



# Public Notice

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

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**In reply refer to Public Notice No.**

55082-1

**Issue Date:**

September 28, 2006

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**Stream:** An embayment formed at the confluence of  
Pond Run and the Ohio River

**Closing Date:**

October 27, 2006

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**Please address all comments and inquiries to:**

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-FS Public Notice No. 55082-1

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

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**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 watercourse, 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 (U.S.), 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 of Engineers' request to the Kentucky Division of Water to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Worthington Marina, Inc.  
1001 Riverside Drive  
Worthington, Kentucky 41138

**LOCATION:** The project is in an embayment formed at the confluence of Pond Run with the Ohio River, near Ohio River mile 331, on the left descending bank, latitude 38° 33' 12", longitude 82° 44' 57", as depicted in the attached Location Map (Drawing 1), in Greenup County, Kentucky.

**ADMINISTRATIVE HISTORY:** On April 7, 1993, the applicant was authorized to place a total of no more than 0.25 acre of dredged material at two locations in waters of the U.S. in conjunction with a marina dredging project. The sites authorized for the placement of dredged material on April 7, 1993 are indicated on Drawing 2.

On April 28, 2005, the applicant requested authorization to dredge the marina area and dispose the material in an on-site containment area. During a pre-construction inspection it was determined the applicant had constructed a levee to enclose an area for the disposal of material from future dredging projects. The levee was constructed outside the original permit area and encloses an area of approximately 1.4 acre of waters of the U.S. The levee is indicated on Drawing 3. Drawing 4 depicts the disposal area as constructed based on GPS coordinates.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant has requested a Department of the Army Permit for unauthorized and proposed discharges of dredged or fill material into waters of the United States (U.S.) in conjunction with previously constructed containment area and proposed marina dredging project. The applicant proposes to dredge approximately 15,000 cubic yards at the marina area and adjacent areas and from the marina to the Ohio River. The dredged material would be placed within the disposal area indicated in Drawing 5. After decanting, the dredged material would be permanently placed in all or portions of the areas indicated in Drawing 4.

The applicant estimates the dredging operation would have a duration of approximately one year and all material outside the original permit area be removed six months after the dredging operation is complete. The estimated completion time would not include work during fish spawn season, April 15 through June 15.

The applicant proposes to leave the containment area for future dredging operations. Material from future dredging would be placed in all or portions of the areas indicated in Drawing 4.

**ALTERNATIVES ANALYSIS:** The disposal of dredged material 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 proposes to separately provide the required alternatives analysis.

**MITIGATION PLAN:** To mitigate for unauthorized and proposed impacts the applicant would furnish permanent protection for the wetland upstream of the levee as indicated in Drawing 5. The applicant would remove all material outside the original permit area and restore the area to the condition prior to construction of the levee. The applicant would be required to submit a detailed mitigation plan for agency approval prior to any proposed impacts.

**WATER QUALITY CERTIFICATION:** A Section 401 Individual Water Quality Certification would be required for this project. It is the applicant's responsibility to obtain certification from the Kentucky Division of Water.

**HISTORIC AND CULTURAL RESOURCES:** The National Register of Historic Places has been consulted and it was 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 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 Huntington District has consulted the most recently available information and determined the project could affect the continued existence of three federally listed endangered mussels: *Lampsilis orbiculata*, *Obovaria retusa* and *Cyprogenia stegaria*; or result in the destruction or adverse modification of habitat of such species, which has been determined to be critical. 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.

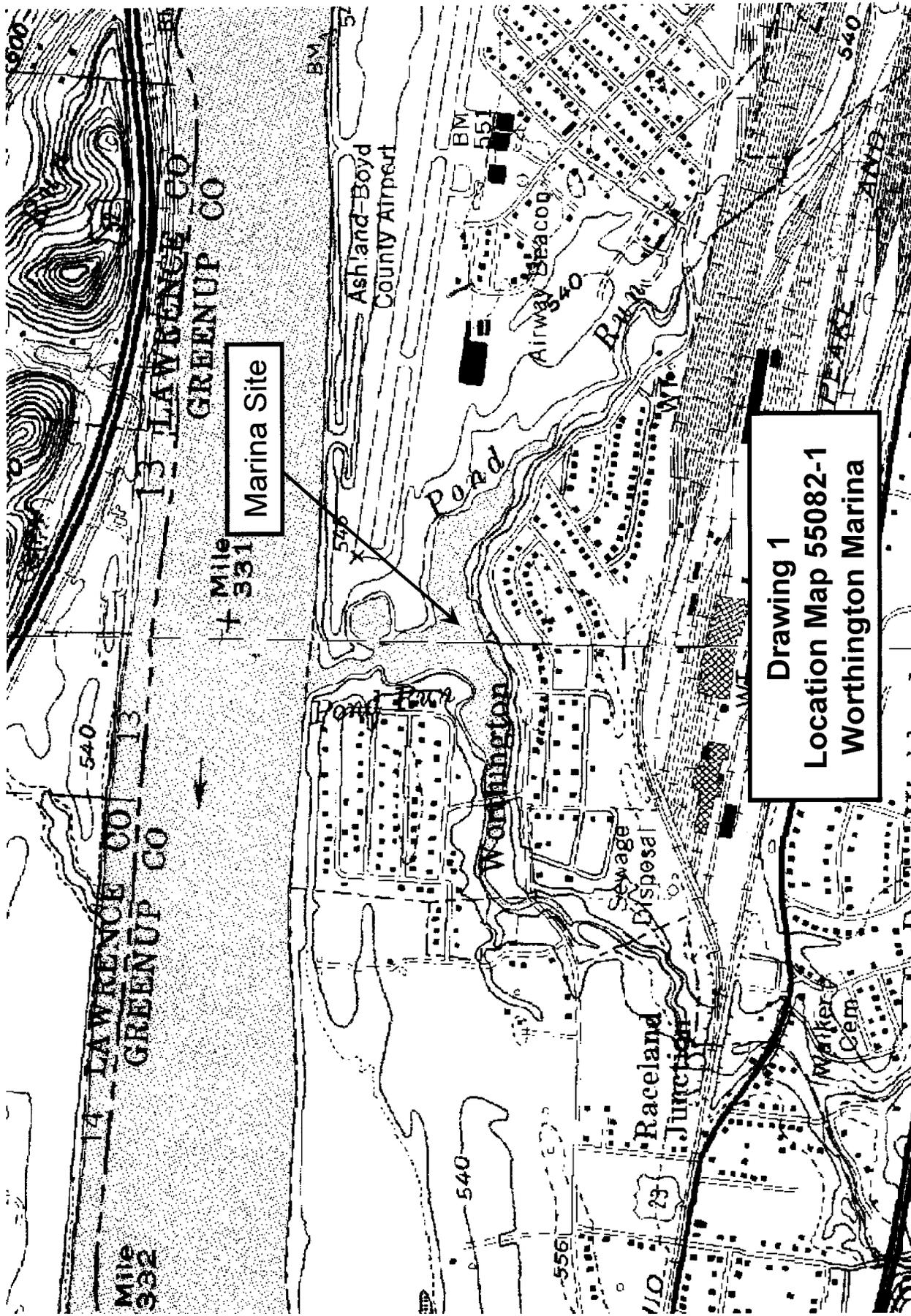
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

U.S. Army Corps of Engineers, Huntington District  
Attn. CELRH-OR-FS, Public Notice 55082-1  
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. Richard A. Hemann of the South Regulatory Section at 304-399-5710.

for   
Ginger Mullins, Chief  
Regulatory Branch

(K,O)



Marina Site

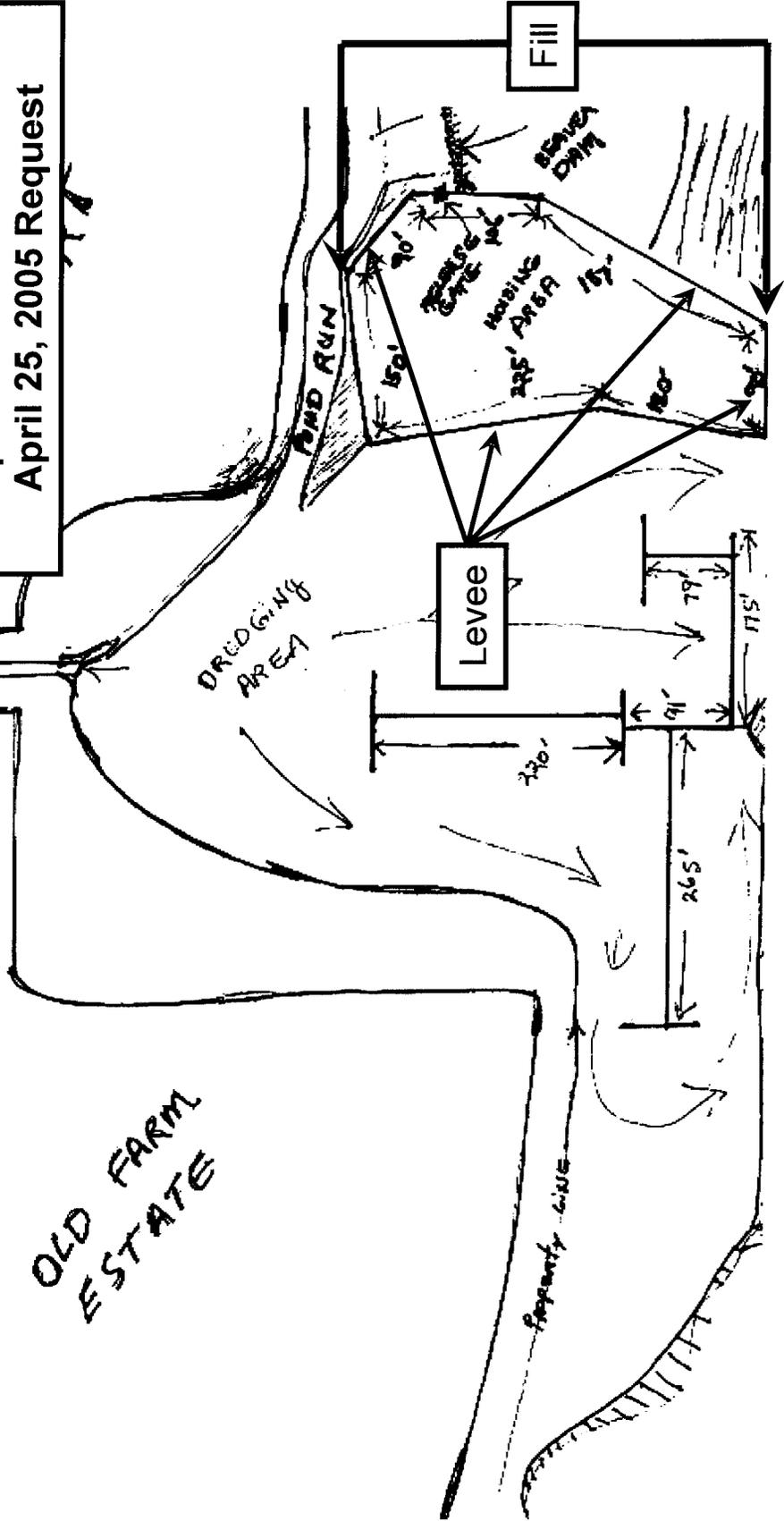
Drawing 1  
Location Map 55082-1  
Worthington Marina

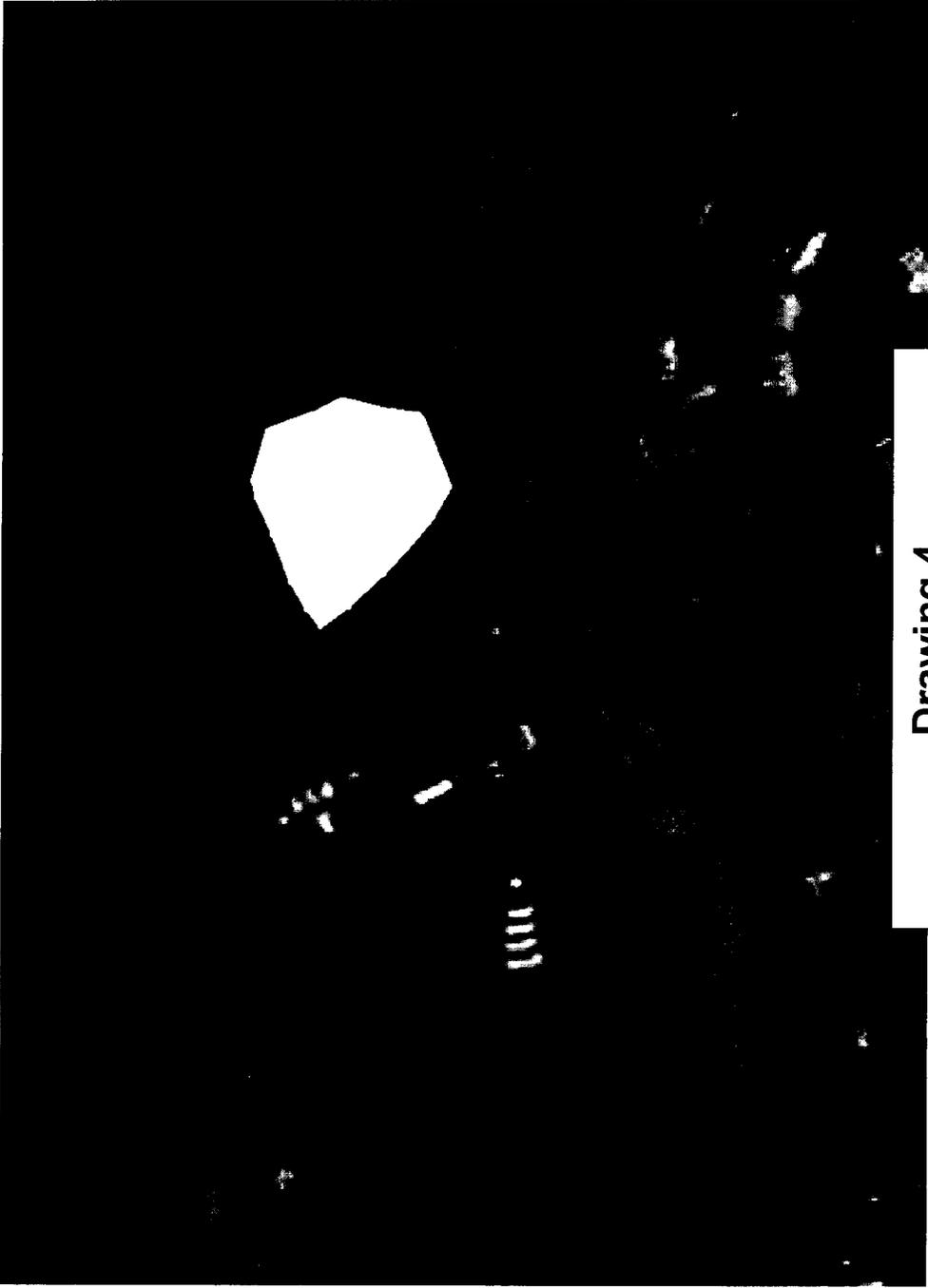


MP 331 OHIO RIVER

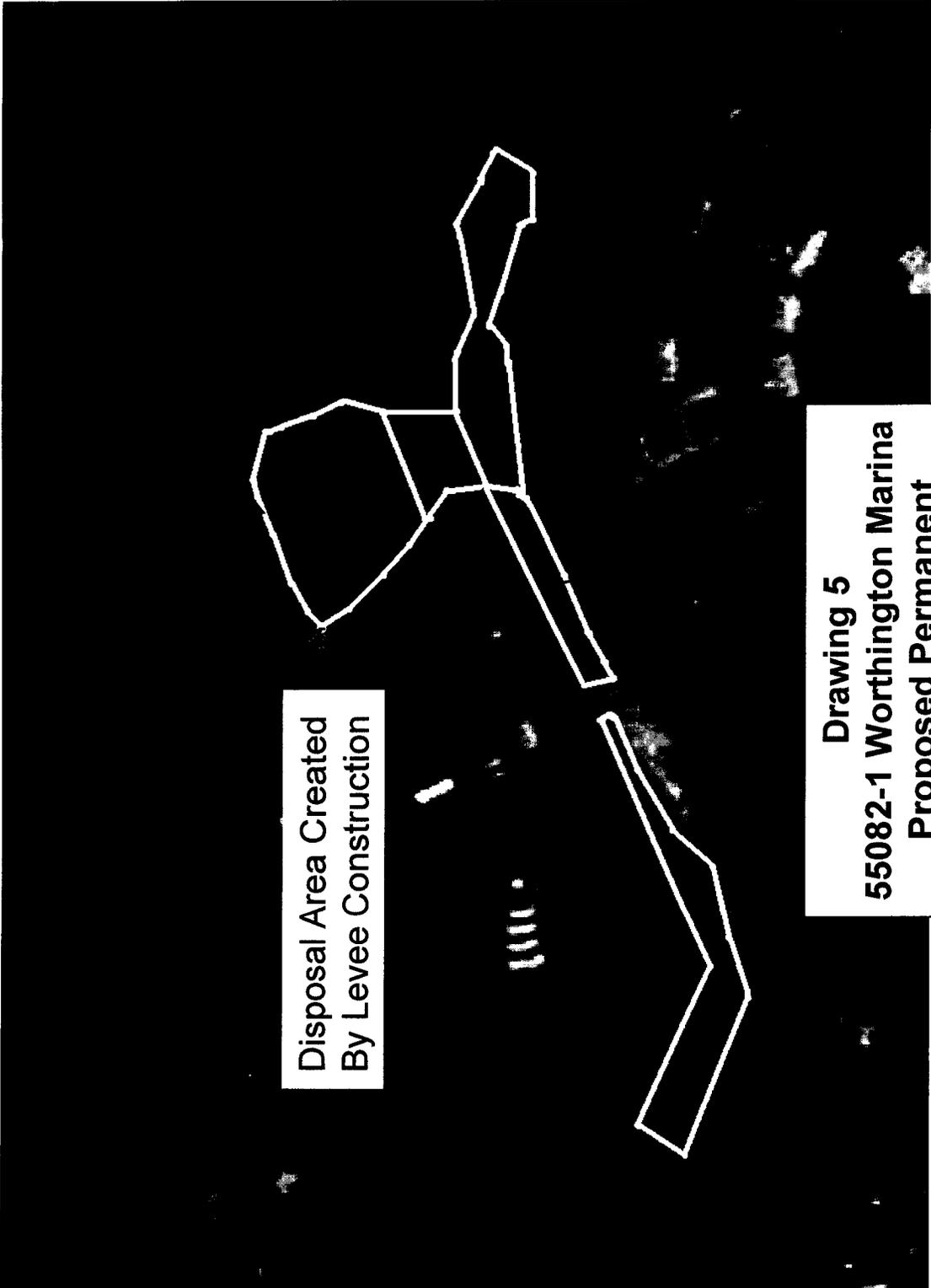
Drawing 3  
55082-1 Worthington Marina  
Disposal Area Indicated in  
April 25, 2005 Request

OLD FARM  
ESTATE





**Drawing 4**  
**55082-1 Worthington Marina**  
**Levee Containment Area**  
**Indicated Using**  
**GPS Coordinates**



Disposal Area Created  
By Levee Construction

**Drawing 5**  
**55082-1 Worthington Marina**  
**Proposed Permanent**  
**Disposal Areas 1-4**

Pond Run and Wetland Areas  
Proposed for Protection



Drawing 6  
55082-1 Worthington Marina  
Area Proposed for  
Permanent Protection