

IN THE COURT OF COMMON PLEAS
WILLIAMS COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

GENE HUMBARGER

Defendant.

CASE NO. 96CI000043

JUDGE Gretick

CONSENT ORDER

FILED
69 APR 11 PM 3:41
CLERK OF COURTS
SHARON WILEY
WILLIAMS COUNTY, OHIO

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Gene Humbarger (hereinafter "Defendant") having consented to the entry of this Consent Order; and

Plaintiff and Defendant having agreed that settlement of this matter is in the public's interest and that entry of this Consent Order is without admission as to allegations set forth in the complaint and to settle and resolve claims which are contested as to validity and amount without further litigation; and

Defendant does not admit the allegations as set forth in the Complaint, and agrees to this Consent Order solely for purposes of settlement of these matters and Defendant denies any violation of State statute and regulation;

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of

JOURNAL 289 PAGE 14
JOURNALIZED DATE 4-11-96

this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111. of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Defendant, his agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with him. In the event that Defendant sells or otherwise transfers his interest in the property described below in paragraph 5, Defendant shall provide the purchaser or transferee with a copy of this Order and shall notify Plaintiff of such sale or transfer within 10 days of such transfer or sale. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has adversely impacted water quality, has filled in a wetland, and has polluted waters of the State in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order, and no other document, shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. The State will not seek further civil penalties for the violations alleged in the complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged

in the Complaint, including violations which occur after the filing of the Complaint.

IV. PERMANENT INJUNCTION

4. Defendant is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111. of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter.

V. PRELIMINARY INJUNCTION

5. Defendant is enjoined and ordered to restore at least 10.5 acres of wetlands at the property located at 3894 Williams County Road N-30, Mountpelier, Ohio 43543, (hereinafter "the property") in accordance with the restoration plan dated October 19, 1993. A copy of the restoration plan is attached hereto as Attachment A, which is incorporated by reference and is an enforceable part of this Consent Order. If restoration is unsuccessful in whole or in part, Ohio EPA will require additional work necessary to achieve 10.5 total acres of wetland restoration and Defendant is enjoined and ordered to perform the additional work required by this paragraph.

6. Defendant shall, within 270 days of entry of this Order, complete 10.5 acres of wetland restoration in accordance with the approved restoration plan.

7. Defendant is enjoined and ordered to prevent existing jurisdictional wetlands from becoming adversely impacted by increasing or decreasing water levels to the degree that the wetland type is altered. This prohibition, however, does not apply to alterations due to rainfall, other precipitation, or actions of third parties

who do not act in concert or privity with Defendant.

8. Defendant shall, within 30 days of entry of this Order and again a second time within 30 days of compliance with paragraph 9 of this Order, place the following restrictive language on the deed on file at the County Recorder's Office for the property located at 3894 Williams County Road N-30, Mountpelier, Ohio 43543:

"All existing wetlands on this property shall be free from being filled, drained or otherwise converted to upland (see "fastland" at 33 C.F.R. 325) use for perpetuity. This restriction shall run with the land."

9. Defendant shall, within three years of the date of entry of this Order, arrange for an on-site meeting with representatives of the Ohio EPA to determine if restoration has been completed in accordance with the approved restoration plan and to determine if restoration is successful.

10. Defendant is enjoined and ordered to conduct wetland monitoring in accordance with the monitoring plan submitted to the Director of the Ohio EPA dated July 7, 1995. Defendant is enjoined and ordered to submit the first monitoring report to Ohio EPA by December 31, 1996.

11. Within seven (7) days from the completion date of each milestone listed in paragraphs 6 and 8 above, Defendant shall submit to Ohio EPA's Division of Surface Water, in care of Linda Merchant or her successor, a written report stating whether it has performed the action set forth therein.

12. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or

modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. FACILITY ACCESS

13. As of the date of entry of this Consent Order, Plaintiff and its representatives and contractors shall have access at reasonable time to the property and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the restoration actions required by this Order. Nothing in this paragraph shall be construed to diminish any statutory rights and authority for access to the property by the Director or his authorized representative.

VII. SUBMITTAL OF DOCUMENTS

14. All required documents shall be submitted to:

Director
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Linda Merchant or her successor,
Division of Surface Water

VIII. STIPULATED PENALTIES

15. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5 through 8, including any scheduled milestone requirement within those paragraphs, then Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty days - \$100.00 per day per requirement not met. For each day of each failure

to meet a requirement, from thirty one to sixty days - \$200.00 per day per requirement not met. For each day of each failure to meet a requirement, from sixty-one to ninety days - \$500.00 per day per requirement not met. For each day of each failure to meet a requirement after ninety days - \$1,000.00 per day per requirement not met.

16. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 9, 10 and 11, including any scheduled milestone requirement within those paragraphs, then Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty days - \$25.00 per day per requirement not met. For each day of each failure to meet a requirement, from thirty one to sixty days - \$50.00 per day per requirement not met. For each day of each failure to meet a requirement, from sixty-one days on up - \$75.00 per day per requirement not met.

17. Any stipulated payment required to be made under the provisions of Paragraphs 15 and/or 16 of this Consent Order shall be made by delivering to Matthew Sanders, Administrative Assistant, Environmental Enforcement Section of the Attorney General's office, 30 E. Broad Street, 25th floor, Columbus, Ohio 43215-3428, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" due immediately upon violation of any paragraph of this Consent Order.

IX. POTENTIAL FORCE MAJEURE

18. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Northeast District Office, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

19. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order.

Failure by Defendant to comply with the notice requirements of Paragraph 18 shall render this Paragraph 19 void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

20. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules and regulations, and permits. For work both on and off the property, Defendant shall obtain all permits or approvals necessary under applicable federal, state or local laws, and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant shall immediately notify Ohio EPA of the potential conflict. Defendant shall include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in

compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

XI. RETENTION OF JURISDICTION

21. The Court shall retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out and oversee the parties' compliance with the terms of this Consent Order.

XII. COSTS

22. Defendant is hereby ordered to pay the costs of this action.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

Date: 11 April 1996

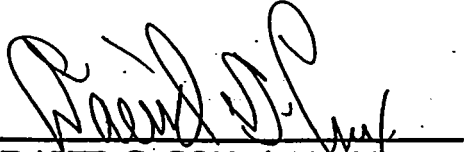


JUDGE, COURT OF COMMON PLEAS
WILLIAMS COUNTY

APPROVED

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

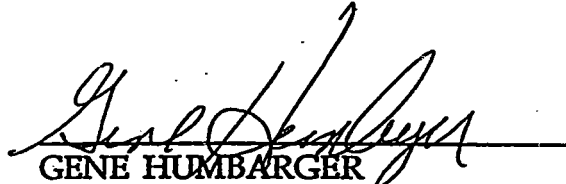
BY:



DAVID G. COX (0042724)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43215-3428
(614) 466-2766
Counsel for Plaintiff



SCOTT DORAN (0037150)
Vorys, Sater, Seymour and Pease
52 E. Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6400
Counsel for Defendant



GENE HUMBARGER
Defendant

MARCH 23, 1996



George V. Voinovich • Governor
Frances S. Buchholzer • Director

June 4, 1993

Mr. Gene Humbarger
5894 Williams Co. Rd. N-30
Montpelier, OH 43543

Gene:

Enclosed is a copy of the wetland restoration recommendations that have been reviewed and approved by the Army Corps of Engineers, Buffalo. Please look them over carefully and call me at (419) 424-5000 if you have any pressing questions that need to be answered.

I'll be looking forward to meeting with you on June 18th.

Sincerely,

Luther Miller
Wildlife Management Consultant
DIVISION OF WILDLIFE
952-A Lima Avenue
Findlay, OH 45840
Phone: (419) 424-5000

LM:np

Enclosure

cc: file

WETLAND MANAGEMENT PLAN - HUMBARGER PROPERTY

WILLIAMS COUNTY, OHIO

This Wetland Restoration Plan is for the Gene and Marylyn Humbarger Property, located in Williams County, Ohio, Florence Township, Section 36. The purpose of this plan is to provide direction to the landowners on recommended restoration techniques for remnant wetland sites on the farm. These restorations could possibly rectify the illegal dredging of a jurisdictional wetland located on this property according to Investigation No. 92-3-363-669 U.S. Army Corps of Engineers, Buffalo District.

The existing and proposed wetlands on this property are divided into different sites according to this plan (see map), and will be addressed separately concerning current conditions, restoration recommendations, and management guidelines. These sites, once restored, will create an excellent complex of small marshes, which provide important habitat for a large variety of local and migrating wildlife.

Site 1.

Current Conditions - This area is the subject of the investigation mentioned above. It is presently open water due to the dredging which occurred in 1991. Approximately 6 acres in size.

Soil Type - Carlisle muck

Dominant Vegetation Present - None

Restoration Recommendations - More than half of this site is a foot or less in depth. To create diversity within the east and southeast corners, deeper areas up to three feet in depth should be dredged within these shallow sections. These deeper areas will not allow the growth of emergent wetland vegetation, and allow some small open water pockets to exist. Although the nature of the soil will have a tendency to collapse into these areas, it will still maintain some depth and prevent a possible vegetative monoculture within the shallow portions of this site.

Management Recommendations - Maintain an undisturbed grass buffer strip of at least 75 feet along the boundary of this site. The following seeding mixture and rate is recommended:

- 8 lbs. Orchard grass (*Dactylis glomerata*)
- 4 lbs. Timothy (*Phleum pratense*)
- 2 lbs. Alsike clover (*Trifolium hybridum*)
- 2 lbs. Red clover (*Trifolium pratense*)

16 lbs. per acre

Mow this buffer strip only to control Canada thistle (*Cirsium arvense*) and volunteer tree growth.

Site 2.

Current Conditions - Presently drained by tile, and was part of an agricultural crop field. Approximately 3/4 acre in size.

Soil Type - Pewamo silty clay loam

Dominant Vegetation Present - Foxtail (*Setaria spp.*)
Quackgrass (*Agropyron repens*)
Smartweed (*Polygonum spp.*)

Restoration Recommendations - Locate and cut any tile that effects the drainage of this site. Remove at least 25 feet from the waterline boundary to reduce the tiles' working ability.

If this tile drains any crop field owned by the adjacent landowner, replace the section of tile draining this site with non-perforated tile of the same size.

Site 3.

Current Conditions - Jurisdiction wetland. Approximately 7 acres in size.

Soil Type - Carlisle muck

Dominant Vegetation Present - Reed Canary grass (*Phalaris arundinacea*)
Softstem Bulrush (*Scirpus validus*)
Cattail (*Typh latifolia*)
Smartwood (*Polygonum spp.*)

Restoration Recommendations - Since it appears that no drainage attempts have occurred on this site in the past, maintain this area in its present state.

Management Recommendations - Maintain an undisturbed grass strip of at least 75 feet around the water boundary. Use the seeding mixture and rate located in the management recommendations of Site 1.

Site 4.

Current Conditions - This is an old natural basin that has been drained many years ago to produce an agricultural commodity. Approximately 5 acres in size.

Soil Type - Carlisle muck

Dominant Vegetation Present - Smartweed (*Polygonum spp.*)
Foxtail (*Setaria spp.*)

Restoration Recommendations - Because of the location of the property boundary next to this site, an easement may be required from the adjacent

landowner to allow this restoration to take place. Locate and cut any tile that may be effecting this drainage. According to the Williams County Engineer's Office, no county tile can be found running through this area. A 12 inch non-perforated tile can be installed running through the natural ridge to drain into Site 5. The elevation of this tile could possibly be set to prevent flooding onto the adjacent property.

Management Recommendations - Maintain an undisturbed grass strip of at least 75 feet around the waterline boundary. Use the seeding mixture and rate in the management recommendations of Site 1.

Evaporation of some of the water during the summer will allow natural vegetation to become reestablished within this site. Maintenance or removal of some trees (i.e willow, cottonwood) may be necessary in the future.

Site 5.

Current Conditions - Drained for agricultural purposes many years ago. Approximately 4 acres in size.

Soil Type - Carlisle muck

Dominant Vegetation Present - Smartweed (*Polygonum spp.*)
Foxtail (*Setaria spp.*)

Restoration Recommendations - Construct a ditch plug at the main drainage point for this site. Emergency spillways located at each end of this small dike with elevations set at the maximum water level. These spillways require little maintenance, and will allow the wetland to restore itself to its natural state.

Since the predominant soil type is Carlisle muck, seepage underneath this dike is possible. The base of the dike should be cored along its length and packed with soil with a higher clay content. This core trench should be dug to a depth where a non-seeping subsoil can be found.

Management Recommendations - Maintain an undisturbed grass strip of at least 75 feet around the waterline boundary. Use the seeding mixture and rate located in the management recommendations of Site 1.

Allow this site to restore to its natural state. Hydric vegetation will reestablish itself within a matter of years.

Plant the same grass mixture on the tops and sides of the dike. Mow this dike periodically to prevent trees from establishing themselves. Tree roots often undermine a dike, and can allow seepage.

Muskrats should also be trapped when digging occurs along the inside slope of the dike. Seek out the assistance of an experienced trapper for control.

Site 6.

Current Conditions - Wetland condition exist on a small section of this site. It has been drained in the past for agricultural purposes. Approximately 1 acre in size.

Soil Type - Carlisle muck and Blount loam

Dominant Vegetation Present - Reed Canary grass (*Phalaris arundinacea*)
Smartweed (*Polygonum spp.*)
Foxtail (*Setaria spp.*)
Red-osier dogwood (*Cornus stolonifera*)
Black willow (*Salix nigra*)

Restoration Recommendations - Construct a dike along the east side of this site. Water elevation control is the same as Site 5., using emergency spillways along each end of the dike set at the maximum elevation of 100.0 feet. Core trenching is also recommended to prevent seepage underneath the dike.

Soil used for the dike should come from the basin itself. Correct procedure involves pushing the topsoil aside, and using the subsoil for the dike materials. The topsoil should then be replaced back into the basin to provide for additional hydric vegetation growth.

Management Recommendations - Maintain an undisturbed grass strip of at least 75 feet around the waterline boundary. Use the seeding mixture and rate located in the management recommendations of Site 1.

Plant the same grass mixture on the tops and sides of the dike. Mow this dike periodically to prevent trees from establishing themselves. Tree roots often undermine a dike, and can allow seepage.

Muskrats should also be trapped when digging occurs along the inside slope of the dike. Seek out the assistance of an experienced trapper for control.

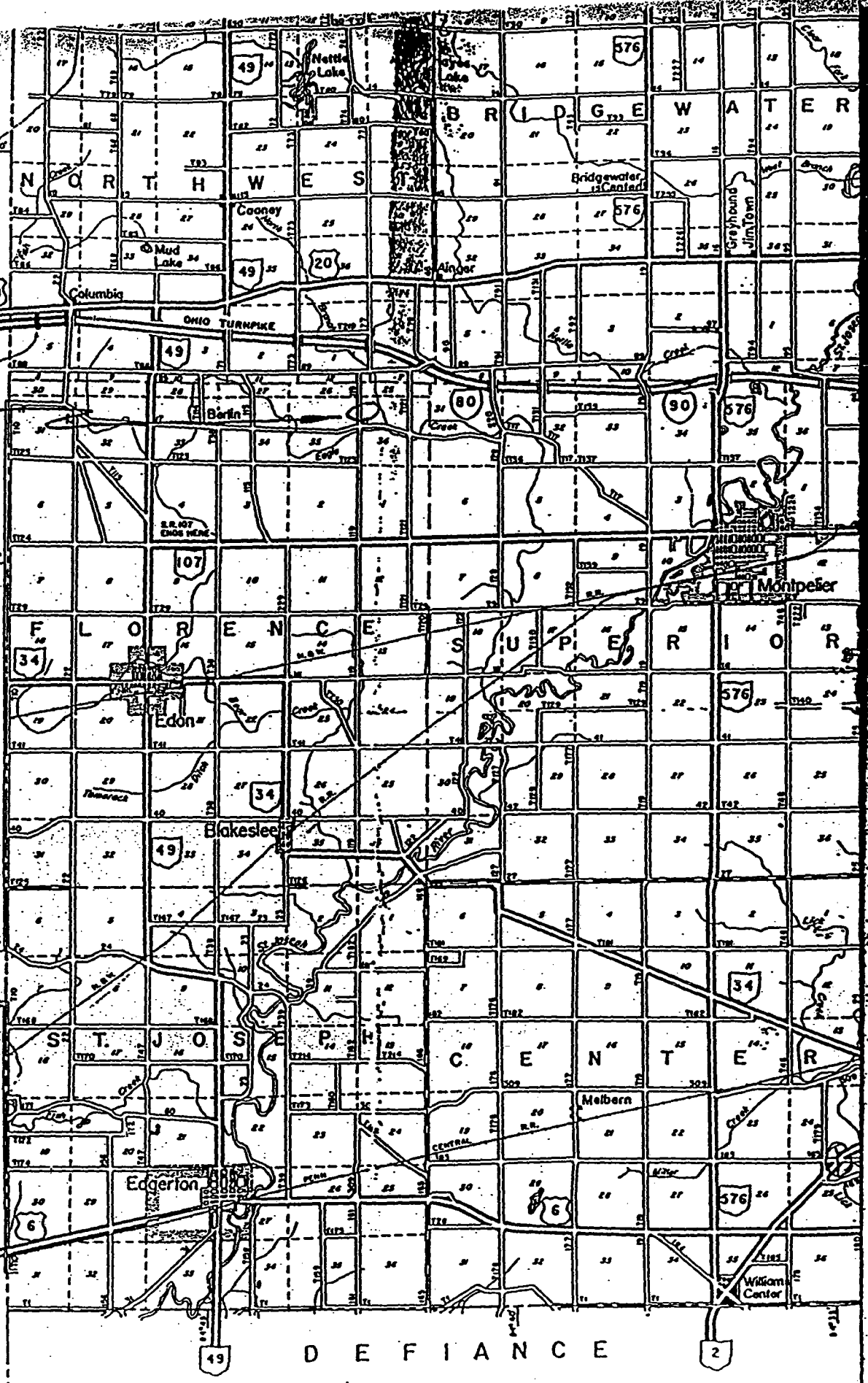
TOTAL ACREAGE THAT CAN BE RESTORED TO WETLAND = 16.75

Luther Miller
Wildlife Management Consultant,
WILDLIFE DISTRICT TWO
952-A Lima Avenue
Findlay, OH 45840
Phone: (419) 424-5000

LM:np

Property Location

I N D I A N A



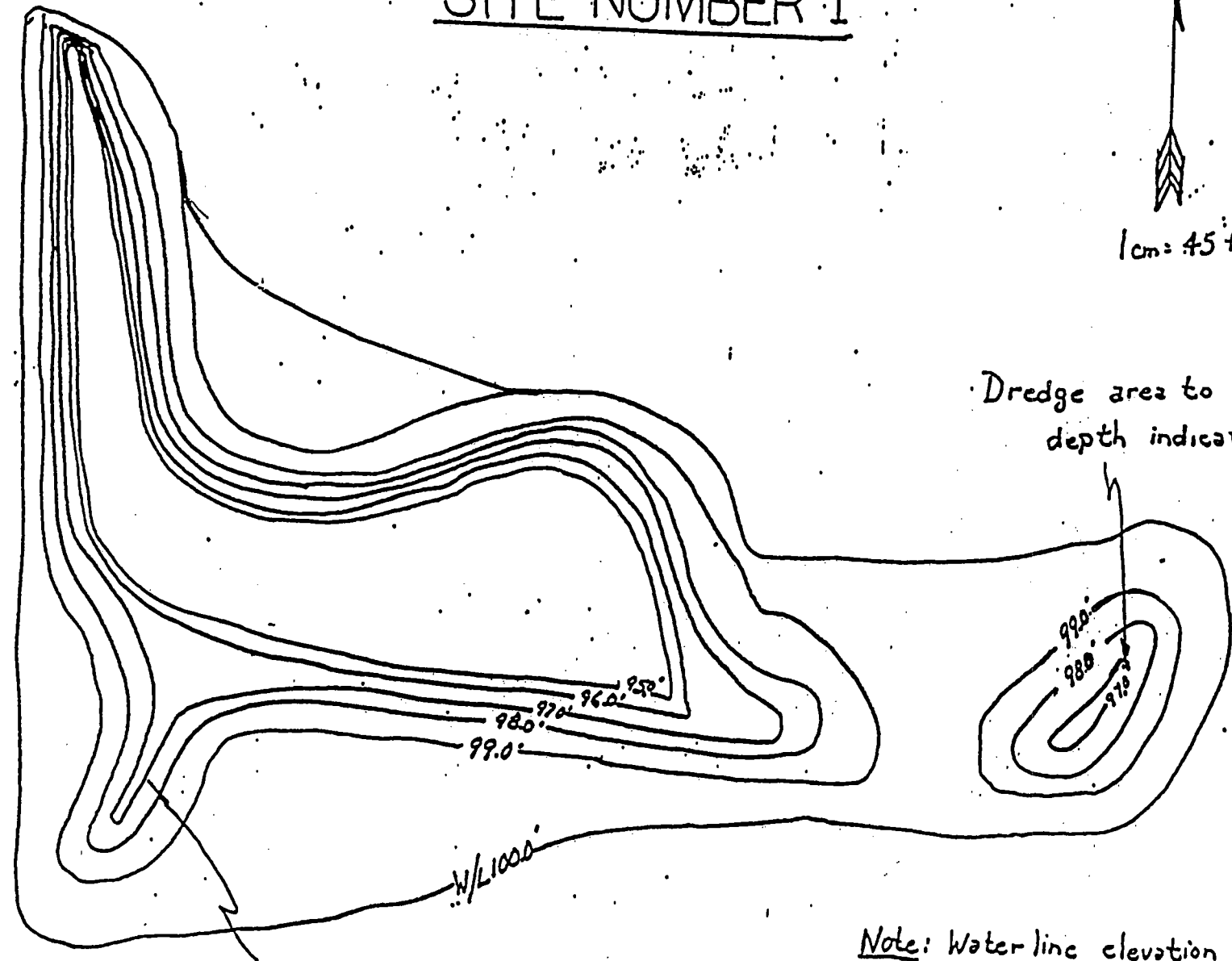
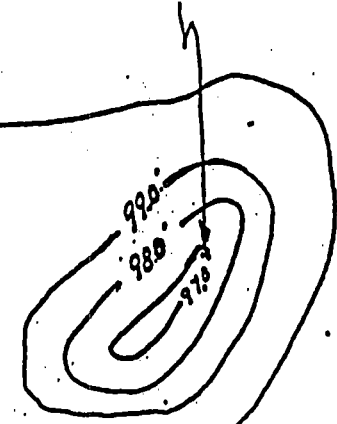
Williams Co. Ohio

SITE NUMBER 1



1 cm = 45 ft

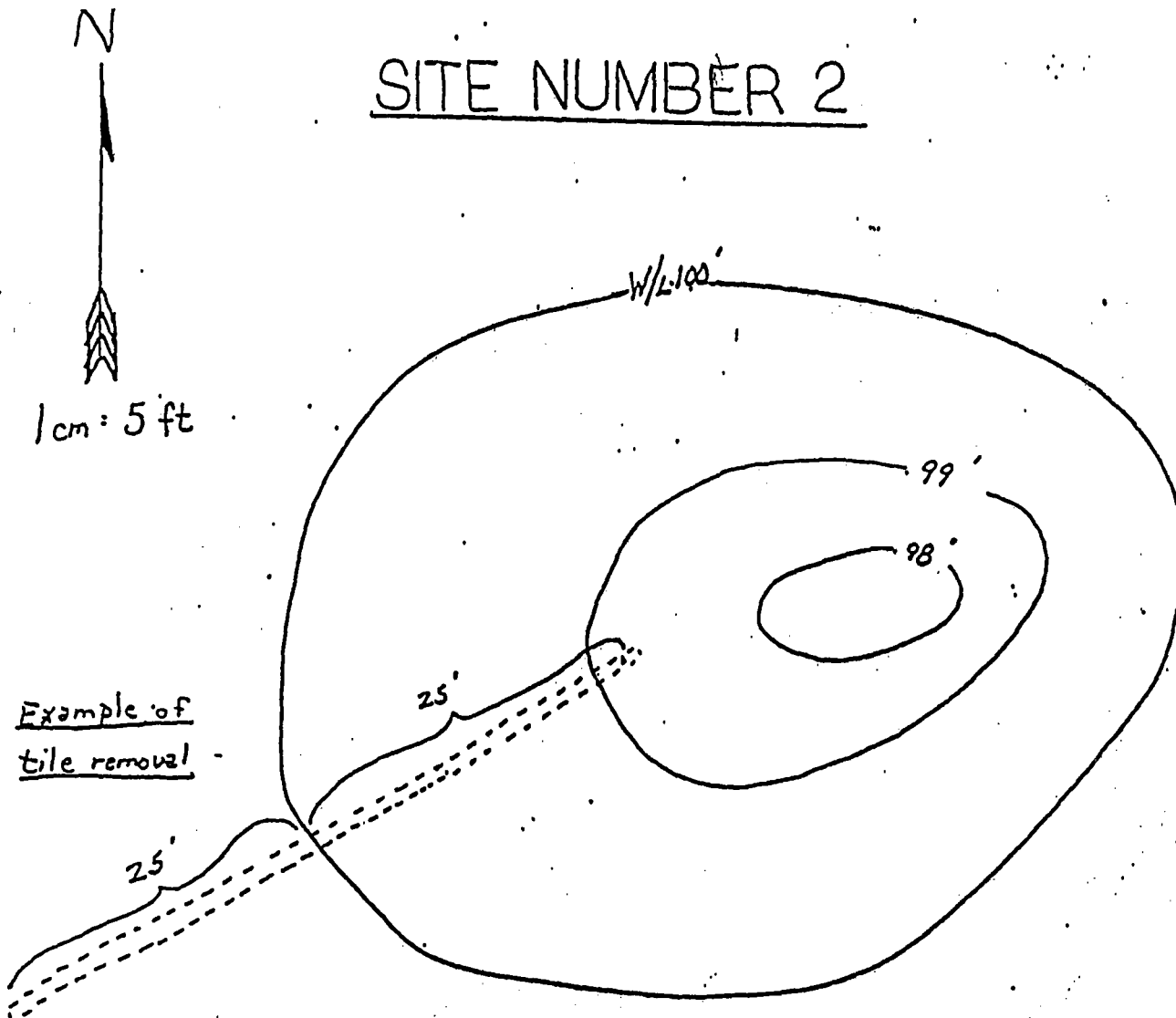
Dredge area to approximate depth indicated



Dredge area to approximate depth indicated

Note: Water line elevation of 100.0 is the maximum water level.

SITE NUMBER 2



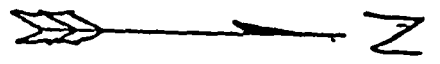
Note: To restore to wetland conditions, locate and remove 50' of tile. 25' within the basin and 25' outside to reduce any water drawing effects.

NOTE TO EXCAVATOR

Excavator must notify all utilities at least 48 hours and not more than 10 days prior to the planned commencement of excavation.

1. Member utilities will be contacted by calling OUPS (1-800-362-2764).
2. Each Limited Basis Participant will be contacted by the excavator using the telephone number provided.

SITE NUMBER 3

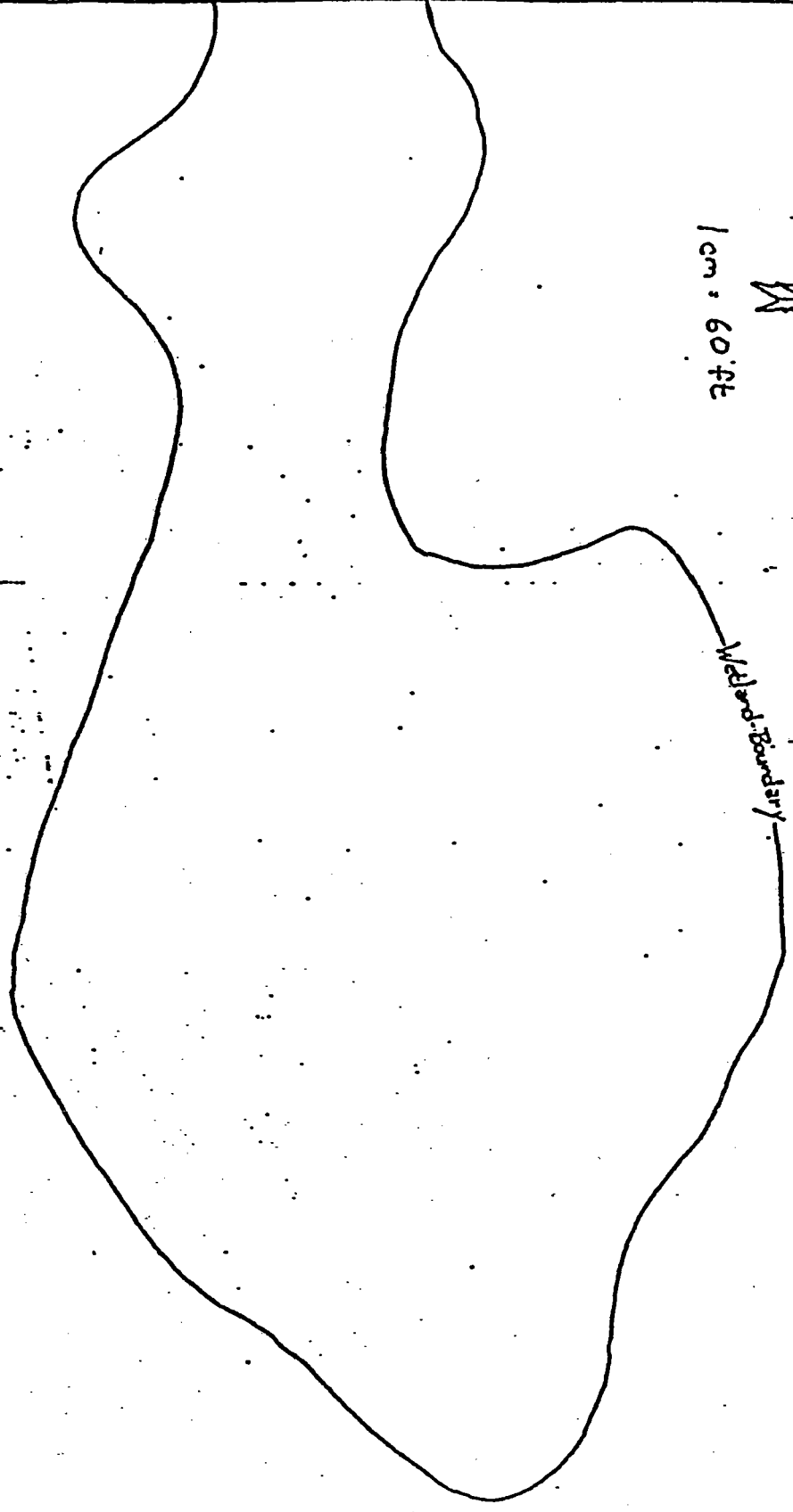


1 cm = 60 ft

Wetland Boundary

Note: Maintain this site in its current wetland condition.

T-121



SITE NUMBER 4

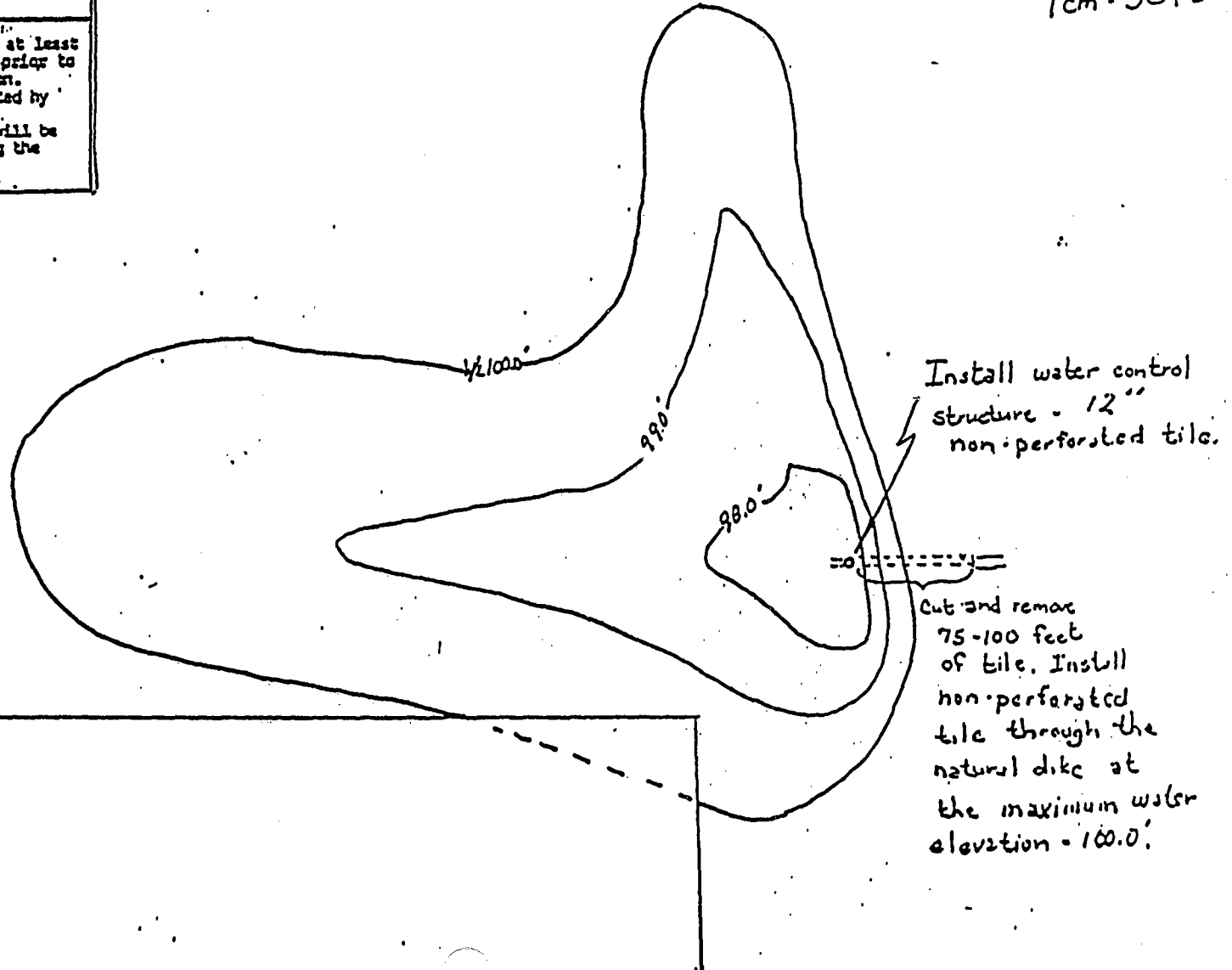


1cm = 50ft

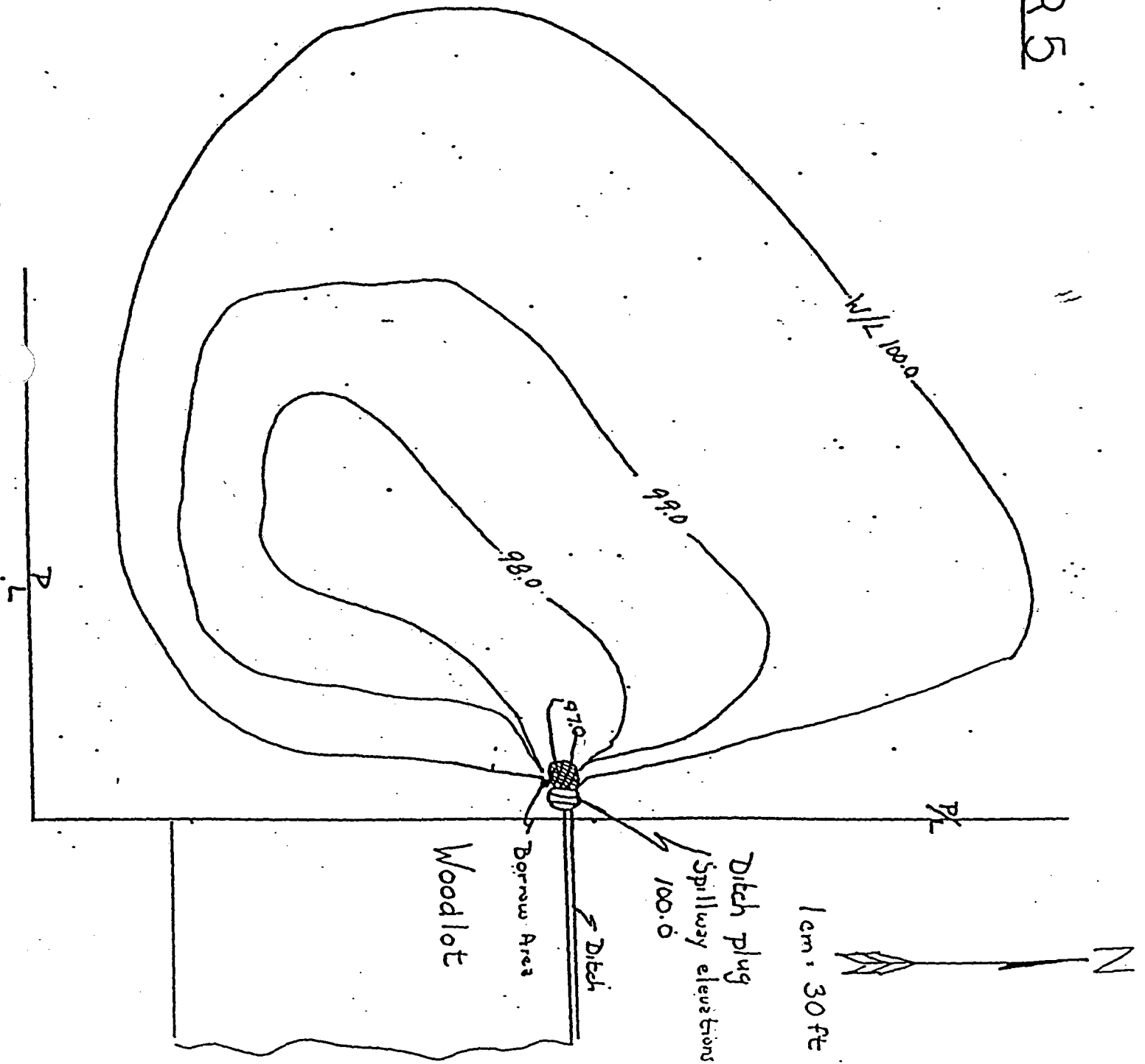
NOTE TO EXCAVATOR

Excavator must notify all utilities at least 48 hours and not more than 10 days prior to the planned commencement of excavation.

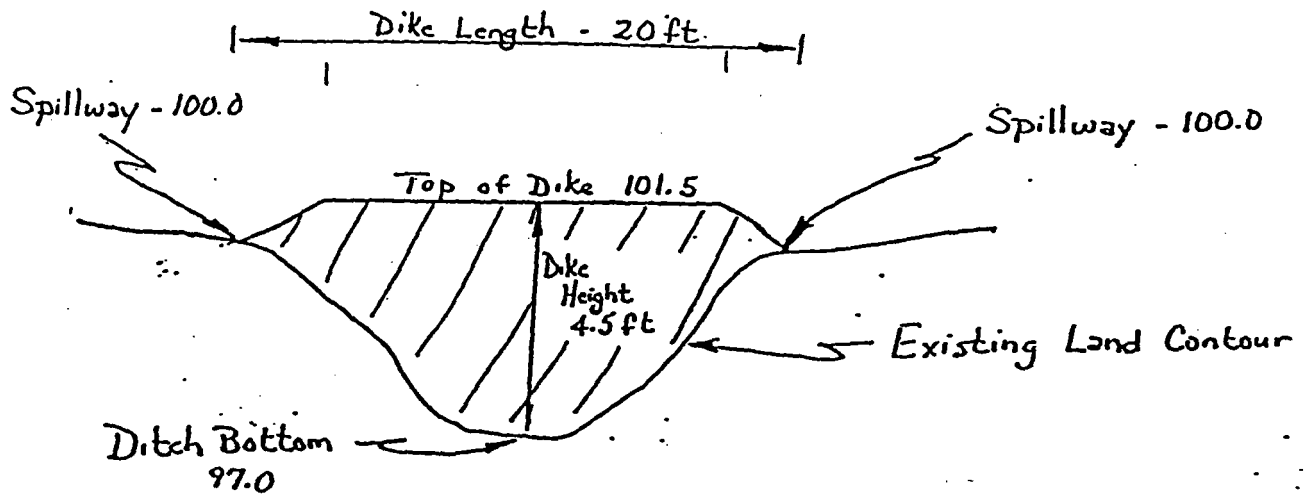
1. Member utilities will be contacted by calling O.P.S. (1-800-362-2764).
2. Each Limited Basis Participant will be contacted by the excavator using the telephone number provided.



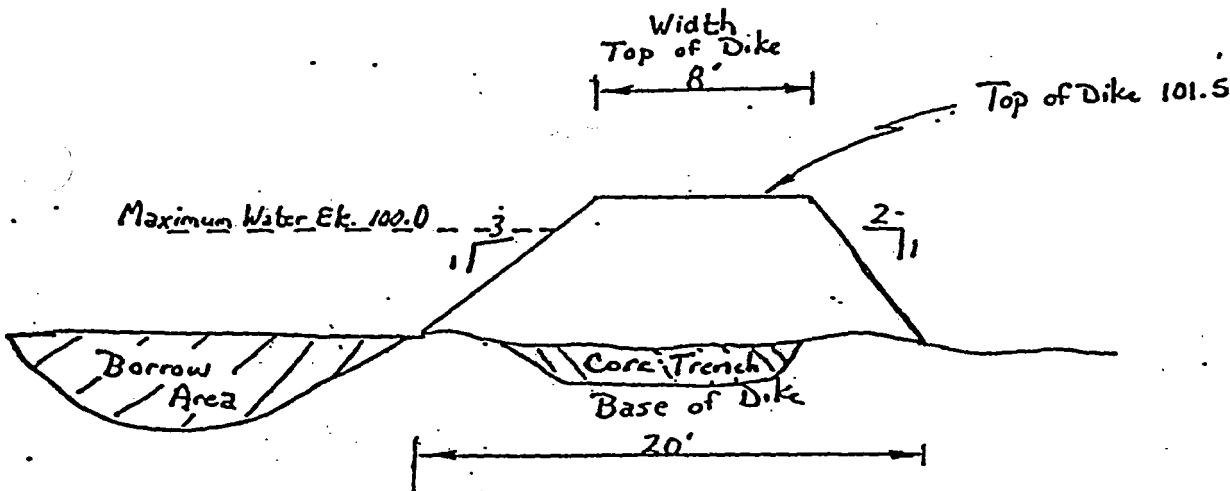
SITE NUMBER 5



SITE NUMBER 5



DIKE PROFILE



NOTE: LOCATE AND REMOVE ALL TILE AT LEAST 40 FEET FROM EITHER SIDE OF THE DIKE'S BASE.

SPECIFICATIONS:

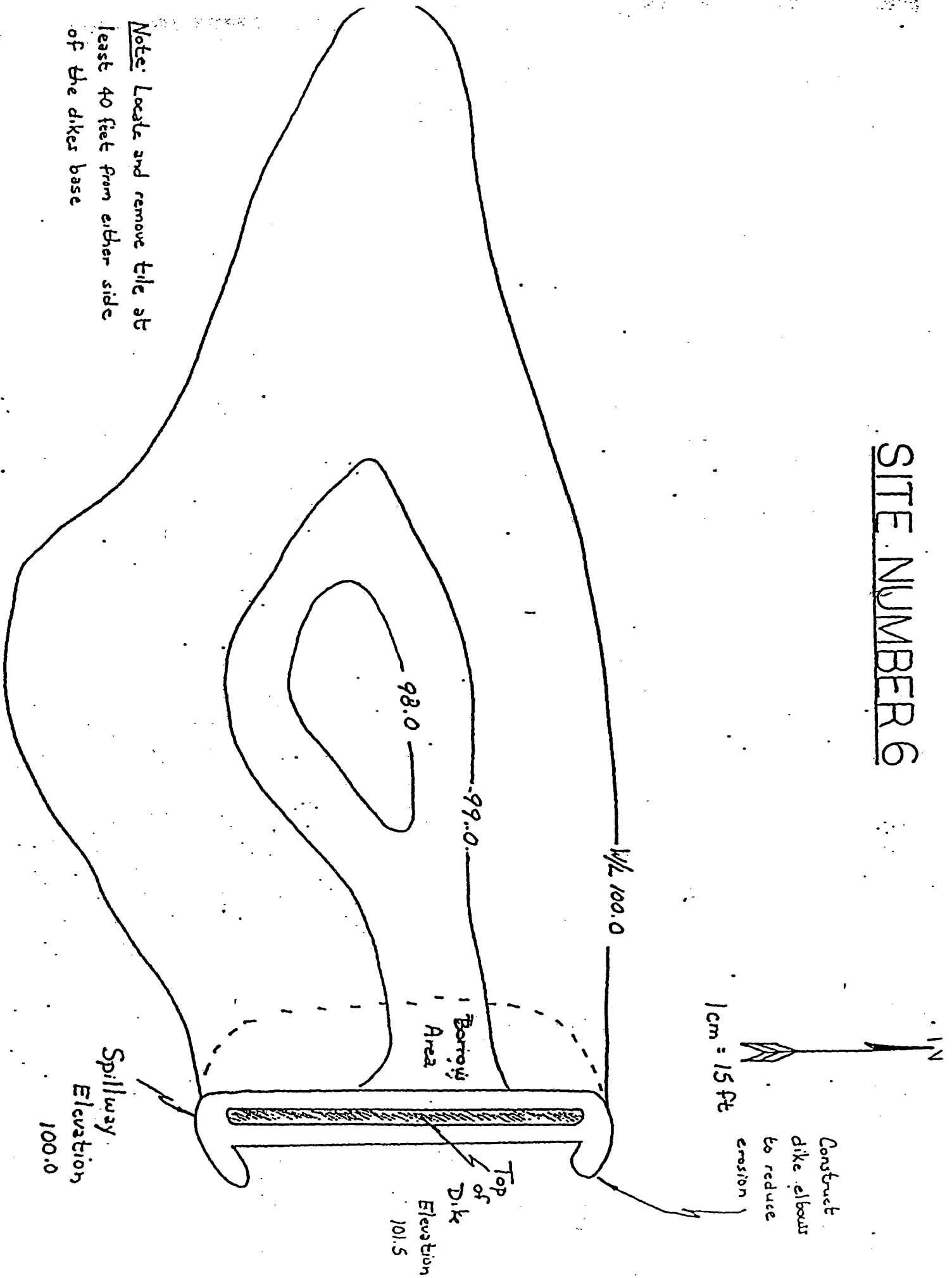
DIKE - APPROXIMATELY 50 CU. YDS. OF SOIL

NOTE TO EXCAVATOR

Excavator must notify all utilities at least 48 hours and not more than 10 days prior to the planned commencement of excavation.

1. Meter utilities will be contacted by calling OAPS (1-800-362-7764).
2. Each Limited Basis Participant will be contacted by the excavator using the telephone number provided.

SITE NUMBER 6



Note: Locate and remove tile at least 40 feet from either side of the dike base

1 cm = 15 ft
Construct dike elbows to reduce erosion

Spillway Elevation 100.0

Top of Dike Elevation 101.5

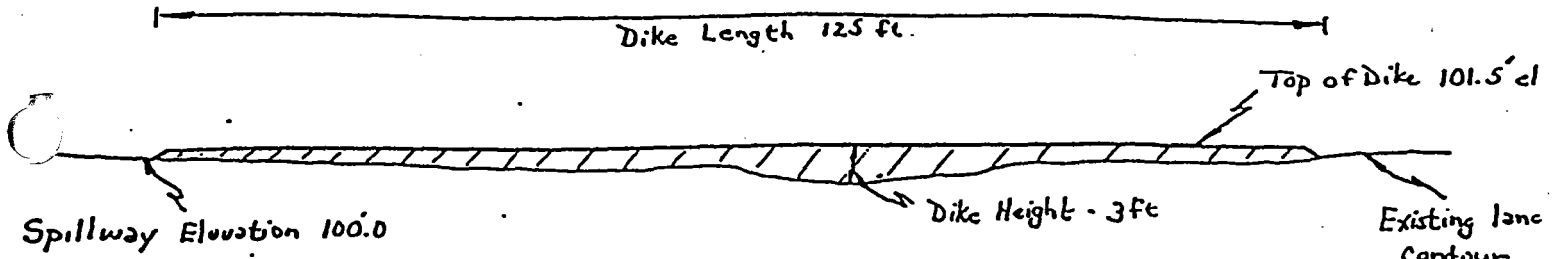
Barroy Area

W/L 100.0

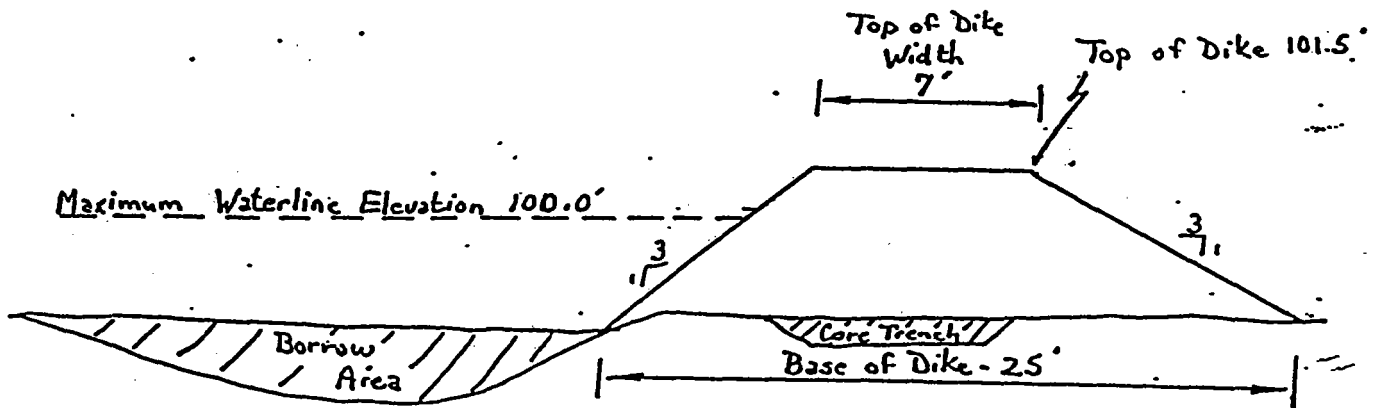
99.0

98.0

SITE NUMBER 0



DIKE PROFILE



DIKE CROSS SECTION

SPECIFICATIONS:

DIKE - APPROXIMATELY 200 CU. YDS. OF SOIL

NOTE TO EXCAVATOR

Excavator must notify all utilities at least 48 hours and not more than 10 days prior to the planned commencement of excavation.

1. Messex utilities will be contacted by calling O.P.S. (1-800-362-2764).
2. Each Limited Basis Participant will be contacted by the excavator using the telephone number provided.