

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890
(<http://www.saw.usace.army.mil/wetlands/regtour.htm>)

Action ID No. 200330268

April 29, 2003

PUBLIC NOTICE

Ed and Clay Neill, Neill Grading and Construction Company, Inc., 2965 Tate Boulevard S.E., P.O. Box 3916, Hickory, North Carolina 28603, have applied for a Department of the Army (DA) permit **TO DISCHARGE DREDGED OR FILL MATERIAL INTO WATERS OF UNNAMED TRIBUTARIES TO THE SOUTH FORK CATAWBA RIVER, IMPACTING APPROXIMATELY 4200 LINEAR FEET OF STREAM CHANNEL TO CONSTRUCT AN 18-ACRE LAKE WITH A SEDIMENT BASIN AND A CONSTRUCTED 1.3-ACRE WETLAND, NEAR NEWTON, CATAWBA COUNTY, NORTH CAROLINA.**

The following description of the work is taken from data provided by the applicant and from observations made during onsite visits by a representative of the Corps of Engineers. Plans submitted with the application show the proposed construction of two (2) earthen dams to create an 18-acre impounded lake and an associated forebay sediment basin. The primary dam for a deepwater impoundment would involve the placement of fill material in 125 linear feet of perennial stream channel, inundating 2695 linear feet of important perennial channel and 400 linear feet of important intermittent channel upstream. A riser barrel structure for controlled discharge through the proposed dam is included which will maintain cold water base flow to downstream waters (Drawing A). A secondary dam and associated road crossing is also proposed in an unimportant intermittent tributary to the perennial channel, impacting 115 linear feet of channel by filling. An additional 265 linear feet of unimportant intermittent channel upstream (forebay area) and downstream of the secondary dam would be impacted through inundation. The forebay area would serve as a sediment trap/stilling basin, and would be accessed for periodic sediment removal maintenance (Drawing B). In addition, an approximate 1.3-acre wetland is proposed to be created through excavation at the head of the proposed impoundment, in and adjacent to an approximate 600-foot reach of the perennial stream (Drawing C). Finally, the applicant has proposed to monitor the stream and channel downstream of the lake to determine if the channel exhibits any instability from the impoundment.

The perennial stream channel of the project area drains an approximately 1,000-acre watershed that is currently subject to residential and commercial development although the majority of the watershed remains undeveloped. The existing perennial channel is moderately entrenched to about 5 feet and exhibits bank failures with resulting sediment loading to downstream receiving waters. The floodplain is currently forested but access from the stream appears to be limited to significant storm events. Channel substrate ranges from coarse sand to gravel and some cobble. The 1 to 3-foot-wide intermittent channel of the project area exhibits weak to moderate indicators of stream function and quality. These streams are generally low gradient and have substrates of silt, sand and fine gravel.

The applicant is currently proposing to mitigate for stream losses by: 1) creation of a 1.3 acre shallow water wetland at the upper end of the proposed lake; 2) creation of a 17 acre deepwater lake with 20-foot-wide littoral shelf (1.5 to 3 acres, on a 10:1 slope); 3) provide 20-foot buffers on each side of remaining 922 feet of perennial stream and 163 feet of intermittent stream; and 4) provide preservation and/or conservation easement protection for approximately 27.5 acres of land adjacent to the project site. The purpose of the proposed dams and impoundment is to create a private ski lake and road crossing to uplands on the northeast side of the parcel. Plans showing the proposed work are included with this public notice.

The State of North Carolina will review this public notice to determine the need for the applicant to obtain any required State authorization. No Department of the Army (DA) permit will be issued until the coordinated State viewpoint on the proposal has been received and reviewed by this agency, nor will a DA permit be issued until the North Carolina Department of Environment and Natural Resources (NCDENR) has determined the applicability of a Water Quality Certificate as required by PL 92-500.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this worksite is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973. The U.S. Fish and Wildlife Service has noted that the federally endangered dwarf-flowered heartleaf plant, *Hexastylis naniflora*, may occur in the project area, and the applicant has been notified that a survey to determine the presence or absence of dwarf-flowered heartleaf is required before the requirements of the Endangered Species Act can be met and a final permit decision made.

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all those factors, which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be

considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore 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. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

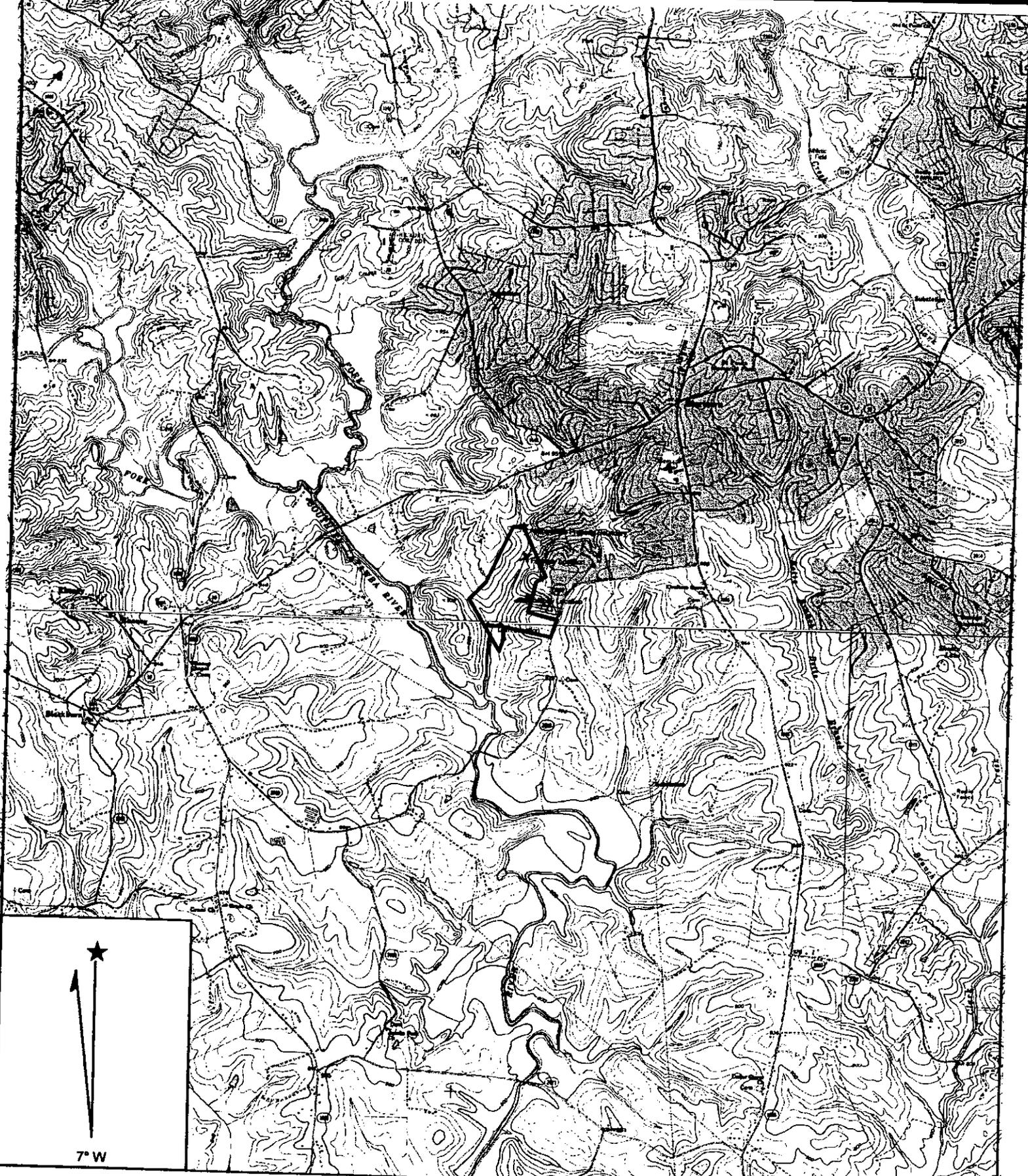
The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine 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 (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Generally, the decision whether to issue this Department of the Army (DA) permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether or not the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Environmental Operations Section, North Carolina Division of Water Quality (NCDWQ), 1621 Mail Service Center, Raleigh, North Carolina 27699-1621. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

All persons desiring to make comments regarding the application for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), Wetlands Section, 1621 Mail Service Center, Raleigh, North Carolina 27626-0621, on or before May 23, 2003 Attention: Mr. John Dorney.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Mr. John Hendrix, until 4:15 p.m., May 29, 2003, or telephone (828) 271-7980.

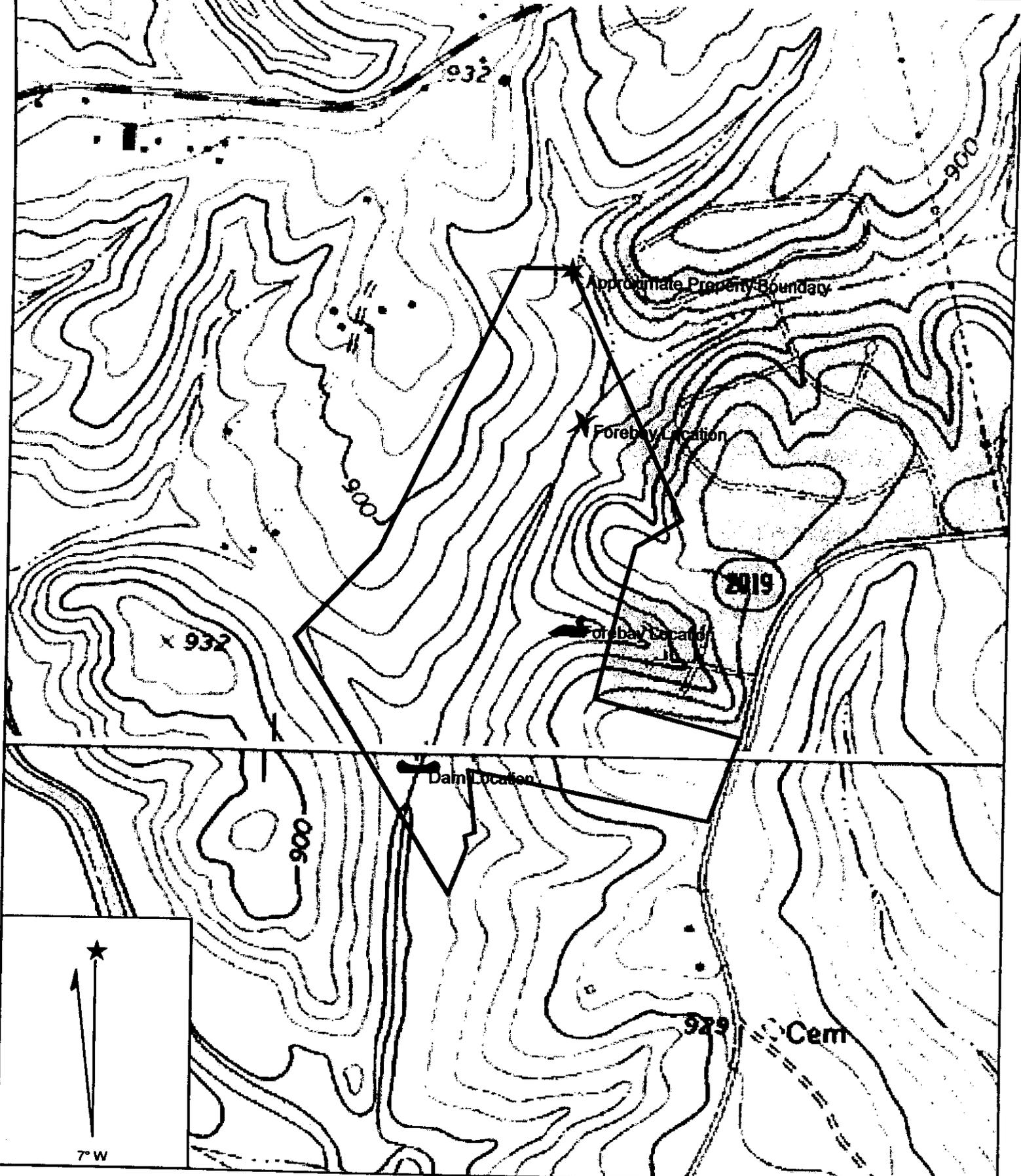


Name: HICKORY
Date: 12/10/2002
Scale: 1 inch equals 4000 feet

Location: 035° 37' 40.8" N 081° 17' 11.3" W
Caption: Rocky Ford West Lake
Neil Grading Construction Co
WNR, Inc. Job # NG-1001

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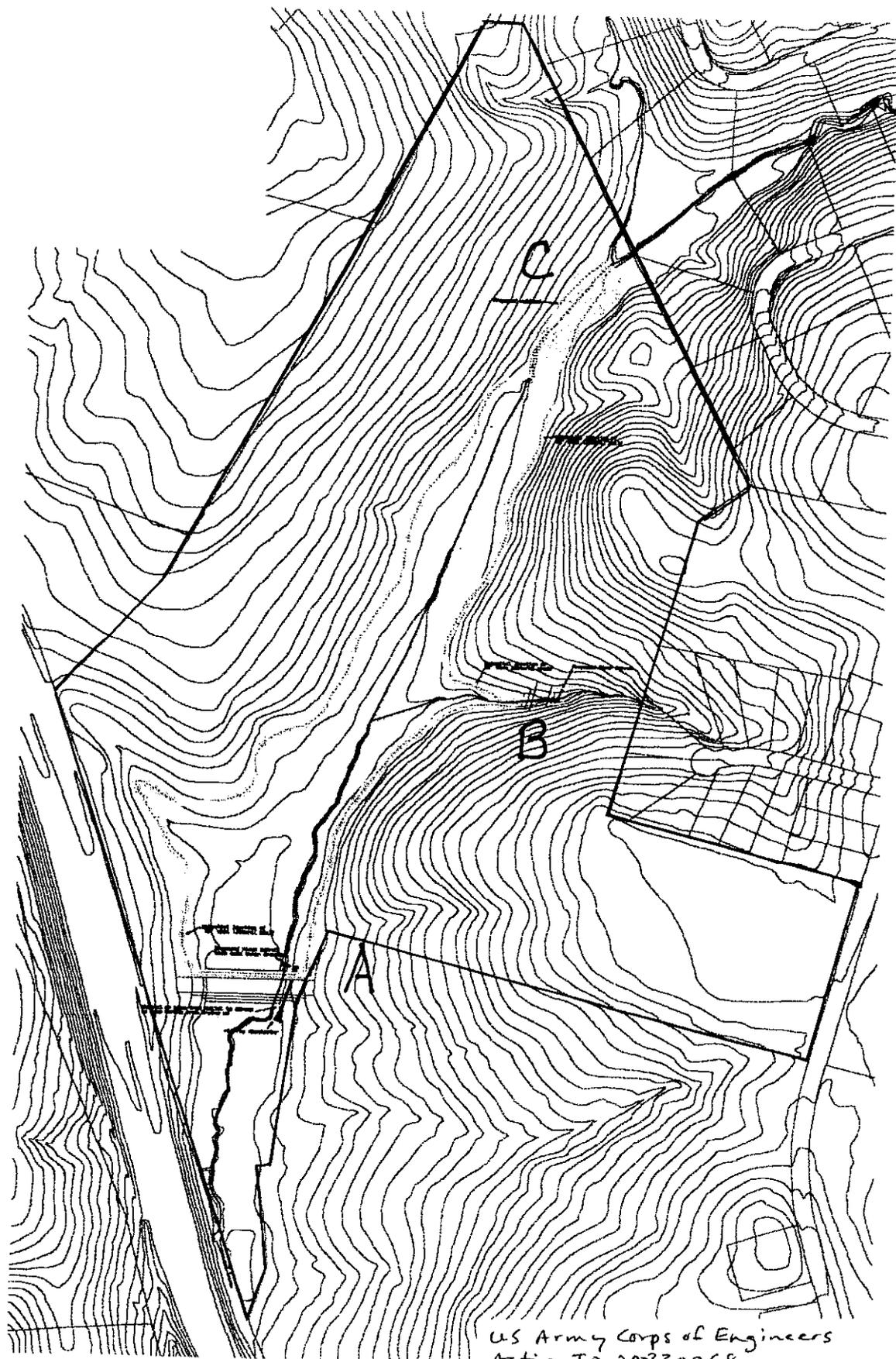


Name: HICKORY
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Location: 035° 37' 40.8" N 081° 17' 11.3" W
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1" = 500'

1" = 100'

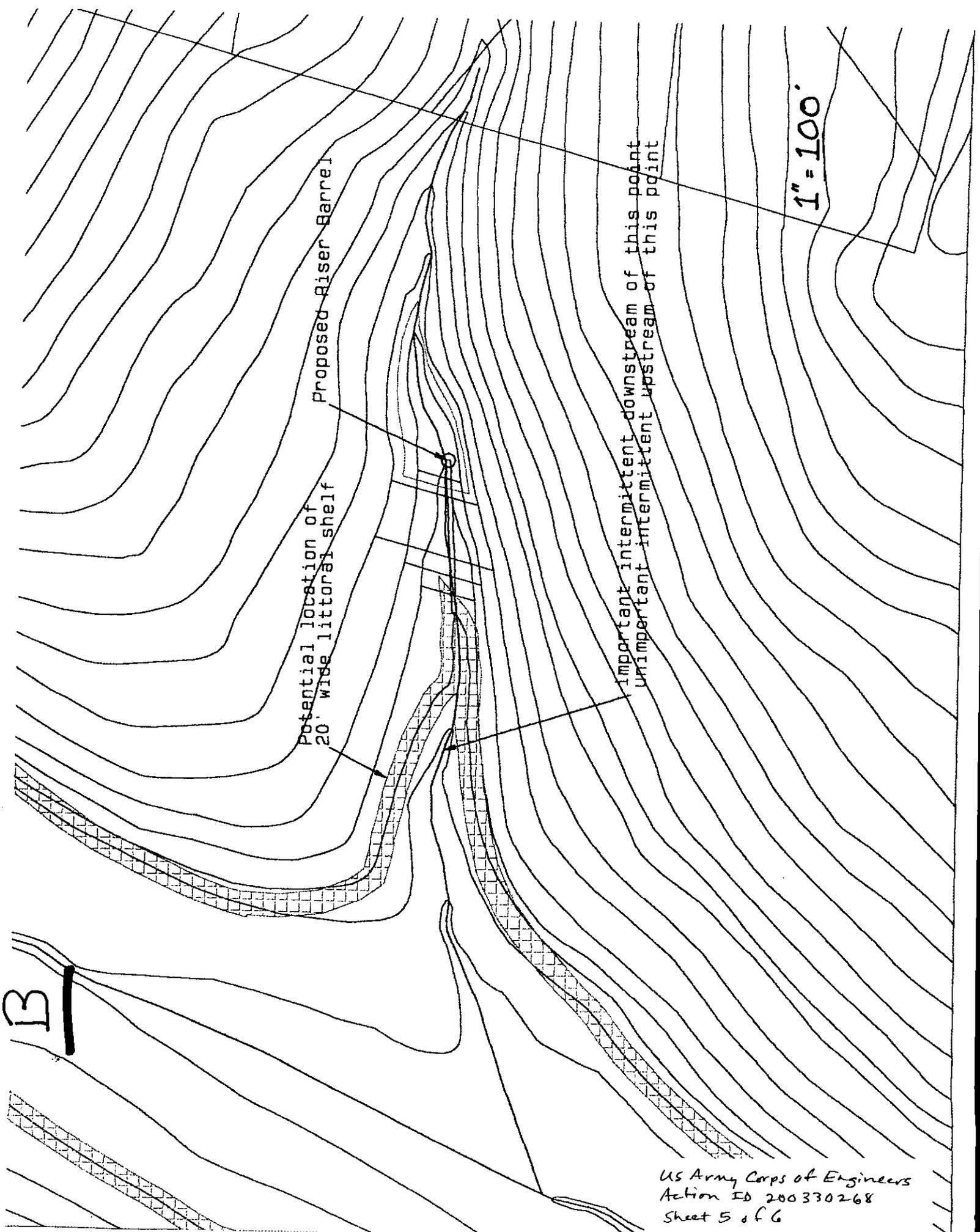
potential location of
20' wide littoral shelf

proposed riser barrel
with cold water drawdown

channel of pipe from outlet to stream
to keep stream from drying up

riprap dissipator

A



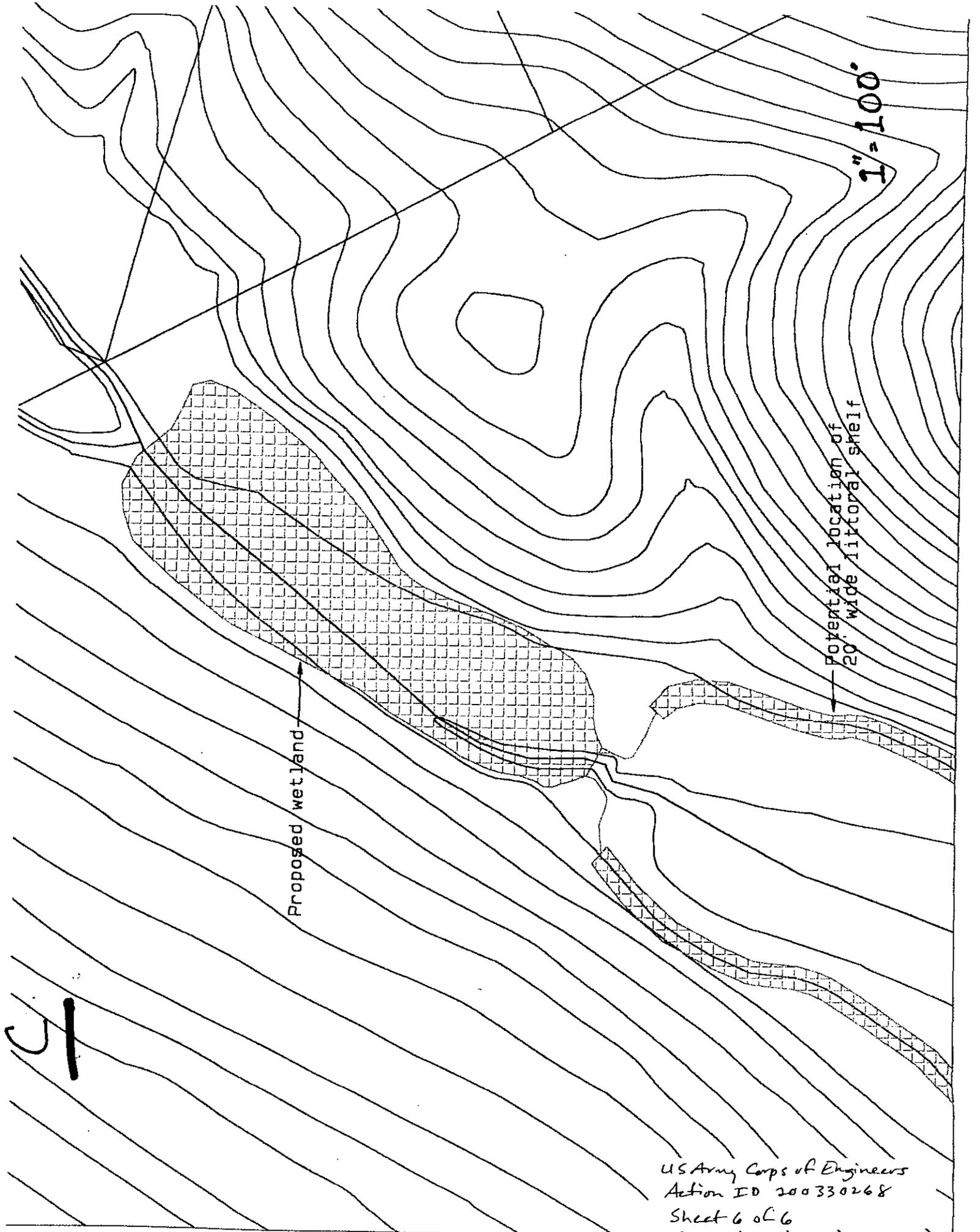
Proposed Riser Barrel

Potential location of
20' wide littoral shelf

Important intermittent downstream of this point
unimportant intermittent upstream of this point

1" = 100'

B



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