
APPENDIX B

US ARMY CORPS OF ENGINEERS, PUBLIC NOTICE



Public Notice

ISSUED: MAY 15, 2013
EXPIRES: JUNE 13, 2013

U.S. Army Corps
of Engineers
Buffalo District

Application No: 2009-01681 Section: OH

All written comments should reference the above Application No. and be addressed to:
US Army Corps of Engineers, Buffalo District Regulatory Branch, 1776 Niagara Street
Buffalo, NY 14207-3199

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

**Application for Permit under Authority of
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

APPLICANT: J.J.J. Properties, LLC, 5585 Canal Road, Valley View, Ohio 44128

WATERWAY & LOCATION: Federal jurisdictional streams and wetlands on a 32.5-acre parcel located north of Carter Road and east of Vrooman Road in Leroy Township, Lake County, Ohio (Sheets 1-2 of 5).

LATITUDE & LONGITUDE: Latitude North: 41.70221
Longitude West: -81.17383

EXISTING CONDITIONS:

Description of delineation of waters of the US, if applicable: A preliminary jurisdictional determination (PJD) for the parcel was issued October 14, 2010. The PJD identified six streams, S-2 (965.97 linear feet (LF)), S-3 (1,505.81 LF), S-4 (70.48 LF), S-5 (122.08 LF), S-6 (96.55 LF), and S-7 (37.08 LF), totaling 2,797.97 LF, and ten wetlands, W-B (0.082 acres), W-C (0.997 acres), W-D (0.449 acres), W-E (0.004 acres), W-F (0.225 acres), W-G (0.023 acres), W-H (0.527 acres), W-I (0.110 acres), W-J (0.014 acres), and W-K (0.006 acres), totaling 2.437 acres, on the subject parcel (Sheet 3 of 5).

PROPOSED WORK: The applicant is proposing to construct freestanding industrial and retail buildings of 30,000 and 27,550 square feet (SF), respectively, a freestanding commercial building of 157,140 SF with an additional 19,575 SF of dock/ warehouse space, 1,188 parking spaces, two stormwater ponds and other attendant features (Sheet 3 of 5). The proposed project will result in permanent impacts to two streams, S-2 (892.44 LF), and S-3 (393.63 LF), totaling 1,289.07 LF, and seven wetlands, W-B (0.082 acres), W-C (0.997 acres), W-D (0.033 acres), W-E (0.004 acres), W-F (0.007 acres), W-G (0.023 acres), and W-H (0.140 acres), totaling 1.286 acres.

PROJECT PURPOSE

Basic: To construct an industrial/ commercial development.

Overall: To create a financially successful, compact industrial/ commercial development whereby the buildings, parking areas, and spaces are developed in such a way that shortens trips and lessens dependence on the automobile, thereby reducing levels of land consumption, energy use, and air pollution.

Water Dependency Determination: The project does not require access or proximity to or siting within the 1.286 acres of proposed wetland impacts to fulfill its basic purpose. Thus, it is not a water dependent activity and practicable alternatives that do not involve wetlands, or other special aquatic sites, are presumed to be available unless clearly demonstrated otherwise.

Avoidance and Minimization Information: The applicant has indicated that they cannot reconfigure the current on-site building, parking lot, and driveway lay out. The applicant has indicated that their onsite configuration is limited by: aerial transmission lines; location of storm water ponds; and, safety. Aerial transmission lines bisect the property from northwest to southeast and buildings cannot be placed under the lines or within the easement right of way. The storm water ponds are located along the western and northwestern side of the site. Since the site slopes to the north-northwest it is impracticable to relocate the storm water management ponds to other areas of the site. The applicant indicated that safety was also a concern such that parking cannot be placed between the largest building and Carter Road as this would require pedestrians to walk through passenger vehicle traffic or semi-tractor trailer traffic on the east side.

The applicant has indicated that offsite alternatives are not practicable as this site has the combination of size (32.5 acres will allow for the construction of an adequately sized building), zoning (this is the only site zoned for industrial manufacturing in Leroy Township), location (close proximity to Interstate 90), and access and connectivity (close proximity to Interstate 90) that make it an ideal location to construct an industrial/ commercial development.

Proposed Mitigation: The applicant is proposing to provide \$228,229.00 to the Cleveland Museum of Natural History (CMNH) to be used towards the purchase of the 442-acre Sawdust property located in Trumbull Township, Ashtabula County, Ohio (Sheets 4-5 of 5). The applicant has proposed to pay \$75,000.00 for wetland mitigation and \$213,229.00 for stream mitigation, for a total sum of \$288,229.00. The total price for the Sawdust property is \$1.1 million. The Sawdust property is located 13 miles from the project site and is within the same watershed – the Grand River (HUC 04110004). The Sawdust property has over 152 acres of Category 3 wetlands and over 16,000 linear feet of stream, including Mill Creek, a designated coldwater habitat tributary to the Grand River. In addition, CMNH biologists have identified sixteen species that are rare to the State of Ohio that are located on the Sawdust property. The Sawdust property will be owned by the CMNH and a conservation easement will be placed over the property and held by the Western Reserve Land Conservancy to ensure perpetual protection.

Location and details of the above described work are shown on the attached maps and drawings.

Comments or questions pertaining to the work described in this notice should be reference the Application Number and be directed to the attention of Keith C. Sendziak, who can be contacted at the above address, by calling (716) 879-4339, or by e-mail at: keith.c.sendziak@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The applicant has certified that the proposed activity complies with Ohio's approved Coastal Zone Management Program and will be conducted in a manner consistent with that program. Any comments on the consistency of the proposed activity with Ohio's Coastal Zone Management Program should be forwarded to:

Mr. John Kessler
Ohio Department of Natural Resources
Office of Real Estate
2045 Morse Rd.
Columbus, OH 43229-6605
phone: 614-265-6621
email: john.kessler@dnr.state.oh.us

The following authorization is required for this project:

Water Quality Certification (or waiver thereof) from the Ohio Environmental Protection Agency

Based on preliminary findings, there do not appear to be any properties listed in, or eligible for listing in, the National Register of Historic Places within the permit area as shown on Sheet 2 of 5. This notice constitutes initiation of consultation with the Ohio Historic Preservation Office (SHPO) per Section 106 of the National Historic Preservation Act. All currently available historic resource information pertaining to this proposed project if any has been provided to the SHPO. Additional information concerning historic properties should be submitted to the Corps before the end of the comment period of this notice. The Corps will forward that information to the SHPO for their review.

Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the Corps of Engineers is consulting, under separate cover, with the USFWS to evaluate any potential impacts to: Snuffbox (*Epioblasma triquetra*), Piping plover (*Charadrius melodus*), Kirtland's warbler (*Setophaga kirtlandii*), and Indiana bat (*Myotis sodalis*) and to ensure that the proposed activity is not likely to jeopardize their continued existence or result in the destruction or adverse modification of critical habitat.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in

the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request 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 benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain 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.

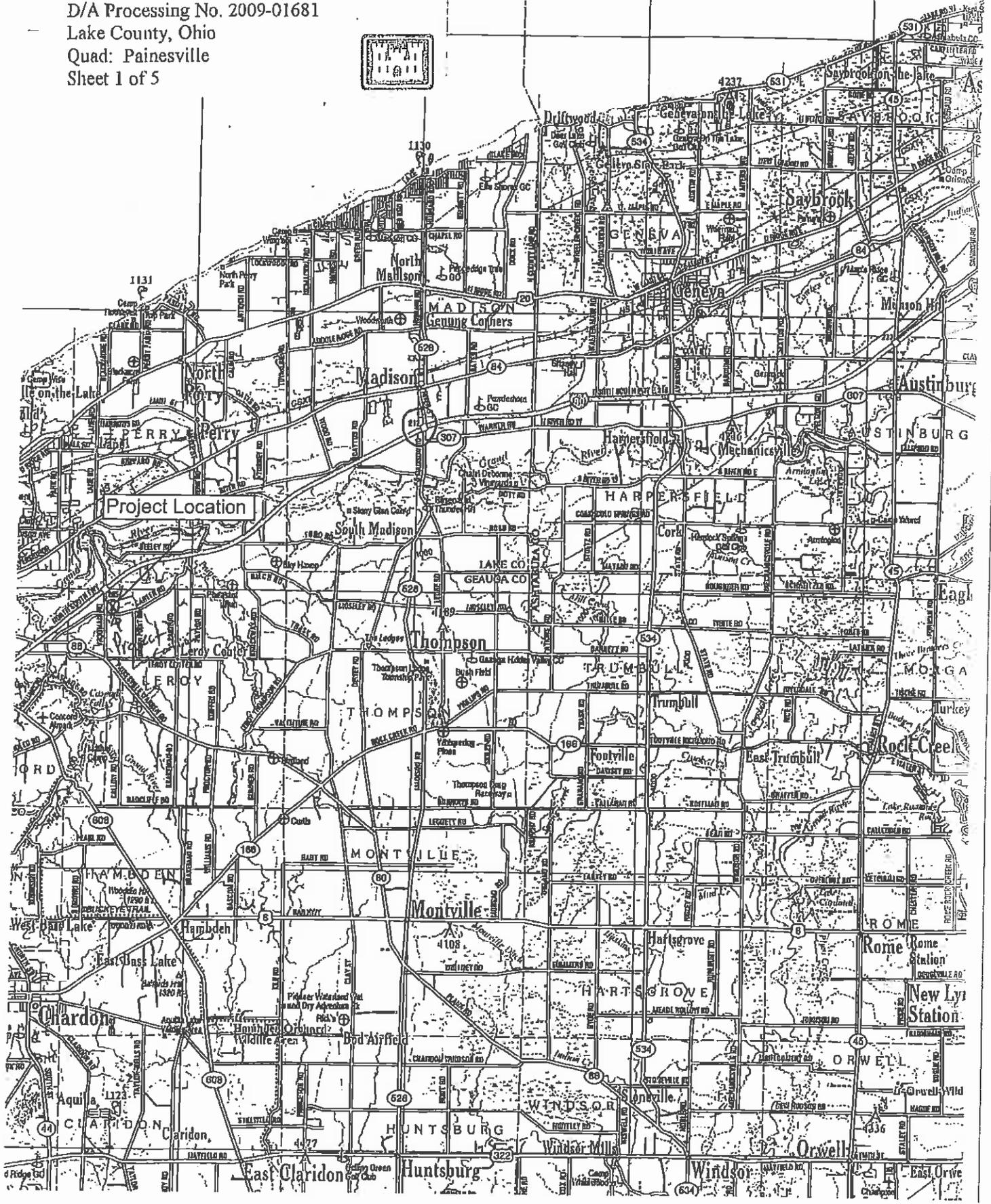
The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine 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.

SIGNED

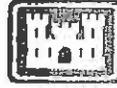
Diane C. Kozlowski
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.

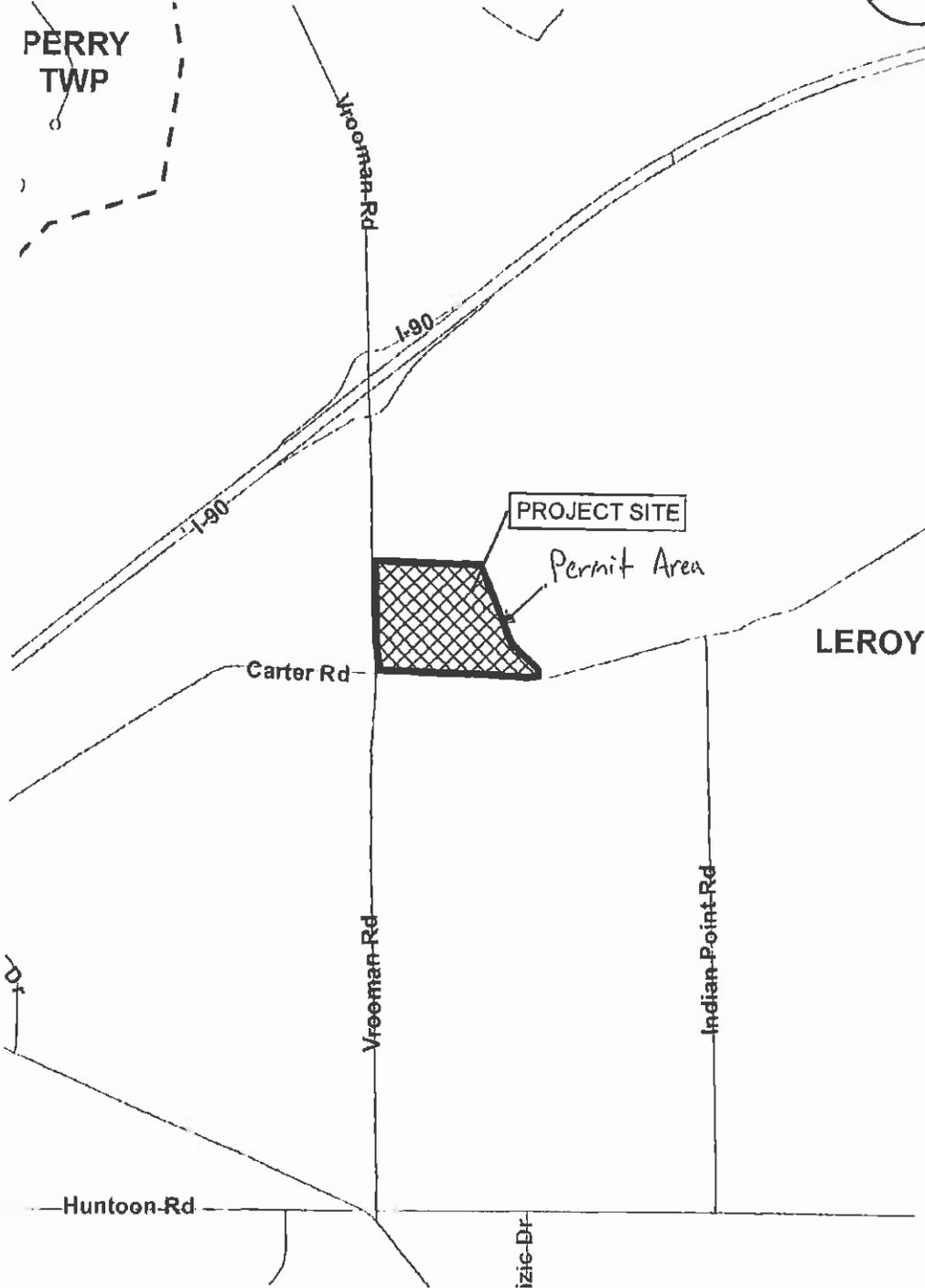
JJJ Properties LLC
D/A Processing No. 2009-01681
Lake County, Ohio
Quad: Painesville
Sheet 1 of 5



JJJ Properties LLC
D/A Processing No. 2009-01681
Lake County, Ohio
Quad: Painesville
Sheet 2 of 5



PERRY
TWP



SITE LOCATION MAP FIGURE 1

PROJECT: VROOMAN ROAD PARCEL
LOCATION: LEROY TWP, OHIO



PROJECT No: 11227

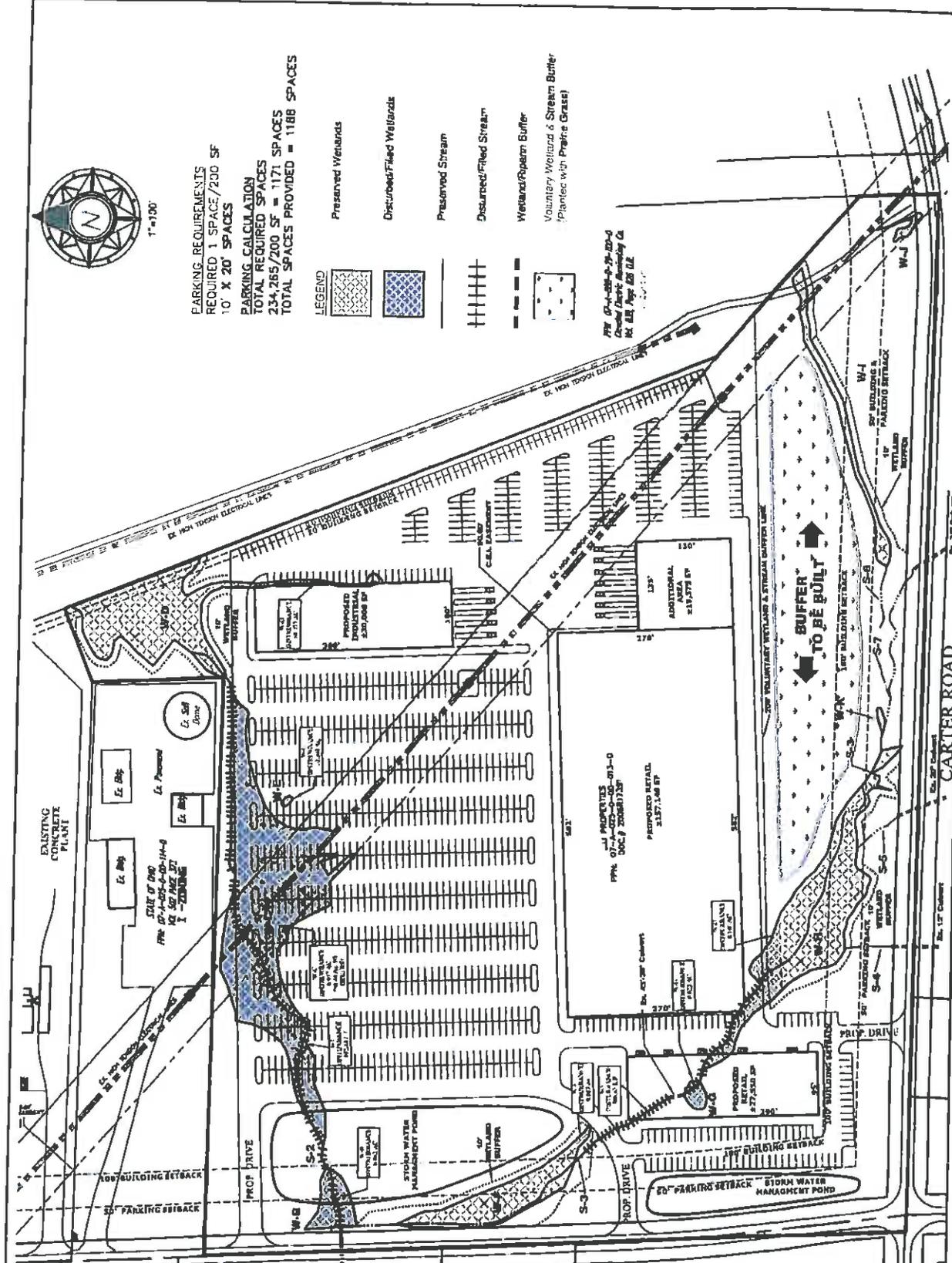


PARKING REQUIREMENTS
 REQUIRED 1 SPACE/200 SF
 10' X 20' SPACES

PARKING CALCULATION
 TOTAL REQUIRED SPACES
 234,265/200 SF = 1171 SPACES
 TOTAL SPACES PROVIDED = 1188 SPACES

- LEGEND**
- Preserved Wetlands
 - Disturbed/Filled Wetlands
 - Preserved Stream
 - Disturbed/Filled Stream
 - Wetland/Stream Buffer
 - Voluntary Wetland & Stream Buffer (Planted with Prairie Grass)

PP# 07-1-028-0-00-011-0
 VOLUNTARY WETLAND & STREAM BUFFER
 PLANTED WITH PRAIRIE GRASS



JJ Properties LLC
 D/A Processing No. 2009-01681
 Lake County, Ohio
 Quad: Painesville
 Sheet 3 of 5



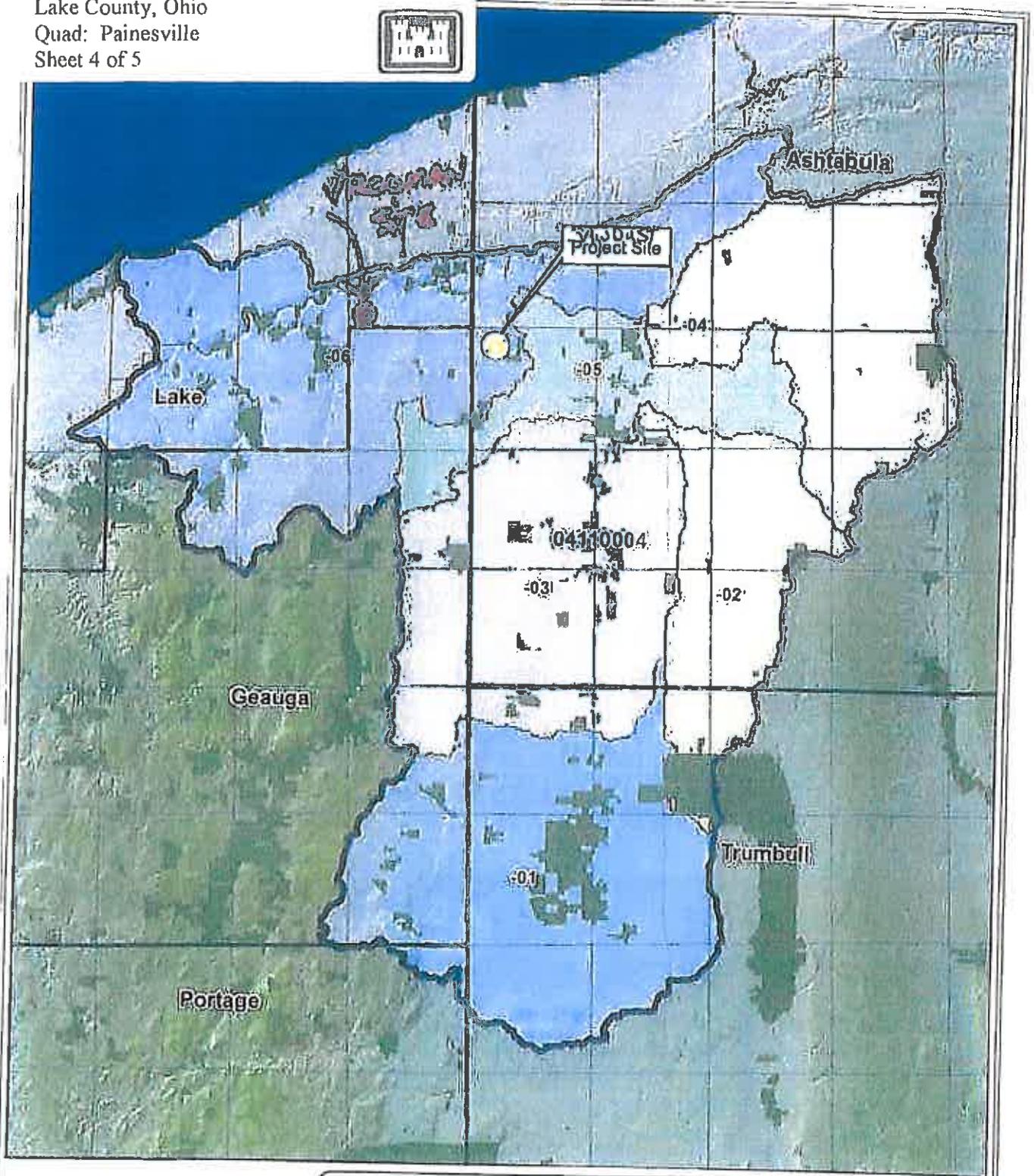
VROOMAN & CARTER ROAD
 SITE DEVELOPMENT
 LEROY TOWNSHIP-LAKE COUNTY-040

PREPARED FOR:
 J.J.J. PROPERTIES

VROOMAN ROAD
 ROSKOPF L'ONGHOFF
 PPN: 07-1-028-0-00-008-0
 VOL. 0528, PAGE 0432

MANIFEST DESIRY ENTERPRISES LTD
 PPN: 07-1-028-0-00-007-0
 VOL. 0681, PAGE 0388

SANDRA & J. D. RASCH
 PPN: 07-1-028-0-00-011-0
 VOL. 0606, PAGE 0536



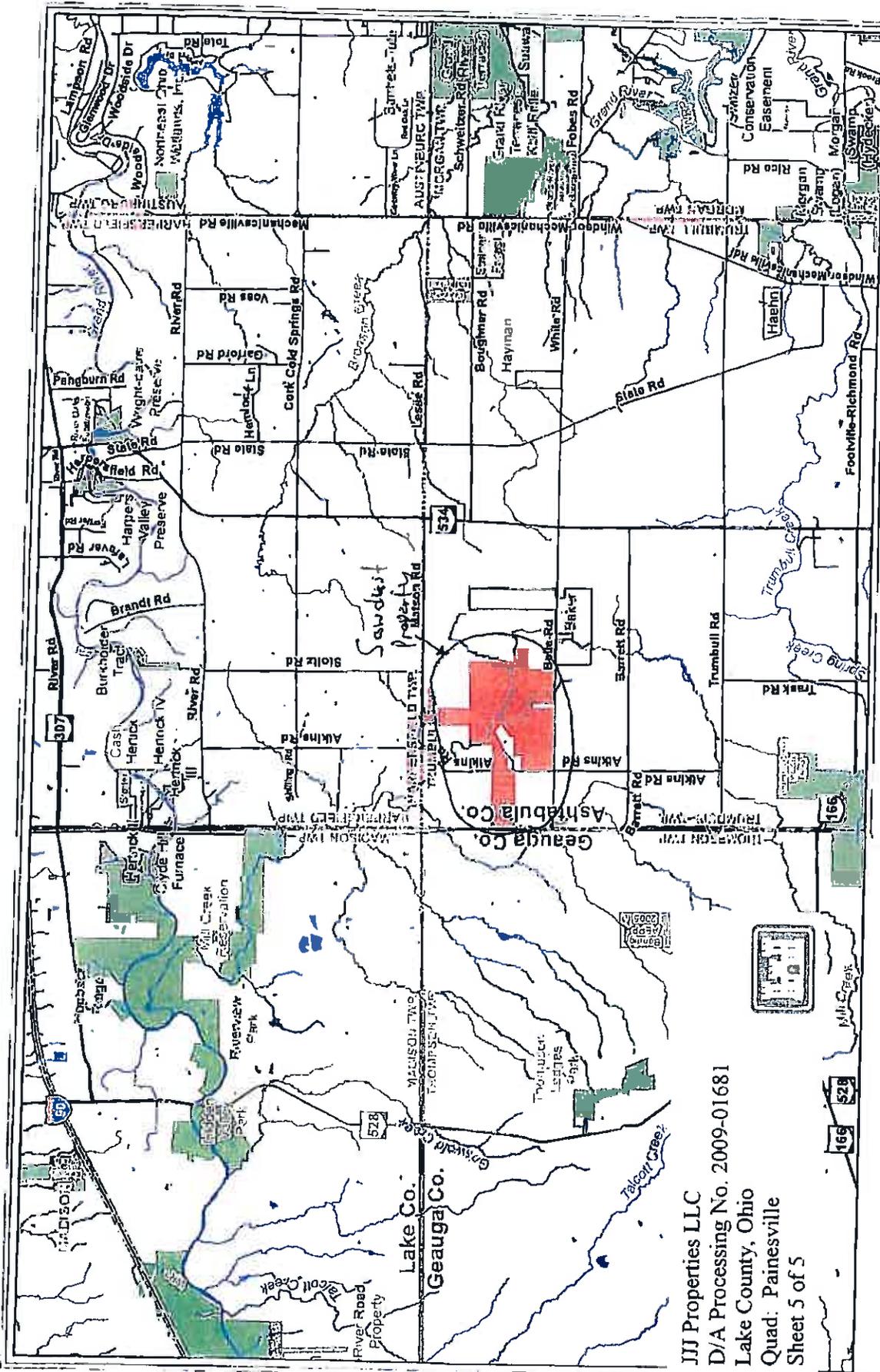
2 0 2 4 Miles



Western Reserve
 Land Conservancy
 OUR LAND. OUR LEGACY

Sawdust Property
Figure 1: Grand River Watershed Location

- Counties
- Townships
- Parks & Managed Areas
- Lake Erie
- Watersheds - 8 Digit Hydrologic Unit Codes
- Watersheds - 10 Digit Hydrologic Unit Codes

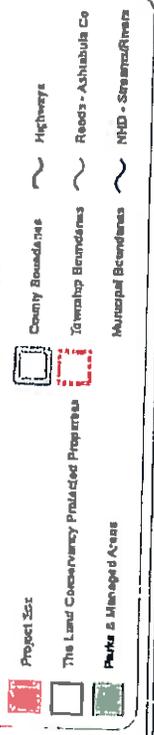


JJJ Properties LLC
 D/A Processing No. 2009-01681
 Lake County, Ohio
 Quad: Painesville
 Sheet 5 of 5



Western Reserve Land Conservancy
 OUR LAND. OUR LEGACY

Figure 2: Project Location



APPENDIX B

USACE, JURISDICTIONAL DETERMINATION LETTER



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO

14 October 2010

Regulatory Branch

**SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application
No. 2009-01681, JJJ Development LLC**

Mr. Erik Flickinger
Flickinger Wetland Services Group, Inc.
2680 West Market Street, Suite 200
Fairlawn, Ohio 44333

Dear Mr. Flickinger:

I have reviewed the wetland delineation map you submitted on behalf of JJJ Development LLC for a site located north of Carter Road and east of Vrooman Road in Leroy Township, Lake County, Ohio.

I have evaluated your submitted wetland delineation map and have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. Please note that this is a Preliminary Jurisdictional Determination (JD). Preliminary JDs are non-binding written indications that there may be waters of the United States on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 08-02, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters on the site are regulated by the Corps. Further, all waters, including wetlands will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on the submitted drawings, you may request an approved jurisdictional determination from this office. If an approved jurisdictional determination is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the Preliminary JD Form with this letter. The form and attached table identifies the extent of waters on the site and specific terms and conditions of the Preliminary JD. Please have your client sign and return a copy of this form to my attention so that I may complete my evaluation of this file. If your client does not respond within fifteen days of this letter, I will

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application
No. 2009-01681, JJJ Development LLC

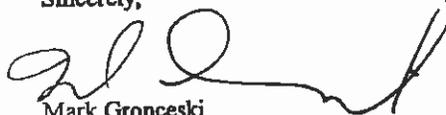
assume you no longer wish to pursue the jurisdictional determination and will withdraw the request.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of waters of the United States be re-evaluated by a qualified wetland biologist after five years of the date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, this determination has been conducted only to identify the limits of waters that may be subject to Corps Clean Water Act or Rivers and Harbors Act jurisdiction. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

Questions pertaining to this matter should be directed to me at (440) 437-5847, by writing to the following address: U.S. Army Corps of Engineers, 33 Grand Valley Avenue, Orwell, Ohio 44076, or by e-mail at: mark.e.gronceski@usace.army.mil

Sincerely,



Mark Gronceski
Biologist

Enclosures

ATTACHMENT

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 19 July 2010

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Mr. Jeff Repenning, JJJ Development, LLC, 5585 Canal Road, Valleyview, Ohio 44128

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, JJJ Development LLC, 2009-01681

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The subject parcel is located north of Carter Road and east of Vrooman Road in Leroy Township, Lake County, Ohio
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: Ohio County/parish/borough: Lake City: Leroy
Township

Center coordinates of site (lat/long in degree decimal format): Lat. 41.70306° N, Long. -81.17417° W.

Universal Transverse Mercator:

Name of nearest waterbody: unnamed wetlands and streams

Identify (estimate) amount of waters in the review area:

Non-wetland waters: linear feet: 2967

Cowardin Class: Riverine

Stream Flow: Perennial

Wetlands: 2.53 acres.

Cowardin Class: Emergent

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 16 July 2010

Field Determination. Date(s): 31 March 2010

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute, Painesville.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County.
- National wetlands inventory map(s). Cite name: Painesville.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify): site visit.

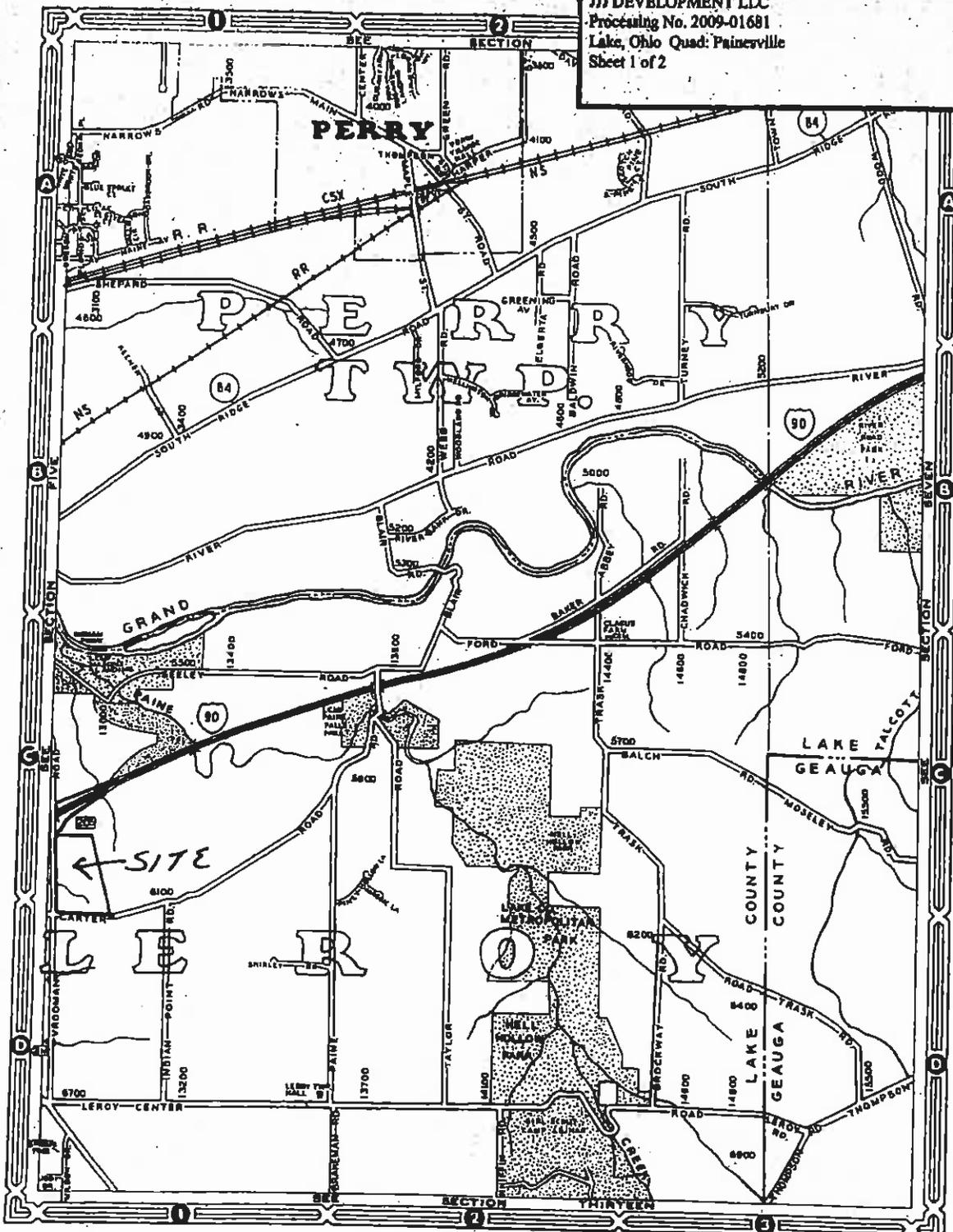
IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

 14 OCT 10

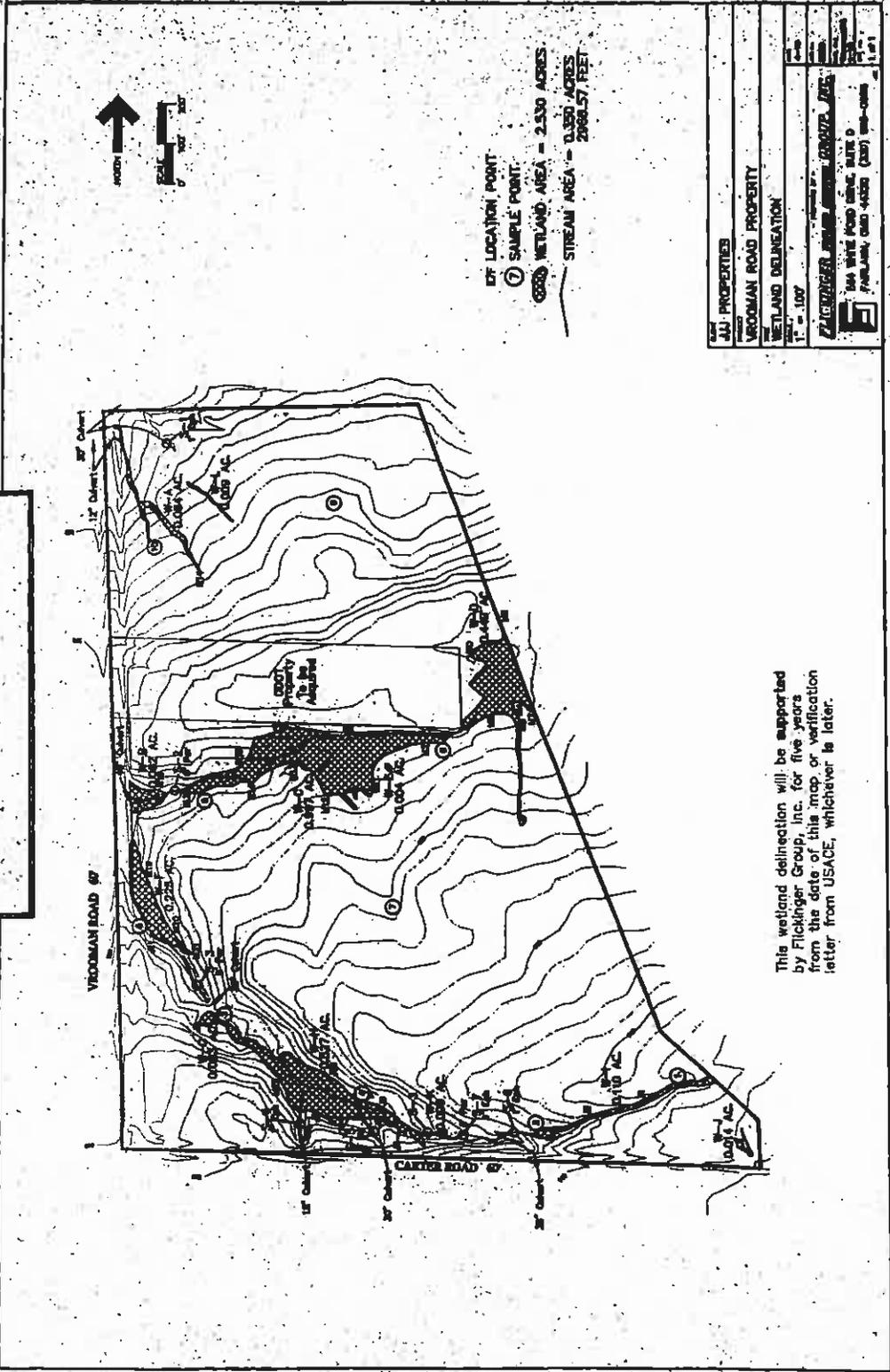
Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

JJI DEVELOPMENT LLC
 Processing No. 2009-01681
 Lake, Ohio Quad: Painesville
 Sheet 1 of 2



JJJ DEVELOPMENT LLC
 Processing No. 2009-01681
 Lake, Ohio Quad: Painesville
 Sheet 2 of 2



JJJ PROPERTIES 104 WYBE ROAD SUITE 9 PAINESVILLE, OHIO 44050 (419) 498-0888 FAX (419) 498-0888	ZALINGER GROUP 1000 W. 107th St. Des Moines, IA 50319 (515) 281-1111
VROOMAN ROAD PROPERTY WETLAND DELINEATION 1" = 100'	DATE SCALE PROJECT NO. CLIENT DATE SCALE PROJECT NO. CLIENT

This wetland delineation will be supported by Flickinger Group, Inc. for five years from the date of this map or verification letter from USACE, whichever is later.

APPENDIX B
ODNR, NATURAL HERITAGE PROGRAM RESPONSE LETTER



Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR

JAMES ZIEHRINGER, DIRECTOR

Ohio Division of Wildlife
Scott Zody, Chief
2045 Morse Rd., Bldg. G
Columbus, OH 43229-6693
Phone: (614) 265-630

November 6, 2012

Erin Van Nort
Chagrin Valley Engineering, Ltd.
2299 Forbes Road, Suite B
Cleveland, OH 44146

Dear Ms. Van Nort,

I have reviewed the Natural Heritage Database for the Vrooman Road Parcel project area, including a one mile radius, in Concord Township, Lake County, Ohio. We have records in your search area. A map showing the locations of these elements is provided with this letter.

We are unaware of any additional unique ecological sites, geologic features, animal assemblages, scenic rivers, state wildlife areas, nature preserves, parks or forests, national wildlife refuges, parks or forests, or other protected natural areas within a one mile radius of the project area.

Our inventory program has not completely surveyed Ohio and relies on information supplied by many individuals and organizations. Therefore, a lack of records for any particular area is not a statement that rare species or unique features are absent from that area. Please note that although we inventory all types of plant communities, we only maintain records on the highest quality areas.

This letter only represents a review of rare species and natural features data within the Ohio Natural Heritage Database. It does not fulfill coordination under the National Environmental Policy Act (NEPA) or the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and does not supersede or replace the regulatory authority of any local, state or federal agency nor relieve the applicant of the obligation to comply with any local, state or federal laws or regulations.

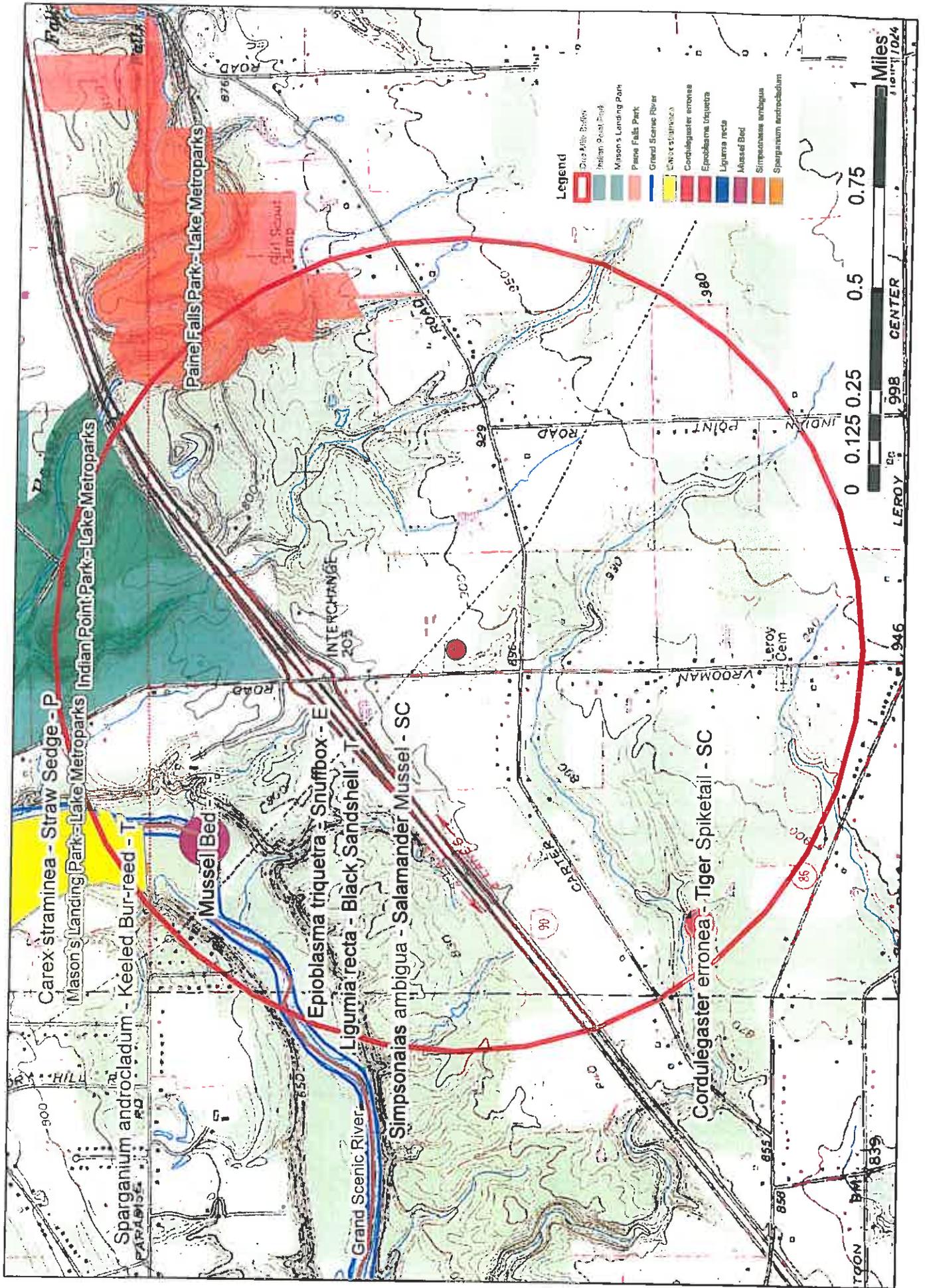
Please contact me at 614-265-6452 if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Greg Schneider".

Greg Schneider, Administrator
Ohio Natural Heritage Program

Vrooman Road Parcel



APPENDIX B

US FISH & WILDLIFE SERVICE RESPONSE LETTER



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / FAX (614) 416-8994

December 17, 2012

Chagrin Valley Engineering
Attn: Lawrence Ludwig
22999 Forbes Road, Suite B
Cleveland, OH 44146-5667

TAILS: 03E15000-2013-TA-0236

Re: JJJ Properties – Vrooman Road Development
CVE Project # 11227
Leroy Township, Lake County, Ohio

Dear Mr. Ludwig:

This is in reference to your November 15, 2012 letter requesting information regarding federally threatened and endangered species in the vicinity of the above referenced project site. The project as proposed involves the construction of an industrial building, commercial building, warehouse, dock, parking lot and associated utilities, driveways, and stormwater ponds. The site is approximately 32.5 acres, the majority of which was recently cleared; the remaining land is composed of forest and scrub shrub areas containing 10 wetlands and 7 streams.

There are no Federal wildlife refuges, wilderness areas, or Critical Habitat within the vicinity of this site.

The Service recommends that impacts to streams and wetlands be avoided, and buffers surrounding these systems be preserved. Streams and wetlands provide valuable habitat for fish and wildlife resources, and the filtering capacity of wetlands helps to improve water quality. Buffers of native vegetation surrounding these systems are also important in preserving their wildlife-habitat and water quality-enhancement properties. The proposed activities do not constitute a water-dependent activity, as described in the Section 404(b)(1) guidelines, 40 CFR 230.10. Therefore, practicable alternatives that do not impact the special aquatic site (i.e., wetlands) are presumed to be available, unless clearly demonstrated otherwise. Therefore, before applying for a Section 404 permit, the client should closely evaluate all project alternatives that do not affect wetlands, and if possible, select an alternative that avoids impacts to the aquatic resource.

BALD EAGLE COMMENTS: The project lies within the range of the **bald eagle** (*Haliaeetus leucocephalus*), a species protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (16 U.S.C. 703-712). Due to the project type, location, and onsite habitat, this species would not be expected within the project area, and no impact to this species is expected. Relative to this species, this precludes the need for further action on this project as required by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

ENDANGERED SPECIES COMMENTS: The proposed project lies within the range of the **Indiana bat** (*Myotis sodalis*), a federally listed endangered species. Since first listed as endangered in 1967, their

population has declined by nearly 60%. Several factors have contributed to the decline of the Indiana bat, including the loss and degradation of suitable hibernacula, human disturbance during hibernation, pesticides, and the loss and degradation of forested habitat, particularly stands of large, mature trees. Fragmentation of forest habitat may also contribute to declines. During winter, Indiana bats hibernate in caves and abandoned mines. Summer habitat requirements for the species are not well defined but the following are considered important:

- (1) dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas;
- (2) live trees (such as shagbark hickory and oaks) which have exfoliating bark;
- (3) stream corridors, riparian areas, and upland woodlots which provide forage sites.

Our records indicate that an Indiana bat mist-net survey was conducted at the site in 2010, prior to the clearing of the majority of the property. The results of this survey are now older than two years, and are no longer considered valid for any additional activity at the site. While the mist-net survey documented the likely absence of Indiana bats at the site, no tree clearing or ground disturbance should have occurred until all applicable permits were issued and Section 7 Consultation under the Endangered Species Act between the Army Corps of Engineers and Service was complete. This would have ensured that impacts are limited to the project footprint and that no unnecessary impacts to potential habitat occur.

You have indicated that potential Indiana bat roost trees exist in the remaining forest on the site. You have also indicated that these trees will be avoided. However, the provided site plan shows that the majority of the property will be developed, including approximately 1.9 acres of wetland and 1,775 linear feet of stream that exist in the remaining forest/scrub shrub areas. In addition to impacts to potential roosting habitat, it appears that may also provide potential foraging habitat. In order for the Service to evaluate potential impacts to the Indiana bat, the Applicant must submit additional information. We recommend including the following information:

1. A map of the site with all forested areas indicated, and a general description of the habitat, including acreage, dominant species composition, age, density of understory, and canopy cover, and representative photos of these areas.
2. A map indicating the location of suitable roost trees (dead or live trees with peeling bark, cracks, or crevices), and describe species, condition (live or dead), size (dbh), and canopy cover. In particular, potential maternity roost trees should be located and quantified. Potential maternity roosts are typically large diameter trees with peeling bark that receive solar exposure for at least half the day. Please include photos of these trees.
3. A description and quantification of any forested parcels and potential roost trees onsite that will be preserved.
4. A list of avoidance and minimization measures to protect the bat and its habitat (such as preservation of suitable habitat, seasonal tree clearing, etc.).
5. Using the information above as justification, please include your determination of whether or not the project is likely to adversely affect the Indiana bat.

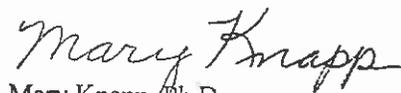
Based on this information, the Service will evaluate potential impacts to the Indiana bat from the proposed project. Depending on the extent of impacts to suitable Indiana bat habitat, we may recommend mist net or emergence surveys to determine bat usage of the project area. These surveys must be designed and conducted in coordination with this office, and *may only be completed between May 15 and August 15*. Furthermore, if the habitat evaluation and avoidance and minimization measures do not provide sufficient information to document a "not likely to adversely affect" determination, formal consultation under section 7 of the Endangered Species Act of 1973, as amended, may be necessary. Additionally, no additional tree clearing on any portion of the parcel should occur until consultation under

section 7 of the Endangered Species Act of 1973, as amended, between the Service and the Army Corps of Engineers is completed. We recommend that the Corps submit to this office a determination of effects to the Indiana bat for our review and concurrence.

The proposed project lies within the range of the federally endangered **Kirtland's warbler** (*Dendroica kirtlandii*), **piping plover** (*Charadrius melodus*) and the **snuffbox** (*Epioblasma triquetra*) a federally endangered freshwater mussel. Due to the project type, location, and onsite habitat, these species would not be expected within the project area, and no impacts to these species are expected.

Should additional information on listed or proposed species or their critical habitat become available or if new information reveals effects of the action that were not previously considered, our comments and recommendations may be reconsidered. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (ESA), as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy. This letter provides technical assistance only and does not serve as a completed section 7 consultation document. If you have questions, or if we may be of further assistance in this matter, please contact David Henry at extension 27 in this office.

Sincerely,



Mary Knapp, Ph.D.
Field Supervisor

cc: ODNR, DOW, SCEA Unit, Columbus, OH

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