

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

Public Notice

In reply refer to Public Notice No.

200400896-1

Issuance Date:

March 01, 2007

STREAM: Biggs Branch and Unnamed Tributary

Closing Date:

March 30, 2007

of Harless Creek of the Russell Fork

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) 399-5710

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 (USACE) 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 USACE Regulatory Program.

SECTION 10: The USACE 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 USACE 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 Kentucky Division of Water to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Cambrian Coal Corporation
P.O. Box 100
Belcher, KY 41513

LOCATION: The proposed project is located on the Millard and Hellier USGS quadrangles at latitude 37° 23' 44.8" and longitude 82° 23' 55.6", within the headwaters of Biggs Creek and an unnamed tributary of Harless Creek, near Millard, Pike County, Kentucky. The location of the proposed three valley fills and associated sediment ponds within waters of the United States (U.S.) are shown on the attached three maps (Exhibits A, B and C). Biggs Creek and Harless Creek both flow into Russell Fork, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into a total of 3,179 linear feet (LF) of ephemeral and intermittent streams in conjunction with their surface coal mine (KDNR permit application 898-0619, Revision 3). Surface, contour and

auger mining methods would be used to recover bituminous coal within the Elkhorn coal seams. The applicant proposes to construct three valley fills that would result in the discharge of non-toxic, durable fill material into approximately 2,929 linear feet of ephemeral and intermittent stream. Temporary sediment pond 39 would be constructed and would impact approximately 250 linear feet of intermittent stream (including 80 LF of stream for the embankment fill). About 114 LF of intermittent stream would be impacted by sediment transport to pond 39. Existing Pond 22, located in the upper end of Biggs Branch would be used as sediment control. About 242 LF of intermittent stream would be impacted by sediment transport to sediment pond 22. The attached General Location Drawing shows the footprints of all activities that would require a Department of the Army permit (proposed valley fills 4-A, 4-B and 9; and proposed sediment pond 39). The applicant's stated project purpose is to maximize recovery of targeted coal reserves within the mining project area.

The Kentucky Department For Natural Resources, Division of Permits (KDOP) is presently reviewing the applicant's Surface Mining Permit application (898-0619, Revision 3) pursuant to the Surface Mining Control and Reclamation Act of 1977. Details regarding the mining operation can be found in the applicant's Surface Mining Application on file at the KDOP.

ALTERNATIVE ANALYSIS: This project 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 has provided an alternatives analysis that is currently being reviewed. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available and practicable to achieve the overall project purpose.

MITIGATION PLAN: The applicant is required to submit a compensatory mitigation plan (CMP) to compensate for the proposed permanent impacts to waters of the U.S. regulated by the USACE. The applicant has used the Eastern Kentucky Stream Assessment Protocol (and its In-Lieu Fee Compensatory Mitigation Calculator) to assess stream functional values and determine compensatory mitigation for temporary and permanent losses of stream functional values as a result of the proposed project.

To compensate for temporary impacts to intermittent streams, the applicant proposes stream restoration upon removal of Ponds 22 and 39, including restoring sediment transport sections to conditions better than existing conditions. To compensate for permanent fills in ephemeral and intermittent streams, the applicant proposes to construct 2,337 LF of ephemeral streams within steep gradient sections of valley fill side drains. These streams would be constructed with a bankfull bench. The remaining drainage channel would serve as the flood-prone area. In-stream structures would be included to create natural velocity/depth regimes. The proposed substrate composition for each mitigation stream would vary depending upon slope and predicted stream volume. In areas with flow greater than 5 cubic feet per second (cfs), the substrate would be composed of boulder size riprap unless concrete grafting is required by cfs. In areas with flow less than 5 cfs, the substrate would consist of cobble, pebble, sand and grass as close as possible to the pre-disturbance composition. However, stream sections that had poor habitat composition would be improved. Native vegetation would be established along 50 feet on each side of the stream channel with species selected from the Natural Resources Conservation Service's "Conservation Practice Standard Code 342". The applicant also proposes In-Lieu fees for the balance of the total compensatory mitigation offered to offset proposed impacts to waters of the U.S.

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 Kentucky Division of Water.

HISTORIC AND CULTURAL RESOURCES: The applicant states the project area was researched to determine if any historic properties lie within or in close proximity to the project area. That study found no known historical, architectural or archaeological sites listed in or eligible for listing in the National

Register of Historic Places. By letter dated January 31, 2006, the Kentucky Heritage Council stated they have reviewed the proposed project during the SMCRA permit review process and find that no historic properties present within the undertaking's area of potential impact and that all responsibilities of Section 106 of the National Historic Preservation Act have been fulfilled.

This public notice will serve as coordination with the Kentucky State Historic Properties Office concerning any additional information they may have concerning the project's potential impacts on historic properties listed or eligible for listing within the National Register of Historic Places.

ENDANGERED/THREATENED SPECIES REVIEW: The proposed project is within the natural range of one federally listed endangered species, the Indiana bat (*Myotis sodalis*). No survey has been performed to determine the presence or absence of the Indiana bat. Rather, the applicant is assuming this species and its summer habitat is present within the project area. The applicant has included a Bat Protection and Enhancement Plan (PEP) to minimize impacts to the species and provide habitat through reclamation. Presence would be assumed until May 2007 at which point a survey would be conducted (unless the seasonal clearing of the area has occurred). If no Indiana bats are found, presence would no longer be assumed and the PEP would be discontinued.

This public notice will serve as coordination with the U.S. Fish and Wildlife Service concerning the adequacy of the applicant's PEP and 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 that 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 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.

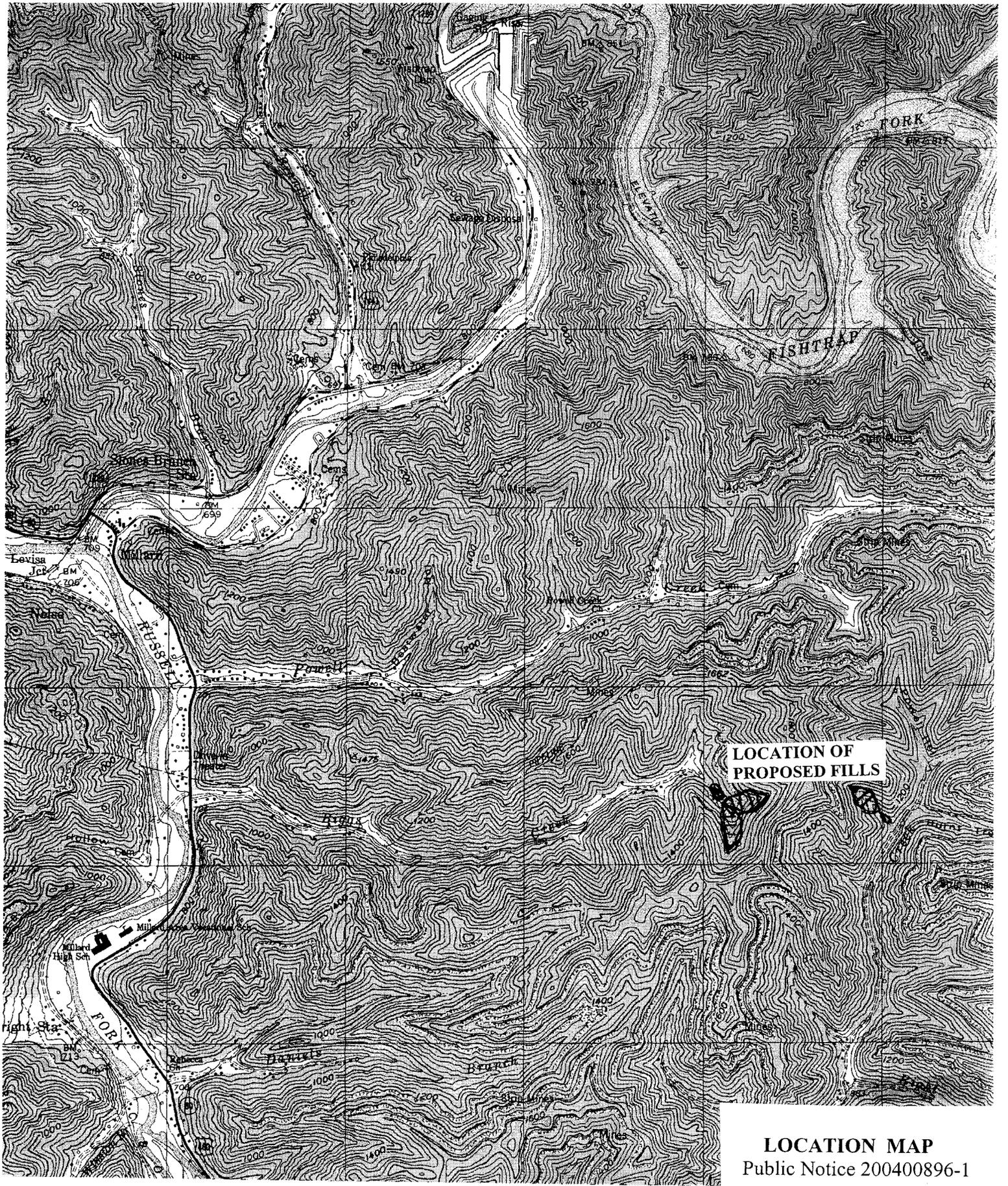
SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, 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 USACE 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 Richard Berkes, Regulatory Specialist, South Regulatory Section, CELRH-OR-FS, 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 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 call Richard Berkes of the South Regulatory Section at 304-399-5710.

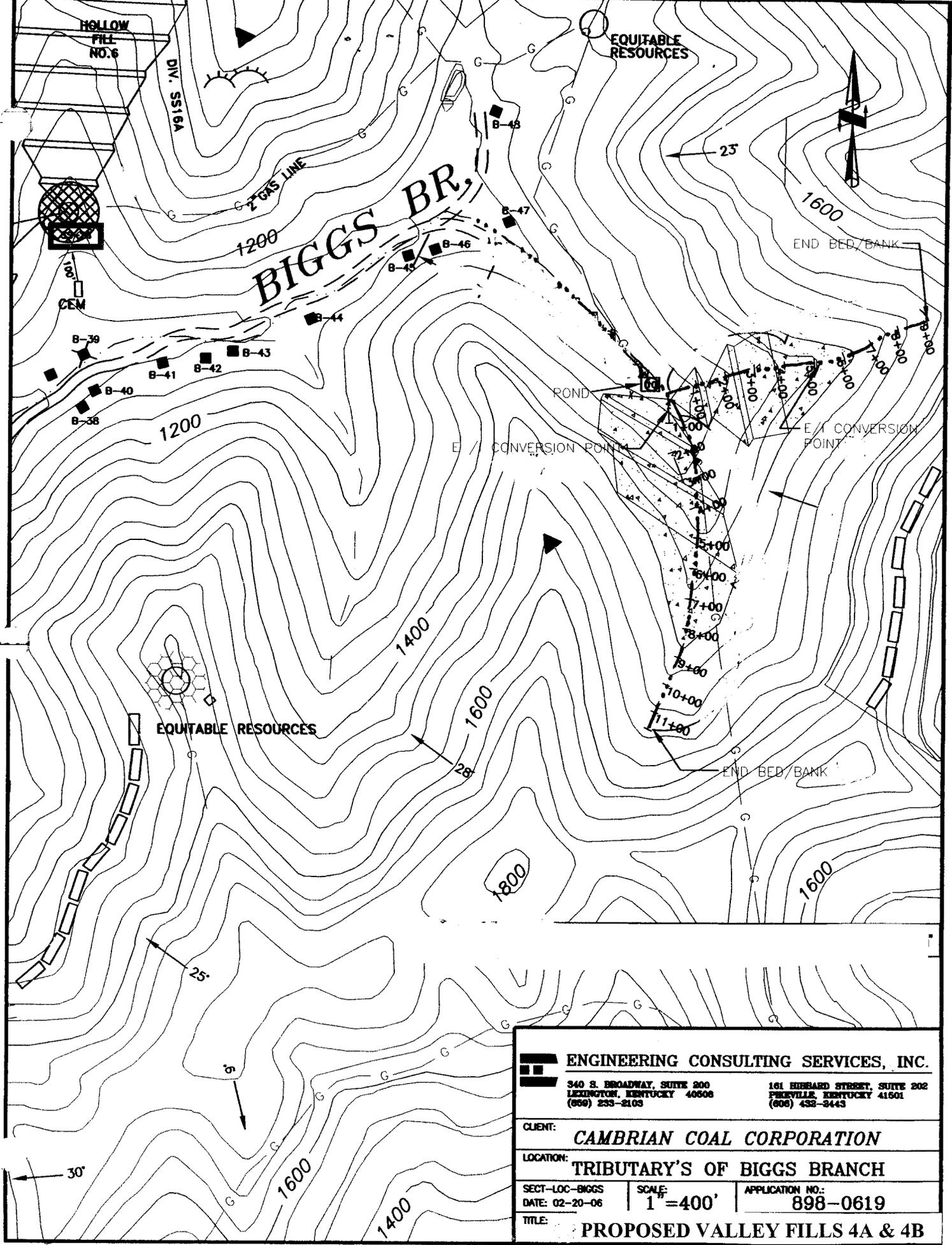

Ginger Mullins, Chief
Regulatory Branch

(K)



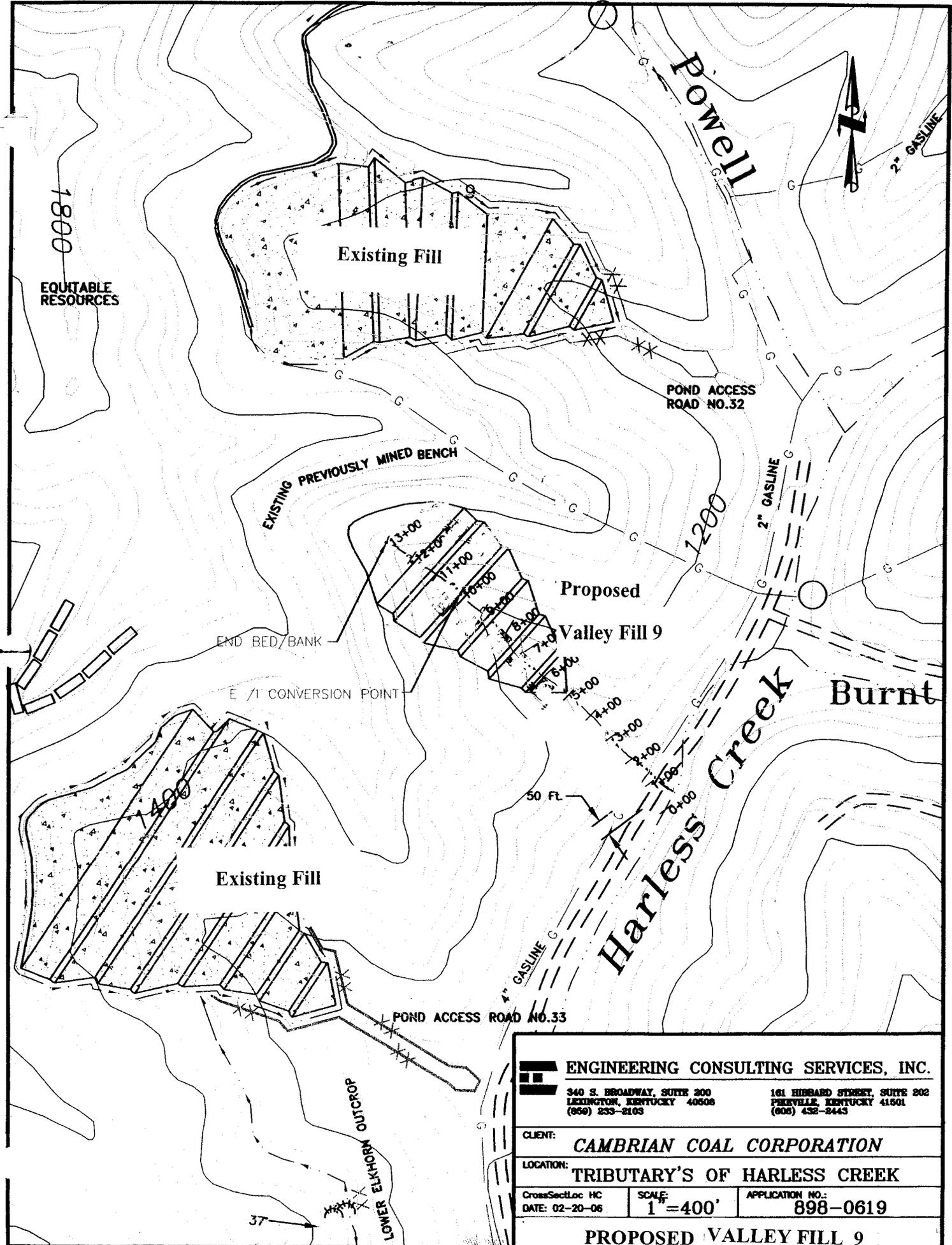
LOCATION MAP
Public Notice 200400896-1

EXHIBIT A



 ENGINEERING CONSULTING SERVICES, INC.		
340 S. BROADWAY, SUITE 200 LEXINGTON, KENTUCKY 40506 (606) 233-2103		161 HERRARD STREET, SUITE 202 FREDVILLE, KENTUCKY 41601 (606) 432-2443
CLIENT: <i>CAMBRIAN COAL CORPORATION</i>		
LOCATION: <i>TRIBUTARY'S OF BIGGS BRANCH</i>		
SECT-LOC-BIGGS DATE: 02-20-06	SCALE: 1" = 400'	APPLICATION NO.: 898-0619
TITLE: <i>PROPOSED VALLEY FILLS 4A & 4B</i>		

EXHIBIT B



 ENGINEERING CONSULTING SERVICES, INC.		
340 S. BROADWAY, SUITE 200 LEXINGTON, KENTUCKY 40508 (502) 233-2103		161 HIBBARD STREET, SUITE 202 PINEVILLE, KENTUCKY 41501 (800) 432-2443
CLIENT: CAMBRIAN COAL CORPORATION		
LOCATION: TRIBUTARY'S OF HARLESS CREEK		
CrossSectLoc HC DATE: 02-20-06	SCALE: 1" = 400'	APPLICATION NO.: 898-0619
PROPOSED VALLEY FILL 9		

EXHIBIT C