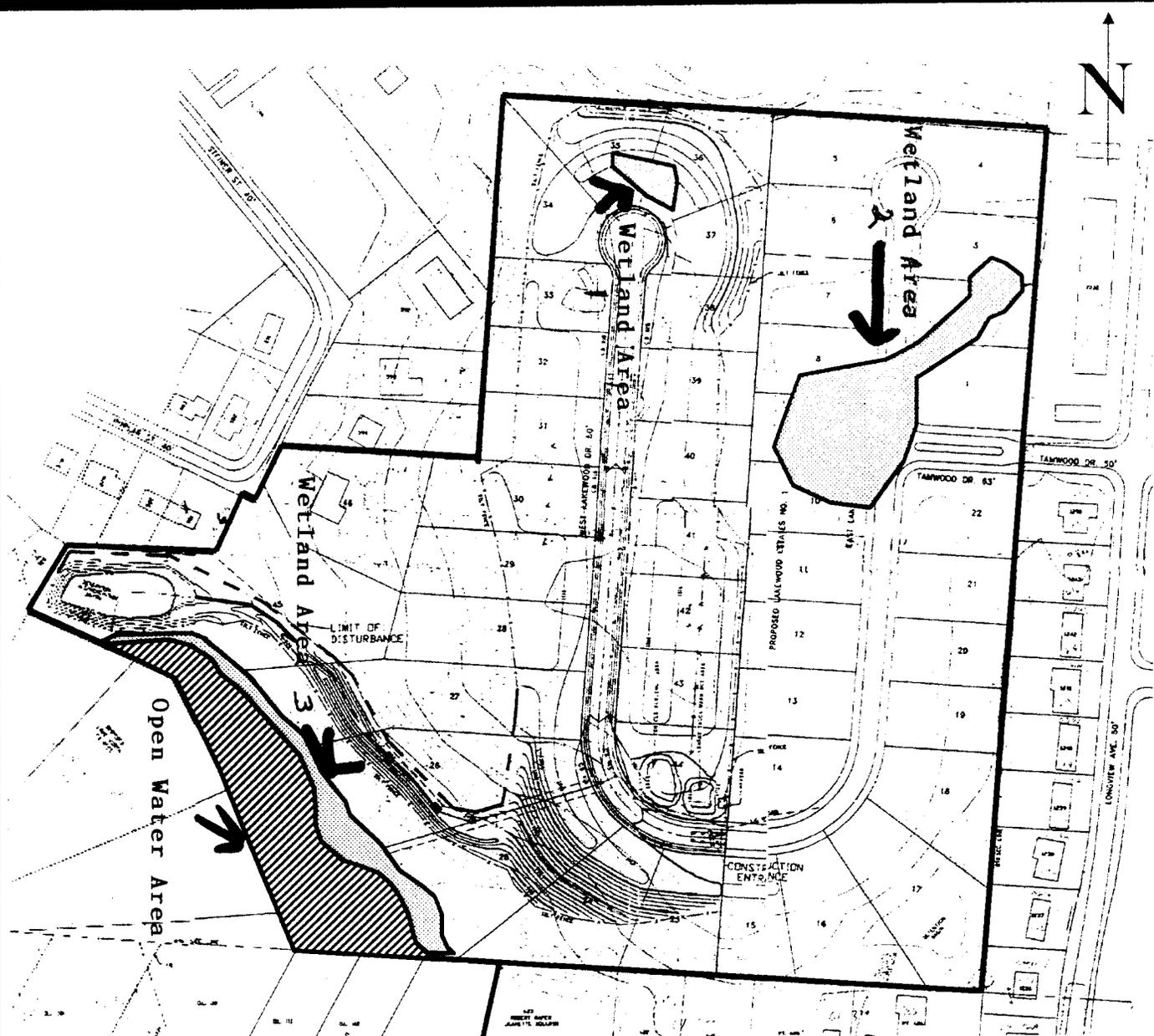
USGS TOPOGRAPHIC MAP - CANAL FULTON QUADRANGLE



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VADOSE Job#: 2004046.1
 Lakewood Estates
 Lawrence Township
 Canal Fulton, Stark County, Ohio
 Map Scale: 1" = 2,000'





 Area of open water wetlands

 Area of jurisdictional wetlands

SUBJECT PROPERTY

PREFERRED DESIGN PLAN

VADOSE ENVIRONMENTAL CONSULTANTS
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 CANTON, OHIO 44714
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VADOSE Job#: 2004046.1
Applicant: Smail Property Development
Lakewood Estates
Lawrence Township
Canal Fulton, Stark County, Ohio
Map Scale: 1"= 230' March 16, 2005