



Public Notice

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

In reply refer to Public Notice No.

200401152

Issuance Date:

February 26, 2007

Stream:

-UNTrib Sunday Creek

Closing Date:

March 28, 2007

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

APPLICANT: Buckingham Coal Company
21525 State Route 13
Glouster, Ohio 45732

LOCATION: The project area is located in jurisdictional waters of the United States in the Sunday Creek watershed. The site is located 0.2 mile east of Hatfield and State Route 13 in Section 26 of Monroe Township, Perry County, Ohio.

DESCRIPTION OF PROPOSED WORK: The applicant proposes to place fill material into waters of the United States in conjunction with the construction of a coal preparation/wash facility, stockpile areas and a slurry impoundment.

The project area encompasses approximately 100 surface acres. Jurisdictional waters within these limits total 4,263 linear feet of intermittent stream, 1,561 linear feet of ephemeral stream and 0.16 acre of jurisdictional open water impoundment. Each of these waters were determined to exhibit a hydrologic connection to Sunday Creek, a tributary to the Hocking River, a Section 10 navigable waterway. No wetlands are located in the project area.

The applicant proposes to place fill material into 4,263 linear feet of intermittent stream and 1,561 linear feet of ephemeral stream in association with construction of a coal wash/preparation plant and a slurry impoundment. Work in jurisdictional waters of the United States on-site would occur in eight stages over approximately 9 ½ years. This information is summarized in an attachment (Table 1). No waters on-site are proposed to be avoided.

Details concerning individual waters proposed to be impacted, their flow regime, length of impact and quality (as assessed by the Headwater Habitat Evaluation Index) are provided below (Table 2).

Table 2. Proposed impacts to jurisdictional streams in association with the proposed Buckingham Coal wash plant located in Monroe Township, Perry County, Ohio.

Stream ID	Flow regime	Proposed impact (feet)	HHEI score*
S-12	Intermittent	775	40
S-13	Intermittent	1573	71
S-13A	Ephemeral	228	21
S-13B	Ephemeral	146	33
S-14	Ephemeral	194	20
S-15	Intermittent	1915	62
S-15A	Ephemeral	411	31
S-15A1	Ephemeral	209	14
S-15A2	Ephemeral	130	20
S-15B	Ephemeral	243	29

*, Headwater Habitat Evaluation Index (HHEI) score, as determined by the Ohio Environmental Protection Agency's protocol.

MITIGATION: To compensate for proposed impacts to jurisdictional waters of the United States, the applicant has proposed on-site stream relocation and off-site stream preservation, riparian improvements, floodplain wetland protection and refuse removal. Details of each of these components are provided below.

The applicant proposes to construct 5,065 linear feet of ephemeral/intermittent stream on-site utilizing natural stream channel design methods. The applicant proposes to monitor this stream length for a period of five years and to ensure it reaches a QHEI of at least 34.5 before being released from further monitoring requirements.

The applicant has identified an off-site mitigation area located adjacent to the Trimble Wildlife Management Area and in Sections 16, 17 and 11 of Trimble Township in Athens County, Ohio. The proposed off-site mitigation area encompasses a total of 559 acres and includes 38,278 linear feet of stream and 14.06 acres of wetlands. The applicant indicates one area, adjacent to West Branch Sunday Creek, has been adversely affected by debris/trash dumping. This material is proposed to be enhanced through debris removal. The applicant also proposes to enhance a 6 acre riparian area adjacent to West Branch Sunday Creek by establishing native trees (400 trees/acre). The applicant proposes to monitor this enhancement area for a period of five years and to ensure the survival of at least 60 percent of the established plantings before being released from further monitoring requirements.

The applicant proposes to protect in perpetuity a total of 15,797 linear feet of stream at this off-site mitigation area. Of this total, 4,370 linear feet of stream are perennial, 4,417 linear feet are intermittent and 7,010 linear feet are ephemeral (Details provided below in Table 3). These waters would be protected within upland riparian zones totaling 69 acres. In addition, one wetland, totaling 0.74 acre, located within the floodplain of the perennial stream on-site, would be protected in perpetuity. The applicant has identified the Ohio Department of Natural Resources, Division of Wildlife, as the proposed conservation easement holder. The applicant indicates while future use of this area would be restricted, existing gas and oil exploration activities are proposed to be continued. The applicant indicates best management construction practices would be implemented to ensure any adverse effects of these continuing activities would be minimized.

Table 3. Streams located at the proposed Oakdale Mitigation site that are proposed to be protected in perpetuity as a component of mitigation to offset the proposed loss of jurisdictional waters in association with the wash plant site.

Stream ID	Flow regime	Proposed protection (feet)	QHEI score*
1	Perennial/Intermittent/Ephemeral	4,370 / 1,316 / 767	59
1-A	Intermittent/Ephemeral	1,345 / 717	38
1-A-1	Ephemeral	261	37
1-B	Intermittent	203	48
1-C	Intermittent/Ephemeral	1,337 / 1,257	53
1-C-1	Ephemeral	279	51
1-C-2	Ephemeral	500	55
1-D	Ephemeral	426	38
1-E	Ephemeral	194	39
1-F	Ephemeral	869	55
1-G	Ephemeral	660	54
1-H	Ephemeral	528	39
1-I	Ephemeral	552	45

*, Qualitative Habitat Evaluation Index (QHEI) score, as determined by the Ohio Environmental Protection Agency's protocol.

ATTACHMENTS: Plans of the proposed work are attached to this notice.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain that certification from the Ohio Environmental Protection Agency.

HISTORIC & 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 State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

THREATENED & ENDANGERED SPECIES: This project is located within the known or historic range of the Indiana bat (endangered).

To address 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 chose to conduct surveys to demonstrate presence or probable absence of the Indiana bat. Surveys were conducted in May 2004 within an approximate 115 acre study area. Based on the results of mist-net surveys, no Indiana bats were detected. Habitat that may be suitable for the Indiana bat in the project area is likely to be cleared. Based on the probable absence of the Indiana bat within the site limits, it has been determined this proposal is not likely to adversely affect the Indiana bat.

This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST: Any person who has an interest, which 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, which 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; among 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,

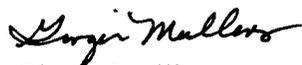
mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under 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.

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 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. Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U.S. Army Corps of Engineers
ATTN: CELRH-OR-F Public Notice No. 200401152
502 8th Street
Huntington, West Virginia 25701-2070

Please note, the 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 Ms. Desiree L. Hann of the North Regulatory Section at (304) 399-5210.



Ginger Mullins
Chief, Regulatory Branch

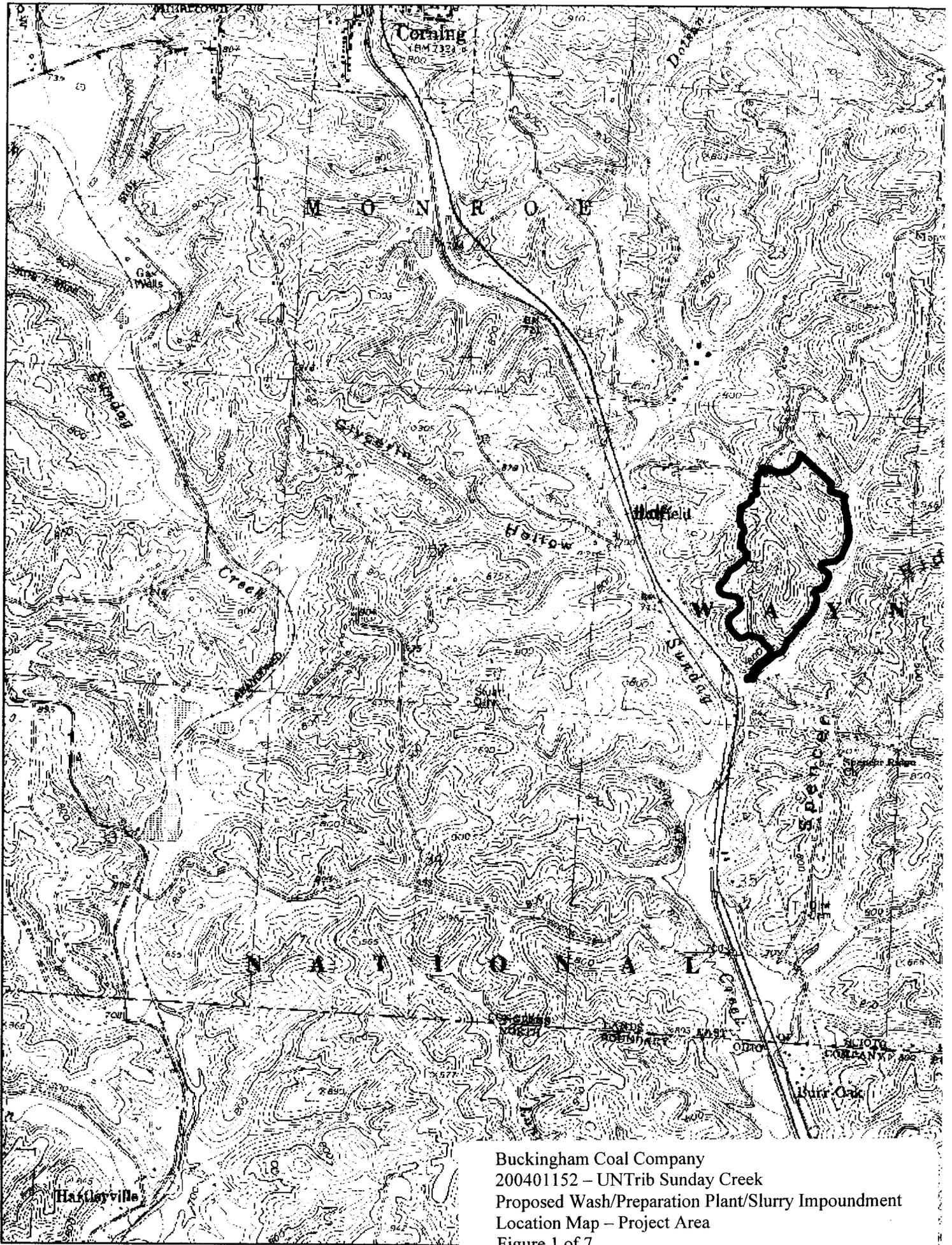
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Table 1. Impacts to Jurisdictional Streams for the Proposed Burr Oak Wash Plant (Preferred Alternative), Perry County, Ohio.

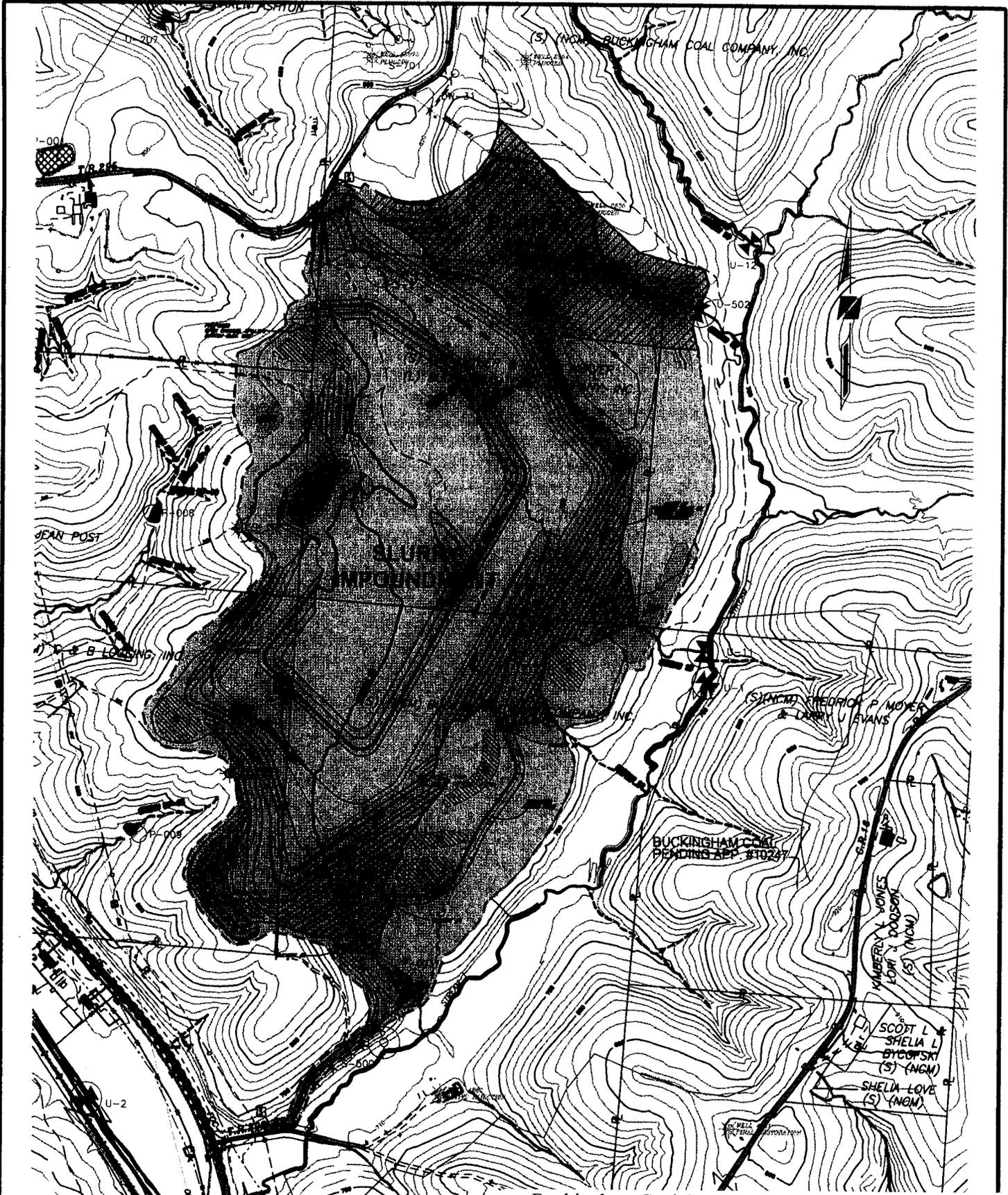
Construction Activity	Stream	Intermittent Channel Impacts (linear feet)	Ephemeral Channel Impacts (linear feet)	Cubic Yards of Slurry Storage	Cumulative Timeframe (Years)
STAGE 1					
Wash Plant Construction	12	450	0		
Sediment Pond 007	12	325	0		
Stage 1 open channel spillway and starter dam -- crest elevation 830'	13	1,213	0	100,000	-
	13A	0	158		
	13B	0	106		
Sediment Pond 001	13	140	0		
STAGE 2					
Raise crest of dam to 850' elevation;	13	220	0		
Stage 2 open channel spillway; and	13A	0	70	162,000	1.0
French Drain No. 1 installed in Stage 1 spillway	13B	0	40		
STAGE 3					
Stage 3A - dam built up to 850' elevation;	14	0	194	838,400	2.6
Stage 3B - coarse refuse placed on downstream bench;					
Stage 3C - crest raised to 870' elevation; and					
French Drain No. 2 installed beneath upstream perimeter embankment					
STAGE 4					
Raise the dam crest elevation to 890'; new open channel spillway; French Drain No. 3; and Sediment Pond 002	NO IMPACTS TO SURFACE WATERS				3.6

Construction Activity	Stream	Intermittent Channel Impacts (linear feet)	Ephemeral Channel Impacts (linear feet)	Cubic Yards of Slurry Storage*	Cumulative Timeframe (Years)
STAGE 5					
Dam built to a crest of 840'; French Drain No. 4; new open channel spillway; and Sediment Pond 003	15	1,525	0	943,200	4.4
	15A	0	411		
	15A1	0	209		
	15A2	0	130		
	15B	0	243		
STAGE 6					
Installation of floating pump station; Stage 6A – dam built to a crest of 890'; Stage 6B – placement of coarse refuse upstream of Stage 5 dam; Stage 6C – raise the crest of Stage 5 dam to elevation of 860'; Stage 6B/6C – French Drain No. 5 and Sediment Pond 004; and new open channel spillway	15	120	0	681,200	5.7
STAGE 7					
Stage 6B/6C dam raised to 890' elevation; new open channel spillway; and French Drain No. 6 installed	15	270	0	681,200	7.0
STAGE 8					
Raise the crest of facility to 910' elevation, converting the two smaller cells into one impoundment New open channel spillway constructed at the rear of the impoundment to discharge stormwater	NO ADDITIONAL IMPACTS TO SURFACE WATERS				9.3

* includes coarse refuse



Buckingham Coal Company
200401152 - UN Trib Sunday Creek
Proposed Wash/Preparation Plant/Slurry Impoundment
Location Map - Project Area
Figure 1 of 7

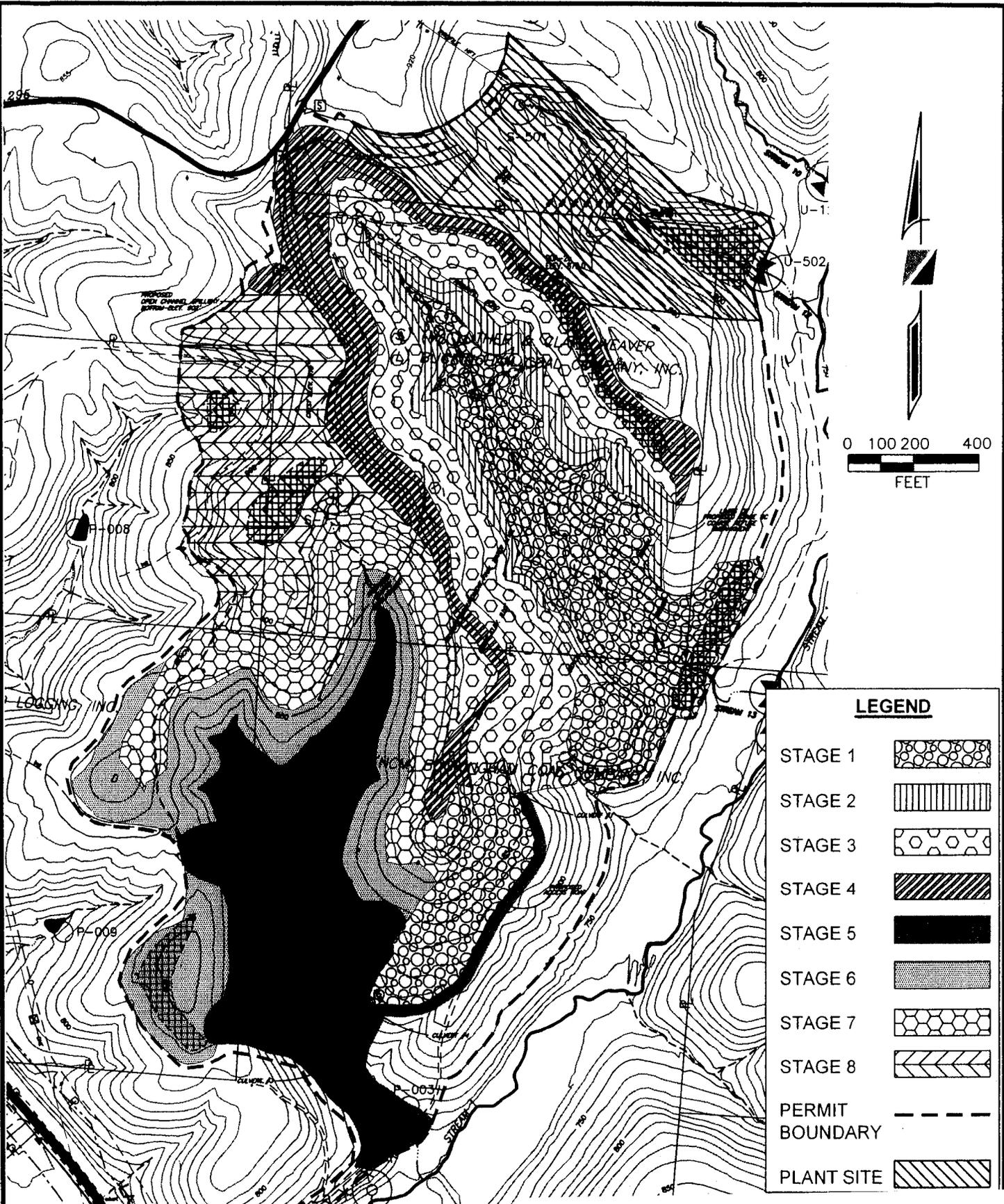


Buckingham Coal Company
 200401152 – UN Trib Sunday Creek
 Proposed Wash/Preparation Plant/Slurry Impoundment
 Plan view of proposed work
 Figure 2 of 7



DATE:	JANUARY 2007	SCALE:	1"=500'
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erikwiseman P:\7265\Exhibits\Wash Plant\8.5x11 DRAWINGS\7265_EXHIBIT 3.dwg Wash Plant 200 Layout JAN 29, 2007 3:44 PM

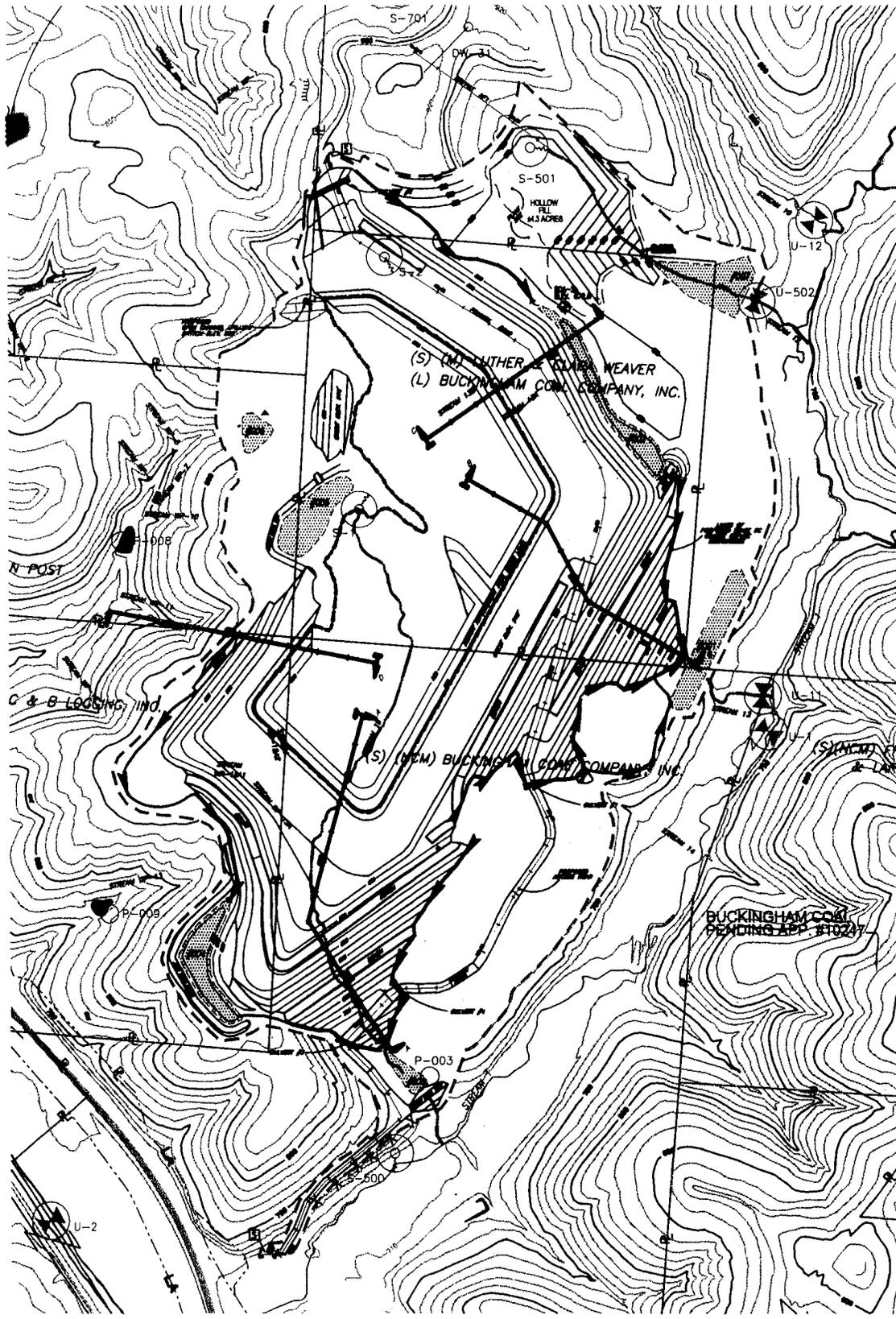


LEGEND	
STAGE 1	
STAGE 2	
STAGE 3	
STAGE 4	
STAGE 5	
STAGE 6	
STAGE 7	
STAGE 8	
PERMIT BOUNDARY	
PLANT SITE	

Buckingham Coal Company
 200401152 - UNtrib Sunday Creek
 Proposed Wash/Preparation Plant/Slurry Impoundment
 Plan view of proposed phases
 Figure 3 of 7



DATE: JANUARY 2007 SCALE: 1"=400'

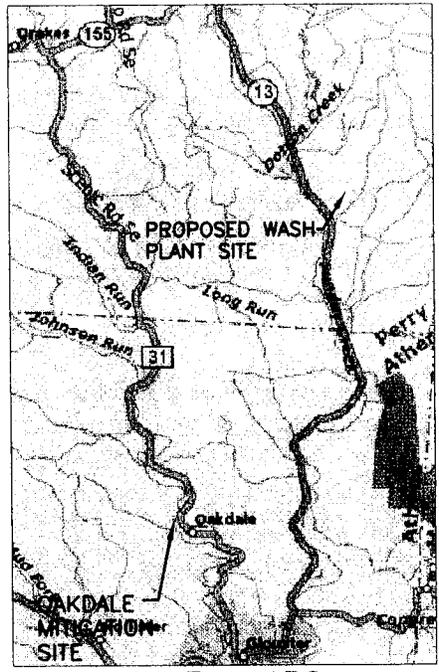


Buckingham Coal Company
 200401152 – UNtrib Sunday Creek
 Proposed Wash/Preparation Plant/Slurry Impoundment
 On-site stream mitigation area
 Figure 4 of 7



DATE:	JANUARY 2007	SCALE:	1"=500'
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<u>PROTECTED STREAM</u>	
<u>STREAM</u>	<u>LENGTH (FT.)</u>
1	6453
1-A	2062
1-A-1	261
1-B	419
1-C	2594
1-C-1	279
1-C-2	500
1-D	426
1-E	194
1-F	869
1-G	660
1-H	528
1-I	552
 <u>STREAM TYPE TOTALS</u>	
PERRENIAL	4,370
INTERMITTENT	4,417
EPHEMERAL	7,010
TOTAL STREAM	15,797.



VICINITY MAPS
1" = 500'

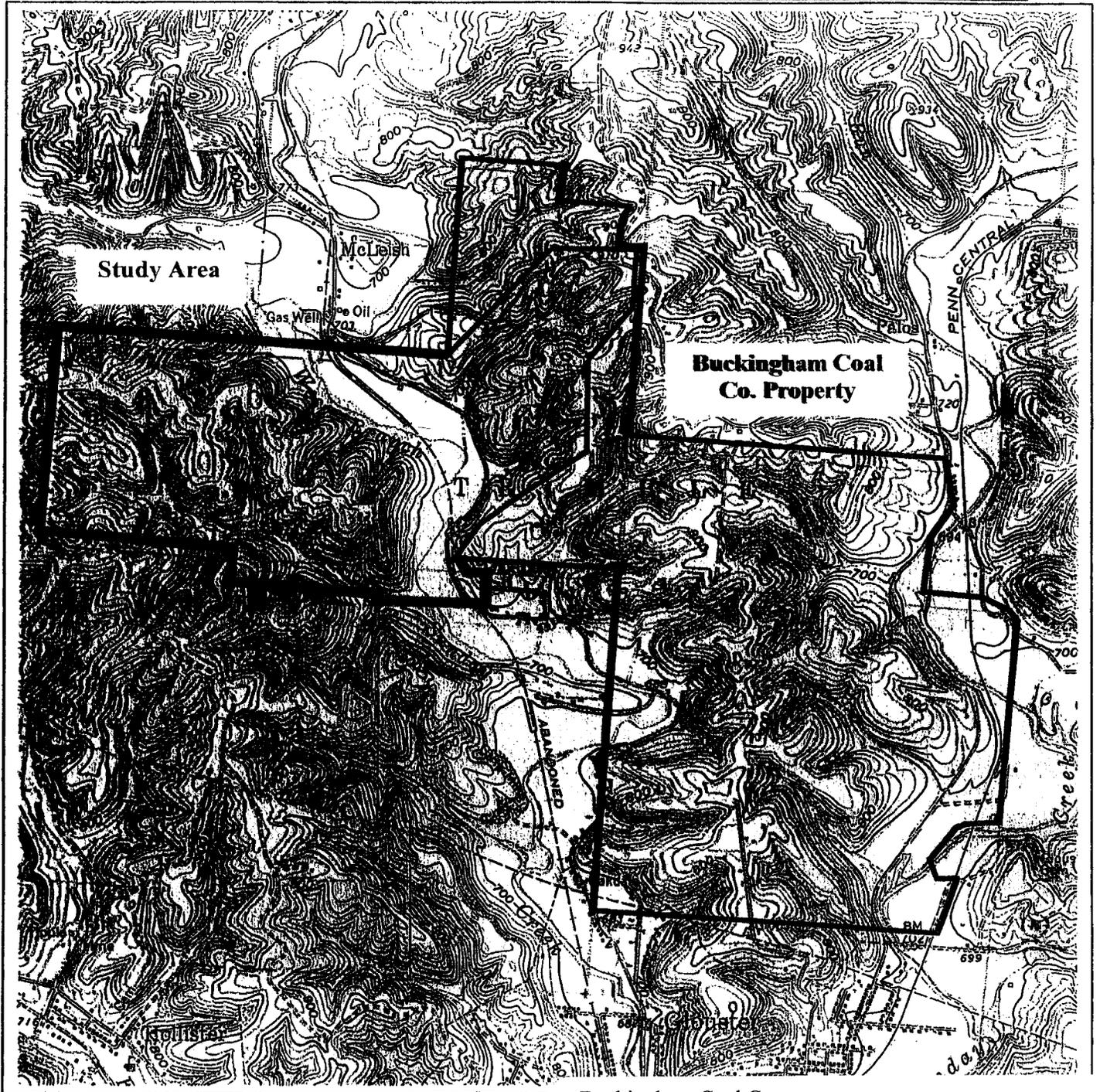
Buckingham Coal Company
 200401152 – UN Trib Sunday Creek
 Proposed Wash/Preparation Plant/Slurry Impoundment
 Location Map – Project Area and Off-site Mitigation Area
 Figure 5 of 7



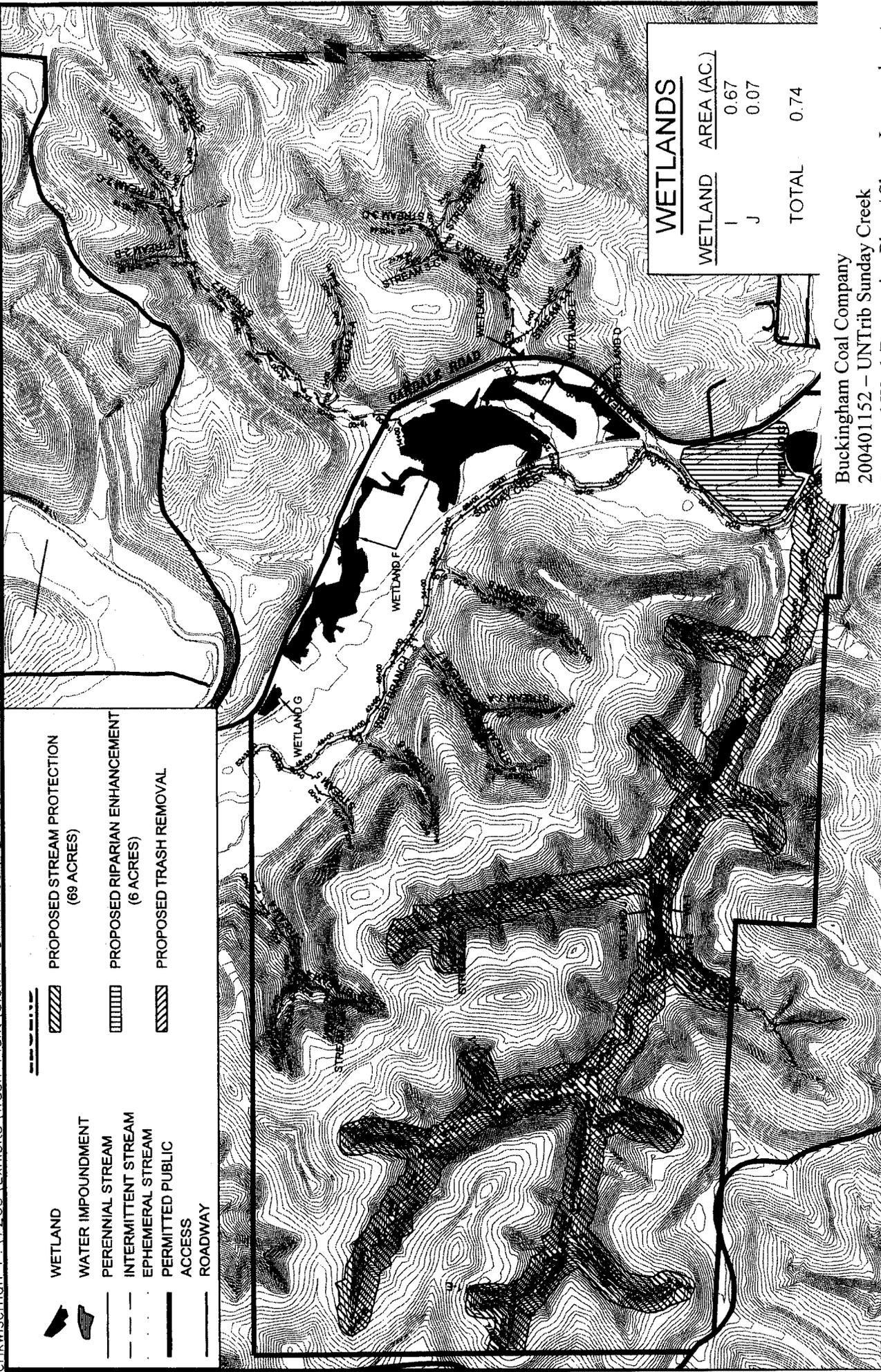
Figure 1

Proposed Oakdale Mitigation Site
Athens County, Ohio

SITE: <i>Proposed Mitigation Site</i>	DATE: <i>March 2006</i>	
JOB: <i>Buckingham Coal Company - 7265.1</i>	QUAD: <i>Corning</i>	
MAP: <i>USGS 7.5-Minute Topo - 1:24,000</i>		



Buckingham Coal Company
200401152 - UNtrib Sunday Creek
Proposed Wash/Preparation Plant / Slurry Impoundment
Location Map - Off-site Mitigation Area
Figure 6 of 7



- WETLAND
- WATER IMPOUNDMENT
- PERENNIAL STREAM
- INTERMITTENT STREAM
- EPHEMERAL STREAM
- PERMITTED PUBLIC ACCESS
- ROADWAY
- PROPOSED STREAM PROTECTION (69 ACRES)
- PROPOSED RIPARIAN ENHANCEMENT (6 ACRES)
- PROPOSED TRASH REMOVAL

WETLANDS	
WETLAND	AREA (AC.)
I	0.67
J	0.07
TOTAL	0.74

Buckingham Coal Company
 200401152 – UN Trib Sunday Creek
 Proposed Wash/Preparation Plant / Slurry Impoundment
 Plan View – Details of Proposed Off-site Mitigation Area
 Figure 7 of 7

