



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

Public Notice

In reply refer to Public Notice No.

2007-1126-OHR

Issuance Date:

September 19, 2008

Stream:

Ohio River M.P. 241 RDB

Closing Date:

October 19, 2008

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 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. This notice serves as the Corps' request to the Ohio Environmental Protection Agency to act on Section 401 Water Quality Certification for the following application.

APPLICANTS: Meigs Point Dock, LLC
Post Office Box 338
New Haven, West Virginia 25265

LOCATION: The proposed project is located along the right descending bank of the Ohio River, 241 miles downstream of Pittsburgh, Pennsylvania near Antiquity, Meigs County, Ohio (*Lat. 38 57 20 and Long. 81 54 38 as depicted on the New Haven, WV USGS Topographic Quadrangle*). The project is located adjacent to the towns of Graham and New Haven, in Mason County, West Virginia (reference Drawing No. 1).

DESCRIPTION OF THE PROPOSED WORK: The applicant is requesting authorization for the construction and operation of a an overhead Conveyor Transport System (CTS) as well as a commercial coal loading dock and barge mooring and fleeting facility. The enclosed CTS (reference Drawing No. 2) would be constructed in an adjacent upland area to provide coal for barge loading operations. The upland area adjacent to the proposed loading facility has been utilized for farming, residential development and recreational facilities. The shoreward impacts associated with the construction of the loading facility are limited to transportation access to the load out and the construction of foundation bases to support the overhead CTS. Construction of the dock and barge mooring and fleeting facility would involve the installation of six (6) mooring cells. Full and empty barges would be moored in a four wide by six long configuration within the 1,400 foot by 215 foot project area (reference Drawing Nos. 3-6). The upstream mooring cell would be a 35-ft diameter cell. The five downstream mooring cells would be 25-ft diameter cells. All six cells would be constructed by driving interlocking sheet piling into the riverbed in a circular form. The circular forms would be backfilled with aggregate and capped with concrete. The upstream mooring cell would also serve as the foundation for a discharge conveyor with a telescoping loading chute. No initial or maintenance dredging is being proposed. Plans of the proposal are attached to this notice.

A Preliminary Jurisdictional Determination (PJD) was approved by this office on September 5, 2008. As detailed in the PJD, jurisdictional waters delineated at this site cumulatively total 5,418 linear feet and 0.88-acre, which includes: 1,724 linear feet (or 0.25-acres) within eight ephemeral streams, 3,694 linear feet (or 0.56-acres) within five intermittent streams and one emergent wetland comprised of 0.07-acre. The dock and fleeting facility would be constructed along 1,400 linear feet of the Ohio River and extend 215 feet riverward of the normal pool shoreline (or 84.6 surface water acres). The project has been designed to avoid impacts to all other waters of the United States.

ALTERNATIVE ANALYSIS: The barge mooring facility is considered to be a water dependent activity, because it must be located within waters of the United States to fulfill its basic purpose.

MITIGATION PLAN: The applicant has provided a conceptual compensatory mitigation plan (CMP) to offset the unavoidable impacts to jurisdictional waters of the United States, which are regulated by the Department of the Army, Corps of Engineers. The conceptual CMP proposes the placement of 12 to 18-inch sized limestone around the riverward face of the proposed mooring cells. The goals of the conceptual CMP are to provide aquatic habitat for benthic macroinvertebrates and fish.

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 AND CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined there are no historic properties currently listed on the National Register within the area to be affected by the project. The applicant has conducted a Phase I Cultural Resource Survey for the areas that would be impacted by the proposed project. As a result of this survey, one site was identified that may be eligible for listing in the National Register. The applicant has indicated surface disturbances would be avoided around the perimeter of the identified site. This public notice serves as coordination with the Ohio State Historic Preservation Office for their review regarding historic properties. Comments concerning archaeological sensitivity of a project area should be based upon collected data.

THREATENED & ENDANGERED SPECIES: The Huntington District has consulted the most recently available information for Meigs County, Ohio and Mason County, West Virginia, which indicates the project is located within the known or historic range of the following federally listed threatened and endangered species:

Indiana bat (*Myotis sodalis*)
 Pink Mucket Pearly mussel (*Lampsilis abrupta*)
 Fanshell mussel (*Cyprogenia stegaria*)
 Sheepnose mussel (*Plethobasus cyphus*)

The project would involve the removal of the following forested areas: a) 0.01-acre associated with the dock construction; and b) 1.32 acres associated with the CTS construction. In accordance with the requirements outlined in the Ohio Department of Natural Resources' *Permitting Policy Procedure Directive 2004-01: Measures for Protecting the Endangered Indiana Bat*, the applicant has conducted mist-net bat surveys to demonstrate the presence or probable absence of the Indiana bat. The results of the survey indicate no presence of Indiana bat or suitable habitat. Therefore, the Huntington District has determined this project would have a may affect, but would not likely adversely affect the Indiana bat. The proposed project would also involve impacts to the existing substrate, which may potentially provide suitable habitat for freshwater mussels. The applicant has indicated a mussel survey was conducted in May 2007 along the right descending bank of the Ohio River between river miles 240.1 to 241.2. The results of the survey revealed a total of 58 individuals were identified, which represented 10 mussel species. No Federally-listed threatened or endangered mussel species were identified within the area of the mussel survey. A copy of the mussel survey report will be forwarded onto the U.S. Fish and Wildlife Service's (USFWS) Reynoldsburg, Ohio and Elkins, West Virginia Field Offices as well as the Ohio and West Virginia Department of Natural Resources for review. Based on the nature of the project and the results of the mussel survey, this office has determined the proposed project may affect, but would not likely adversely affect the Pink Mucket Pearly mussel, Fanshell mussel, and Sheepnose mussel. 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 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. 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. Any person may submit cumulative impact information, which is substantive and specifically associated with the proposed action. 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.

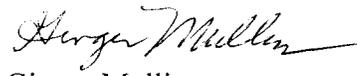
SOLICITATION OF COMMENTS: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, 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 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. Michael Hatten, Project Manager
South Regulatory Permit Section - **LRH-OR-FS-2007-1126-OHR**
U. S. Army Corps of Engineers Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070

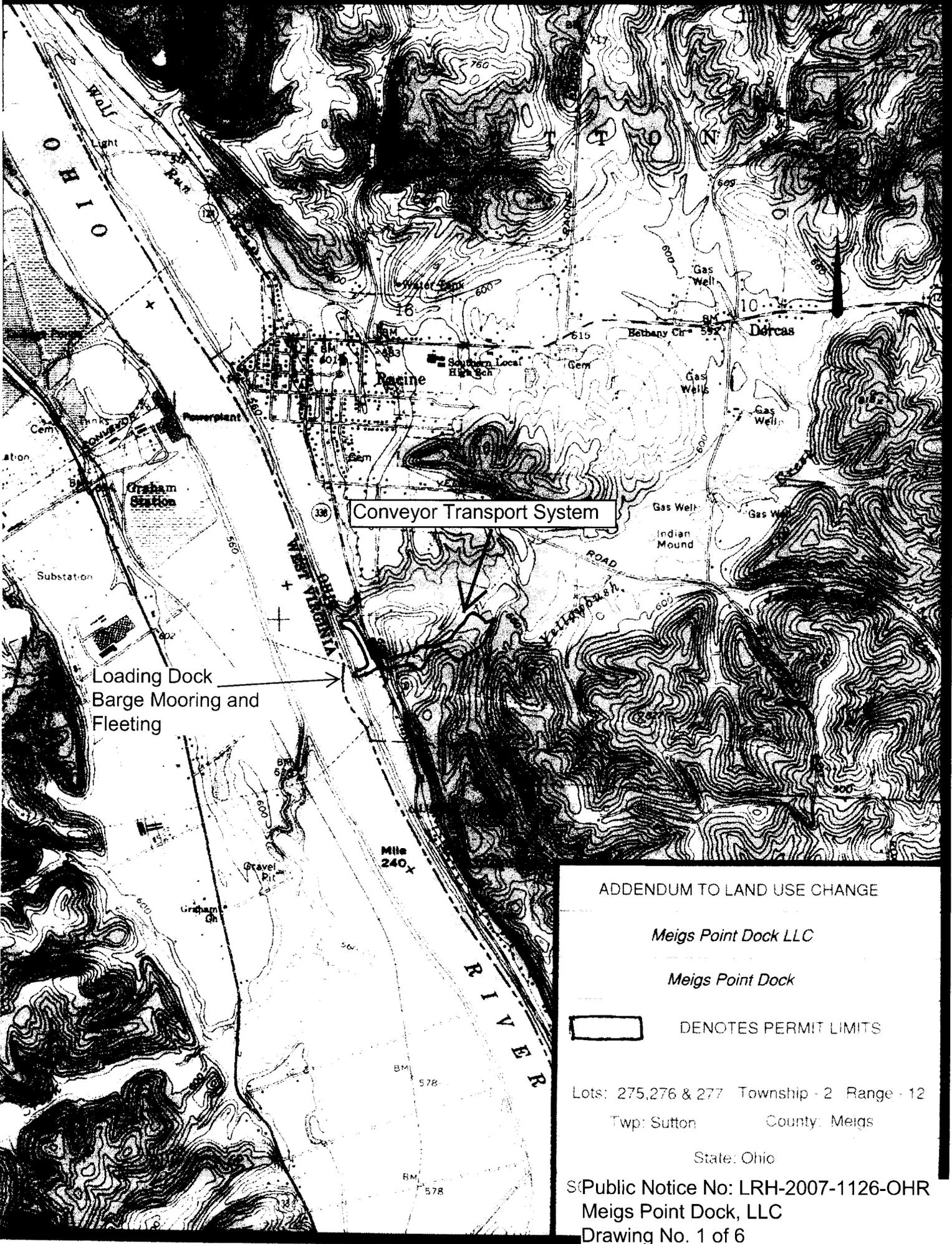
Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of

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 call Mr. Michael Hatten at (304) 399-5610.



Ginger Mullins
Regulatory Branch

(O,WV)



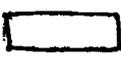
Conveyor Transport System

Loading Dock
Barge Mooring and
Fleeting

ADDENDUM TO LAND USE CHANGE

Meigs Point Dock LLC

Meigs Point Dock



DENOTES PERMIT LIMITS

Lots: 275,276 & 277 Township - 2 Range - 12

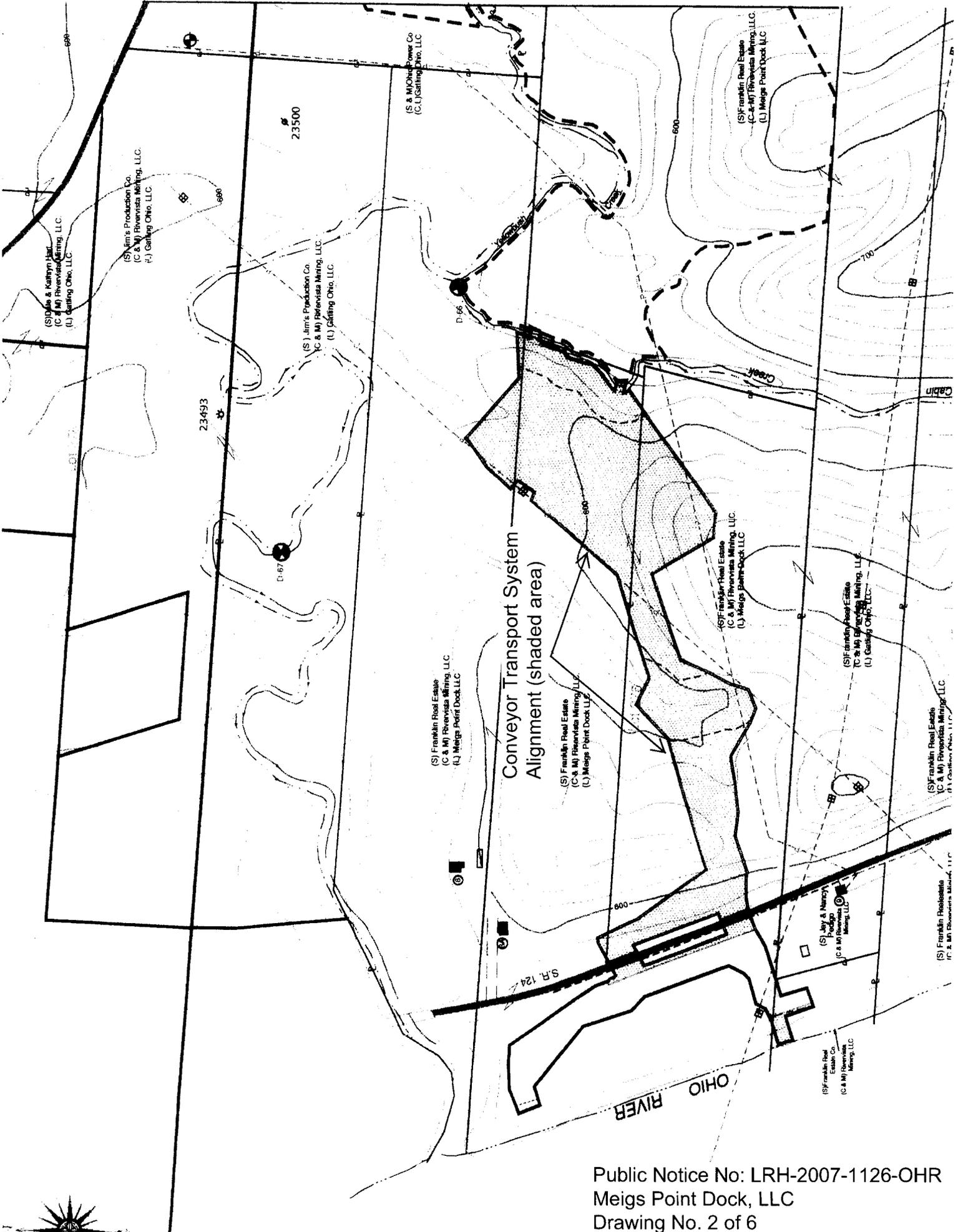
Twp: Sutton County: Meigs

State: Ohio

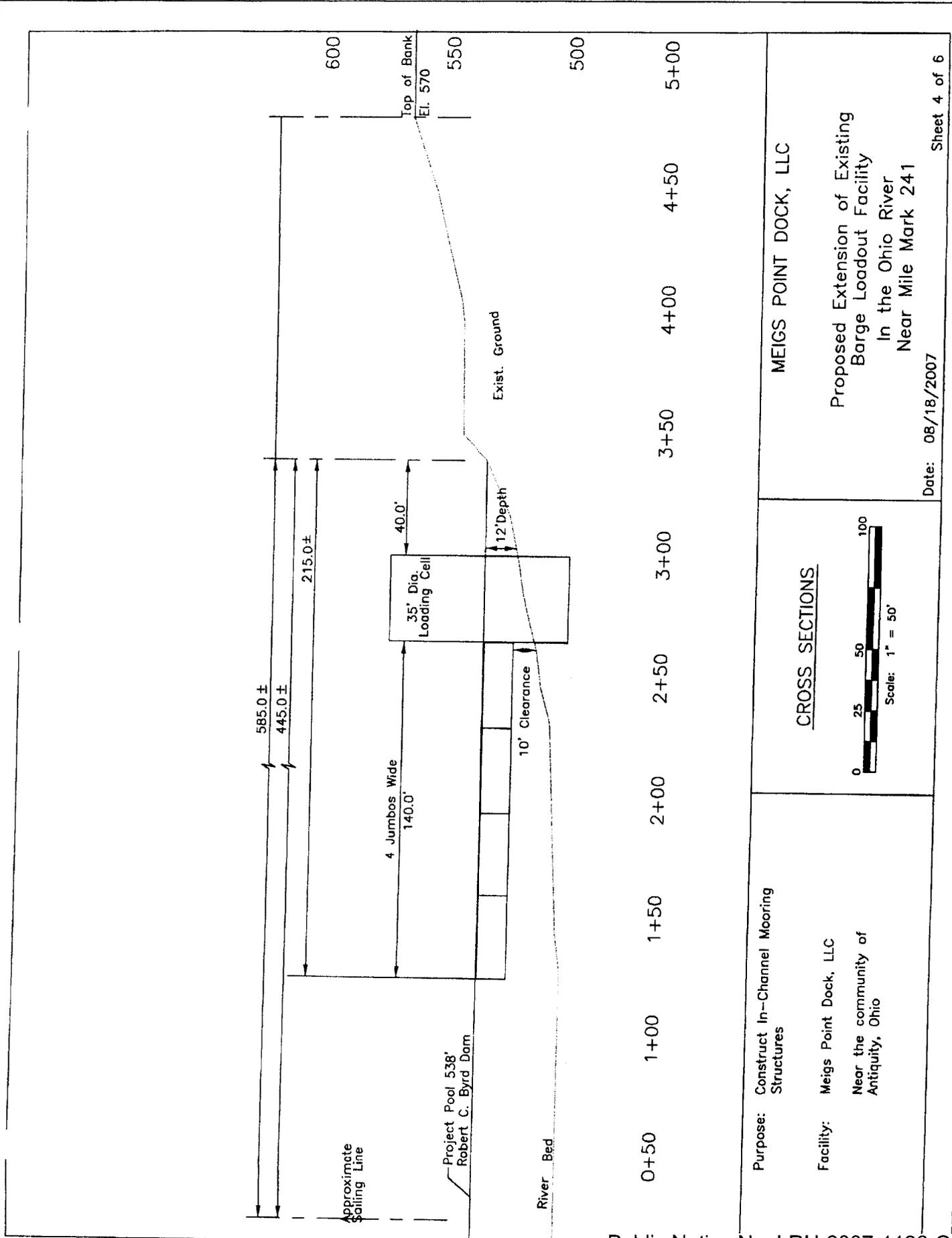
Public Notice No: LRH-2007-1126-OHR

Meigs Point Dock, LLC

Drawing No. 1 of 6



Conveyor Transport System
Alignment (shaded area)



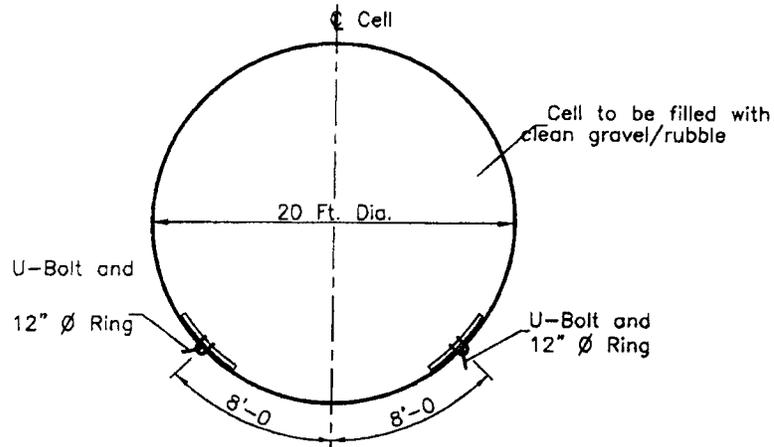
Public Notice No: LRH-2007-1126-OHR
 Meigs Point Dock, LLC
 Drawing No. 4 of 6

Purpose: Construct In-Channel Mooring Structures
Facility: Meigs Point Dock, LLC
 Near the community of Antiquity, Ohio

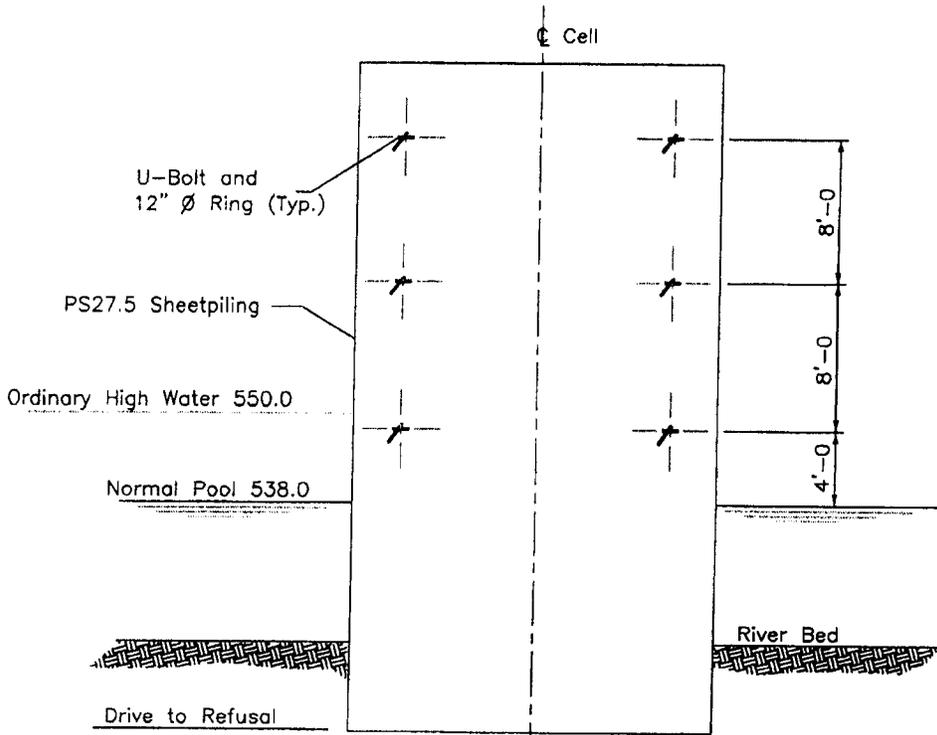
CROSS SECTIONS



MEIGS POINT DOCK, LLC
 Proposed Extension of Existing Barge Loadout Facility
 In the Ohio River
 Near Mile Mark 241



TOP VIEW
20' DIA. MOORING CELL

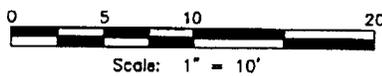


ELEVATION
20' DIA. MOORING CELL

Purpose: Construct In River Mooring Structures

Facility: Meigs Point Dock, LLC
Near the community of Antiquity, Ohio

MOORING DETAILS

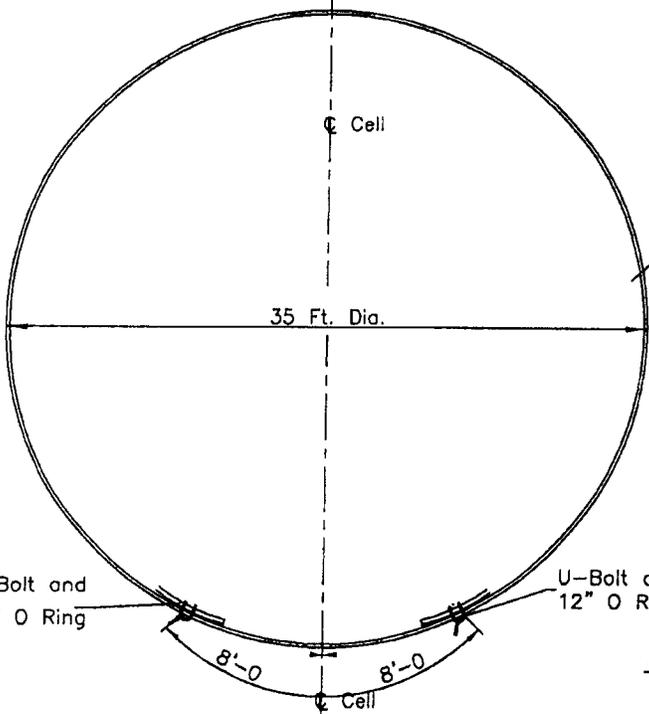


MEIGS POINT DOCK, LLC

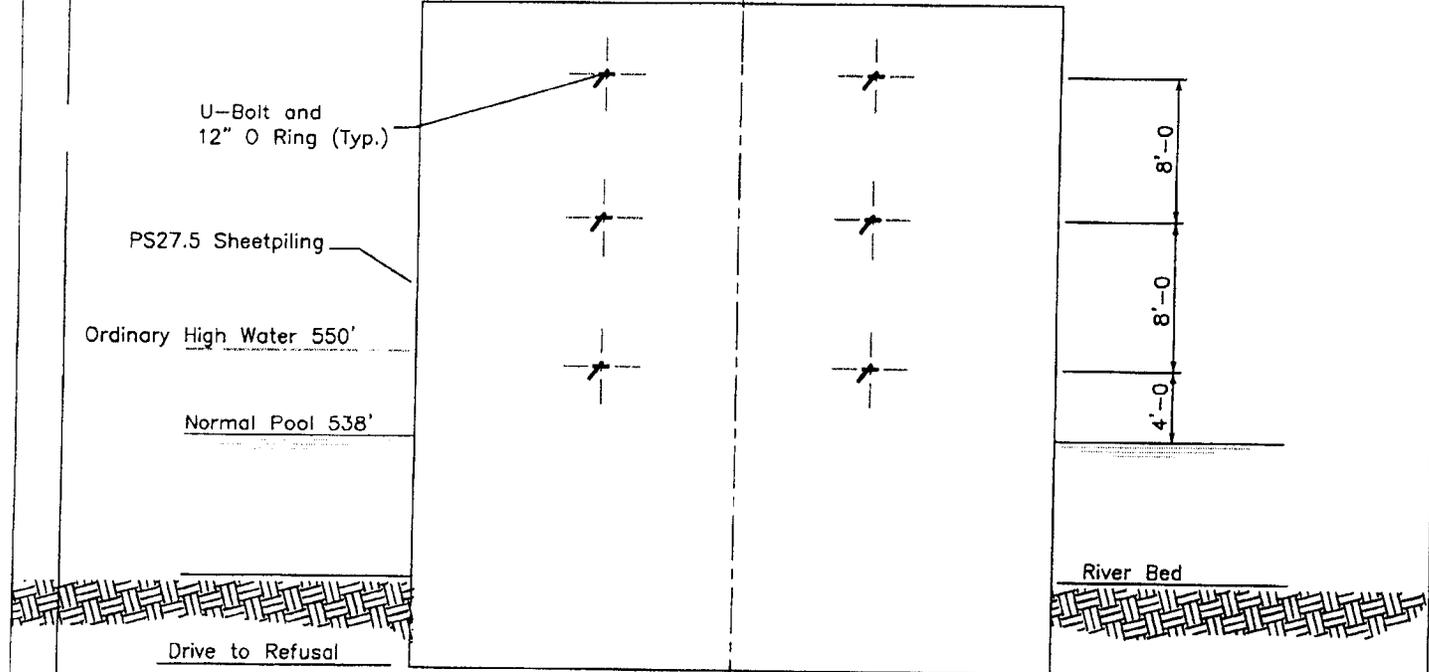
Proposed Construction of Barge Loadout Facility
In the Ohio River
Near Mile Mark 241

Date: 07-12-07

Sheet 5 of 6



TOP VIEW
35' DIA. MOORING CELL

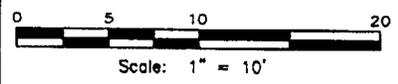


ELEVATION
35' DIA. MOORING CELL

Purpose: Construct In River Mooring Structures

Facility: Meigs Point Dock, LLC
Near the community of Antiquity, Ohio

MOORING DETAILS



MEIGS POINT DOCK, LLC

Proposed Extension of Existing Barge Loadout Facility
In the Ohio River
Near Mile Mark 241

Date: 08-11-07 Sheet 6 of 6

Public Notice No: LRH-2007-1126-OHR
Meigs Point Dock, LLC
Drawing No. 6 of 6