



# Public Notice

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

In reply refer to Public Notice No.

200300468

Issuance Date:

JUNE 1, 2007

STREAM: Unnamed tributary of Mill Creek

Closing Date: JUNE 30, 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) 399-5710

**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:** Wallace Conley  
Conco Coal Company, Inc.  
P.O. Box 261  
Staffordsville, KY 41256

**LOCATION:** The project is located on the Ivyton, KY USGS quadrangle at latitude 37° 44' 24" and longitude 82° 52' 51", in an unnamed tributary of Mill Creek, near Dobson, Johnson County, Kentucky. The project area is shown on **Exhibits 1 and 2**. The stream flows into Jennys Creek of Paint Creek, which flows into Levisa Fork, a navigable (Section 10) water of the United States.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant has submitted an application for an after-the-fact permit for presently unauthorized fills placed within waters of the U.S. in conjunction with the completed surface mine operation authorized by Kentucky Department of Natural Resources (KDNR) permit 858-5063, NW (issued January 2002) and 858-5063, Minor Revision #1. The completed project has resulted in placement of dredged and/or fill material into a total of 1,710 feet of waters of the U.S. This figure includes 930 feet of intermittent stream and 780 feet of ephemeral streams. The fill activities that require a DA permit include construction of valley fill HF-3 and stream mine-through, which has permanently filled 500 feet of intermittent stream and 150 feet of ephemeral stream. The watershed above HF-3 is approximately 113 acres. Temporary Pond PD-1 (below HF-3) has impacted 430 feet of intermittent stream. Temporary pond PD-2 was constructed below valley fill HF-1 (located in upland areas) has impacted 130 feet of ephemeral stream. In addition, the project has impacted 500 feet of ephemeral streams by mining-through, road construction and placement of fill material within areas designated as valley fills HF-2 and HF-4 (as proposed under the SMCRA permit). Transport of sediment between HF-3 and ponds PD-1 has indirectly impacted 800 feet of intermittent stream. Transport of sediment between pond PD-2 and the upstream fill material has indirectly impacted 270 feet of ephemeral stream. No wetlands were impacted. Details regarding the mining operation can be found in the applicant's Surface Mining Permit on file at the Kentucky Department of Natural Resources, Division of Mine Permits in Prestonsburg, Kentucky. The applicant states no further mining or fills within waters of the U.S. would be performed under KDNR permit 858-5063. The overall project purpose, as determined by the USACE, was the practicable recovery of bituminous coal within the Elkhorn #3 seam within the project area.

**ALTERNATIVE ANALYSIS:** This project is not considered to be water dependent; therefore, the applicant is required to demonstrate 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 their alternatives analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

**MITIGATION PLAN:** The applicant is required to submit a complete compensatory mitigation plan (CMP) sufficient to compensate for permanent and temporary impacts to waters of the U.S. regulated by the USACE. The applicant has used the Eastern Kentucky Stream Assessment Protocol to determine stream functional values and compensatory mitigation for temporary and permanent losses of functional values as a result of the proposed project.

The applicant proposes on-site restoration and enhancement of streams located on Exhibit 2. To compensate for permanent and temporary stream impacts, the applicant proposes to restore and enhance the functional values of the 800 feet of the intermittent sediment transport section (below valley fill 3) and 270 feet of ephemeral sediment transport section above pond PD-2. Rock and weir structures would be installed in-stream to enhance fish habitat. Each pond would also be restored to approximate original contour. The profile and overall dimension of the unnamed tributary to Mill Creek would be altered in the areas of the crest of valley fill 3 and Pond PD-1. Grasses, hardwoods, conifers and shrubs would be planted along the mitigation streams.

**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 Mine Permits.

**HISTORIC AND CULTURAL RESOURCES:** Requirements under Section 106 of the National Historic Preservation Act of 1966 must be fulfilled prior to issuance of any DA permit. The applicant stated the project area was researched and no known historical, architectural or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places were found in the project area or its immediate vicinity. A copy of this public notice and a copy of the permit application package will be sent to the State Historical Properties Office (SHPO) for review. This public notice serves as **coordination with the Kentucky Heritage Council** for information concerning whether any historic properties listed or eligible for listing in the National Inventory of Historic Places has been or may be affected by the activity, pursuant to Section 106 of the National Historic Preservation Act.

**ENDANGERED/THREATENED SPECIES REVIEW:** The proposed project is within the natural range of one federally listed endangered species, the Indiana bat (*Myotis sodalis*). A "Deep Mine Portal Assessment and Survey for Endangered Bat Species For the Proposed Permit No. 858-0193 and 858-5063", dated May 12, 2006, was prepared by Compliance Monitoring Labs, Inc. The U.S. Fish & Wildlife Service' "Draft Protocol For Assessing Abandoned Mines/Caves For Bat Use (April 8, 2005)" was used. According to the report, two deep mine portals were located within the combined project area but neither appeared to maintain suitable winter habitat characteristics necessary for harboring bats. The report did not include a summer habitat or mist net survey for endangered bat species. This public notice serves as **coordination with the USFWS** concerning the project's actual or potential impacts on any listed or proposed to be listed endangered or threatened species, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended). A copy of the cited report and a copy of the permit application package will be sent to the U.S. Fish & Wildlife Service (USFWS).

**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,

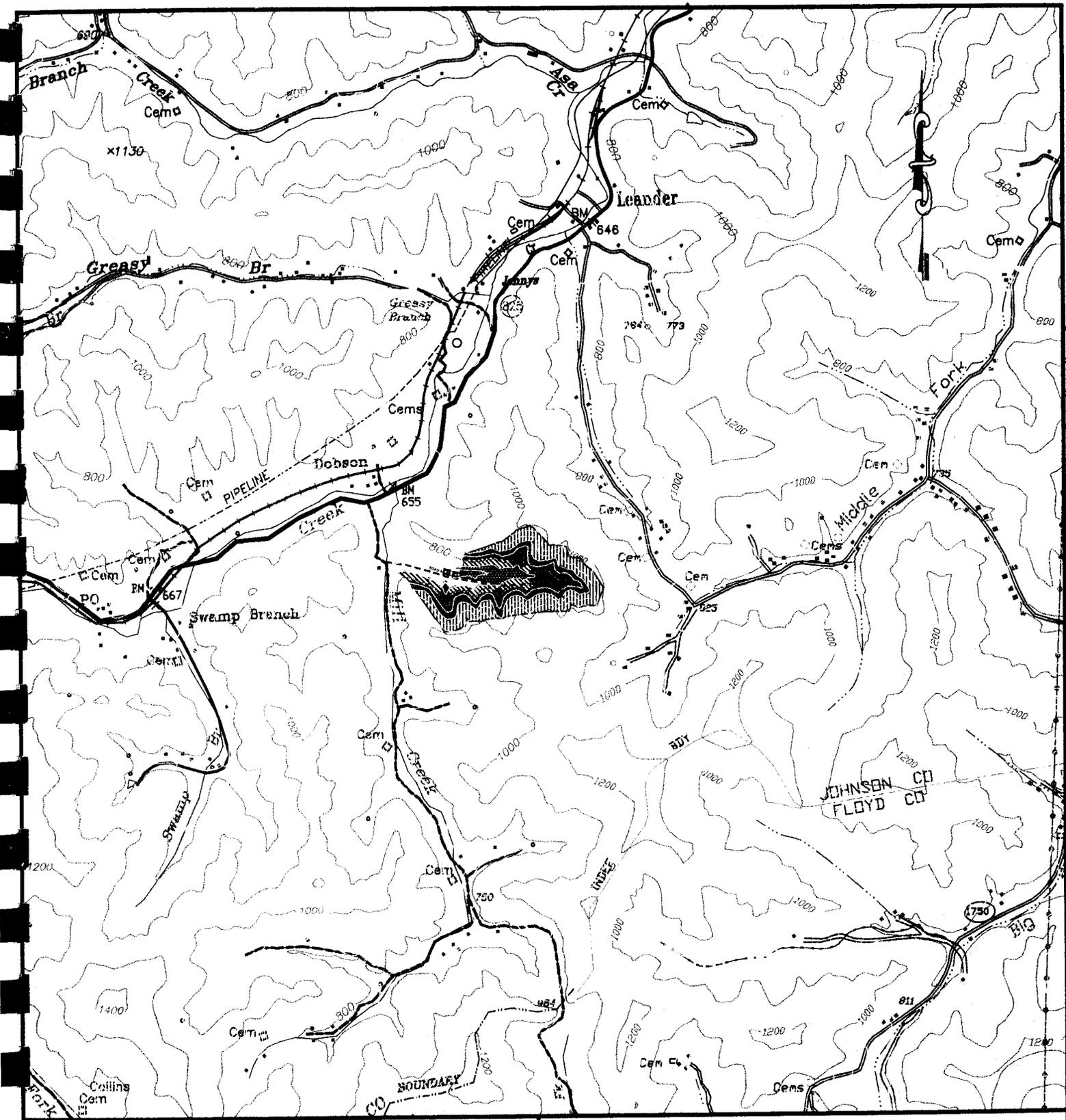
flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. 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)



**BOCOOK ENGINEERING**

**CONSULTING ENGINEERS**

**312 TENTH STREET  
PAINTSVILLE, KENTUCKY 41240  
(606) 789-5961**

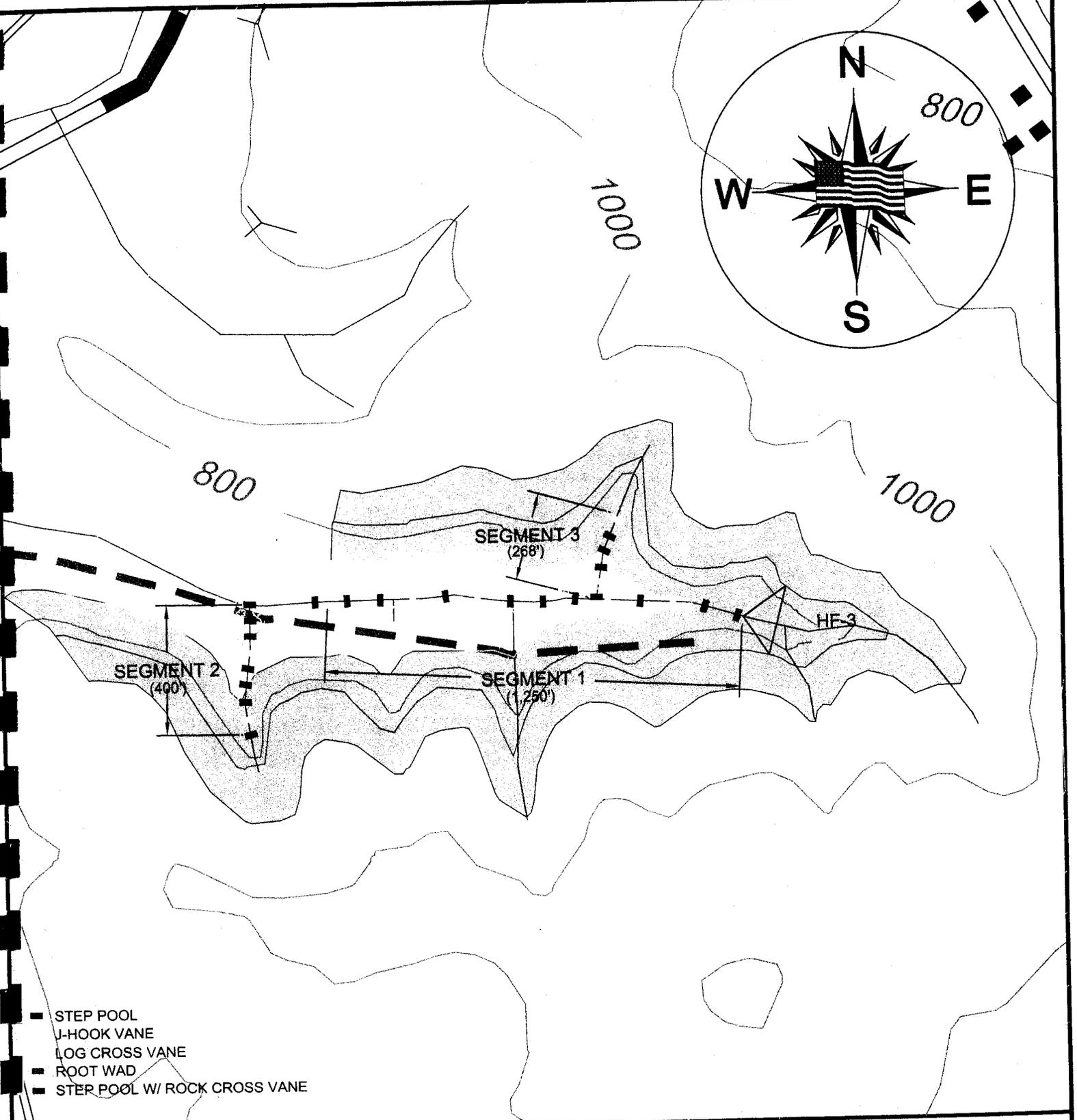
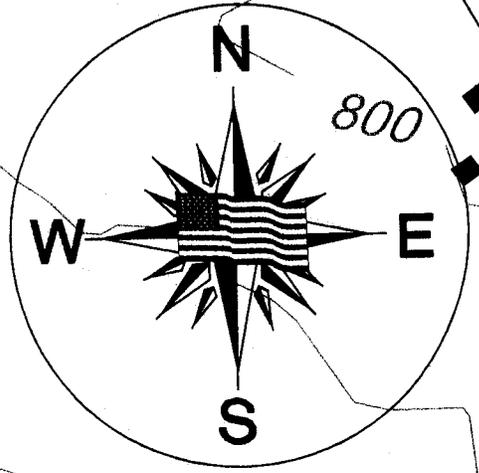
**CONCO COAL COMPANY, INC.**

*P.O. Box 261  
Staffordville, Kentucky 41256*

**US CORP OF ENGINEERS  
LOCATION MAP**

**KY DNR PERMIT #858-5063 ORIGINAL**

Drawn By: R. Tincher	Date: 10/23/2006	Scale: 1" = 2000'
Revised By:	Date:	Description:
		EXHIBIT 1
File Name: J:\WorkOrderFolders\6556-ConcoCc		Public Notice 200300468



**BOCOOK ENGINEERING**

CONSULTING ENGINEERS

312 TENTH STREET  
 PAINTSVILLE, KENTUCKY 41240  
 (606) 789-5961

**CONCO COAL COMPANY, INC.**

P.O. Box 261  
 Staffordsville, Kentucky 41256

**US CORP OF ENGINEERS  
 MITIGATION STRUCTURES LOCATION MAP  
 KY DNR PERMIT #858-5063 ORIGINAL**

Drawn By: R. Tincher	Date: 11/22/2006	Scale: 1" = 400'
Revised By:	Date:	Description:

EXHIBIT 2