



U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 2007-282-GUY Issuance Date: June 7, 2007

Stream: COW CREEK

Closing Date: July 8, 2007

Please address all comments and inquiries to:

U.S. Army USACE of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

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 (USACE) 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 USACE Regulatory Program.

SECTION 10: The USACE 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 USACE 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 USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Pioneer Fuel Corporation
400 Patterson Lane
Charleston, West Virginia 25311

LOCATION: The proposed project would be constructed approximately 3.42 miles northeast of Oceana, in the Ocean District of Wyoming County, West Virginia. The project area can be found at latitude 37°07'11" and longitude 81°34'05" on the Oceana and Matheny USGS quadrangles. The proposed project would result in disturbances to Cow Creek. Cow Creek is jurisdictional up to its ordinary high water mark and exhibits surface hydrological connection to Clear Fork of Guyandotte River, a navigable Section 10 waterway.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 954 linear feet (0.14 acre) of perennial stream channel in conjunction with the construction, operation and reclamation of the Little Eagle Deep Mine [pending approval under Surface Mining Control and Reclamation Act (SMCRA) permit U-4012-06 and National Pollutant Discharge Elimination Permit WV1021435]. Project components would include a temporary disposal site (Valley Fill No. 1), a temporary haul road (Haul Road No. 1) and an associated sediment pond (Pond No. 1). Site preparation would begin with the construction of an access road to the proposed Pond No.1. Once the access is complete, Pond No. 1 embankment would be constructed and would result in the temporarily discharge of 10 cubic yards of dredged or fill material into 10 linear feet (0.01 acre) of Cow Creek. Immediately upstream of this sediment pond, 570 feet of 72-inch corrugated metal pipe and associated 48 cubic yards of fill material would be temporarily placed in 621 linear feet (0.09 acre) of Cow Creek to facilitate the construction of the temporary Valley Fill No. 1. This proposed valley fill would accommodate the storage of 114,014 cubic yards of spoil material that would be generated by the proposed mineral extraction operations as well as the haul road excavation. Construction of the sediment pond embankment would result in the indirect impacts to 177 linear feet/0.02 acre perennial stream channel associated with the impoundment of sediment-laden water within the pond pool footprint. Also, Haul Road No. 1 would be constructed and would result in the temporary discharge of 8 cubic yards of fill material into Cow Creek to provide access to the project area from an existing haul road (Permit No. H-309) located approximately 220 linear feet upstream of the Valley Fill No. 1. Details regarding these proposed activities are listed in the table below.

Proposed Activity	Stream Location	Quantity of Dredged/Fill Material Below Ordinary High Water Mark (cubic yards)	Perennial Stream Channel Impacts		Intermittent Stream Channel Impacts		Ephemeral Stream Channel Impacts	
			(Linear Feet)	(Acres)	(Linear Feet)	(Acres)	(Linear Feet)	(Acres)
Valley Fill No. 1	Cow Creek-21+23 to 27+44	48	621	0.09	--	--	--	--
Pond No. 1 Embankment	Cow Creek-18+65 to 19+45	10	81	0.01	--	--	--	--
Pond No. 1 Pool	Cow Creek 19+45 to 21+23		177	0.02	--	--	--	--
Haul Road No. 1	Cow Creek 39+64 to 30+39	8	75	0.02	--	--	--	--
TOTAL DIRECT FILL IMPACTS		66	777	0.12				
TOTAL INDIRECT IMPACTS		0	177	0.02				

Including proposed direct and indirect impacts, the project would include a total of 954 linear feet (0.14 acre) of temporary affected perennial stream channel. The purpose of the proposed project is construct attendant and associated features (i.e. sediment control structures, overburden disposal, etc.) and to facilitate efficient underground extraction of 7,697,030 tons of coal reserves in the SMRCA permitted area (9 acres) for a period of 11 years. Coal removed from the project area would be processed and moved offsite for delivery to customers. Plans for the proposed facility are attached to this public notice.

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 overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a Compensatory Mitigation Plan (CMP) to compensate for temporary impacts to waters of the U.S. that are regulated by the USACE. To compensate for temporary and temporal impacts to aquatic resources, the applicant proposes to reestablish and restore the 954 linear feet of perennial stream segments and associated riparian areas temporarily impacted during the life of the mine upon reclamation of the site, restore and enhance 1,011 linear feet of Cow Creek and its associated 50-foot riparian area downstream of the project area and permanently preserve each mitigation area via a protective real estate instrument recorded with the Wyoming County Clerk. The mitigation project has been designed using natural stream design techniques and a watershed approach consistent with the USACE Regulatory Guidance Letter 02-02.

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 WVDEP.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) 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 sent to the West Virginia Division of Culture and History for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. In a letter dated September 7, 2006, the U.S. Fish and Wildlife Service (USFWS) concluded "no Indiana bat winter hibernacula are expected to be impacted...since less than 17 acres of Indiana bat maternity habitat will be impacted by this project, no further consultation under the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.)." 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 ESA Species Act of 1972 (as amended).

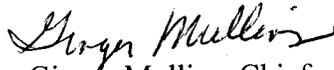
PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the 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 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 USACE 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 USACE 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 Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE 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 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 the above, please contact Mrs. Teresa Spagna of the South Regulatory Section at (304) 399-5710.


Ginger Mullins, Chief
Regulatory Branch

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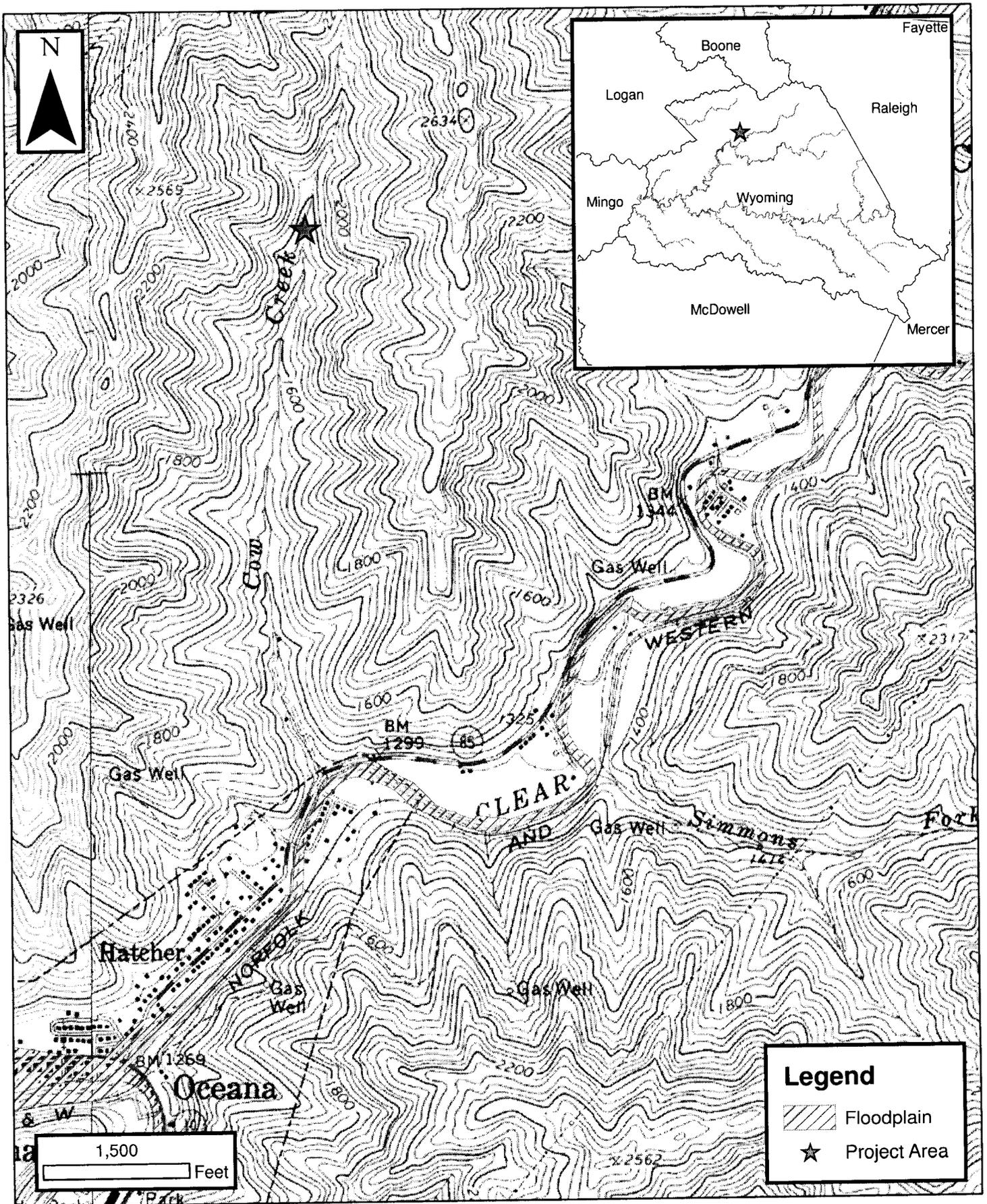
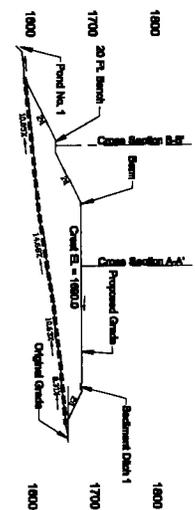
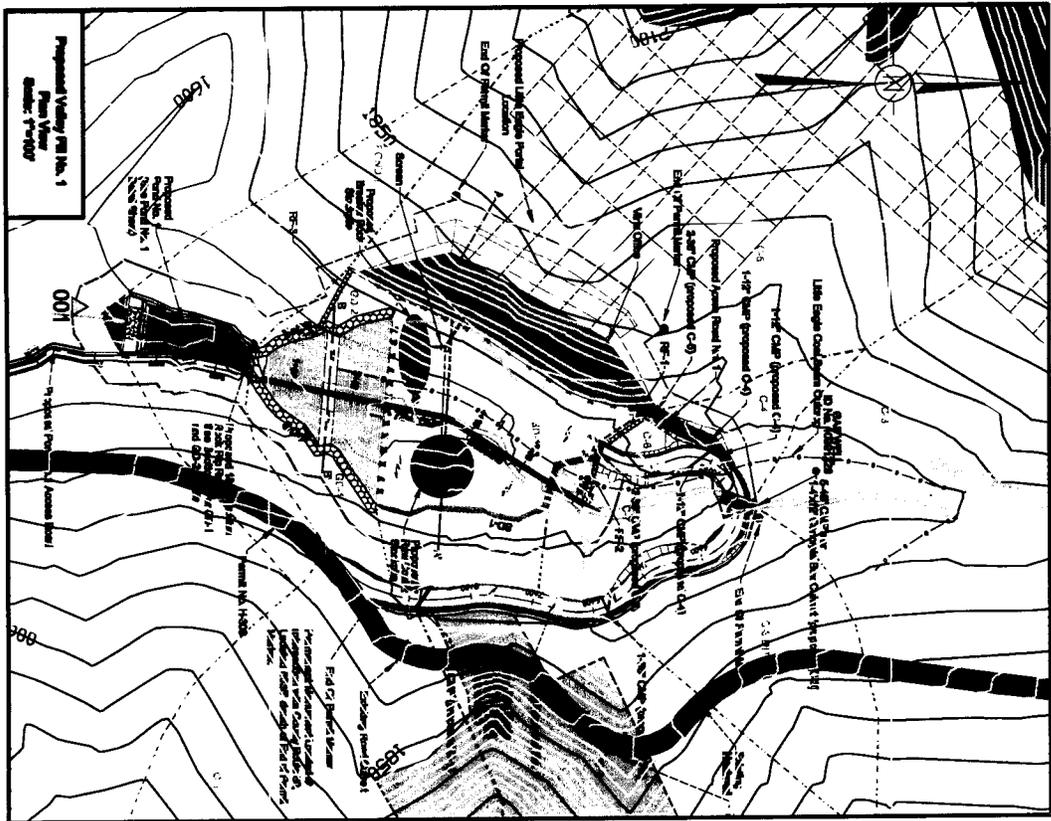
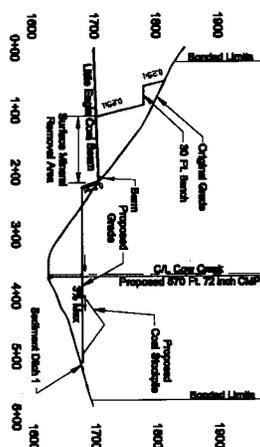


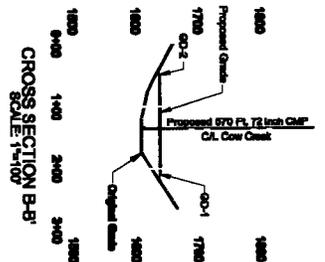
Figure 1. Project Location Map
 Wyoming County, WV
 Oceana & Matheny Quadrangles
 Little Eagle Surface Mine



VALLEY FILL NO. 1 BASELINE
SCALE 1"=100'



CROSS SECTION A-A'
SCALE 1"=100'



CROSS SECTION B-B'
SCALE 1"=100'

- LEGEND**
- PROPOSED BERM
 - ORIGINAL GRADE
 - DRAINING GRADE
 - DRAINAGE DIVISION LINES
 - LINE OF CROSS SECTION
- NOTES**
1. REFER TO SECTION P FOR DRAINAGE STRUCTURE DETAILS
 2. REFER TO SECTION R FOR STABILITY ANALYSIS OF FILL
 3. REFER TO SECTION Q FOR EXCESS SPOIL VOLUME
 4. REFER TO SECTION O FOR ROAD DESIGNS

REVISION	DATE	DESCRIPTION	P.L.
Prepared By			
Checked By			
Approved By			

Marshall Miller and Associates
 Consulting Engineers & Architects
 Charleston, WV • Charleston, WV • Chicago, IL
 Cincinnati, OH • Denver, CO • Dallas, TX
 Detroit, MI • Houston, TX • Kansas City, MO
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 Oklahoma City, OK • Omaha, NE • Phoenix, AZ
 Portland, OR • Raleigh, NC • Richmond, VA
 San Antonio, TX • St. Louis, MO • Tampa, FL
 Wichita, KS

**Valley Fill No. 1 Plan View,
 Profile and Cross Sections**
 LITTLE EAGLE DEEP LAKE
 OCEANA DISTRICT, WYOMING COUNTY, WEST VIRGINIA
 OCEANA AND MATHENEY QUADRANGLES
 PIONEER FIRE AND WATER CONTROL DISTRICT
 400 PATTERSON LANE, CHARLESTON, WV 25311

DESIGNED BY: JEA
 CHECKED BY: JEA
 APPROVED BY: JEA

DATE: 10/08
 DATE: 10/08
 DATE: 10/08

SCALE IN FOOT LINES: Chartered Noted
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