



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

# Public Notice

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In reply refer to Public Notice No.

Issuance Date: August 13, 2007

LRH-2006-201-GUY

Stream: Pickering Branch & Right Fork  
of White Oak Branch

Closing Date: September 12, 2007

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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

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**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 West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Frasure Creek Mining, LLC  
1051 Main Street, Suite 100  
Milton, WV 25541

**LOCATION:** The proposed project is located on the Gilbert and Wharton USGS quadrangle at latitude 37° 34' 33" and longitude 81° 52' 22" within Pickering Branch and Right Fork of White Oak Branch approximately 2 miles west of Gilbert, in Mingo and Wyoming Counties, West Virginia. The location of the proposed project is shown on the attached **Sheet 1** of 4. Pickering Branch is a tributary of the Lefthand Fork of Gilbert Creek. Gilbert Creek flows into the Guyandotte River, a navigable (Section 10) water of the United States. White Oak Branch also flows into the Guyandotte River.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to discharge dredged and/or fill material into waters of the United States (U.S.), in conjunction with the construction, operation, and reclamation of the White Oak Surface Mine No. 6. The purpose of the proposed project is to recover bituminous coal from the Pond Creek, Alma, and Lower and Upper Cedar Grove coal seams. The applicant proposes to disturb approximately 240 surface acres in conjunction with proposed coal removal activities, as depicted in the attached drawings, **Sheet 2** of 4. Overall, the proposed project would result in adverse impacts to approximately 3,041 linear feet (0.449 acre) of streams, all of which are waters of the U.S. The project would include constructing two permanent valley fills and two temporary drainage control ponds. The proposed valley fills and sediment ponds would be constructed within Pickering Branch and the Right Fork of White Oak Branch. Construction of the proposed valley fills would result in permanent adverse impacts to approximately 1,844 linear feet (0.309 acre) of stream, including approximately 1,449 linear feet (0.230 acre) of intermittent streams and approximately 395 linear feet (0.079 acre) of ephemeral streams. Temporary adverse impacts associated with pond construction and operation would total approximately 1,197 linear feet (0.140 acre) of intermittent streams. In addition, approximately 479 linear feet (0.066 acre) of intermittent streams would be indirectly temporarily impacted as a result of sediment transport between the toe of proposed valley fills and proposed sediment ponds. This impact has been included in the calculation of total temporary impacts (1,197'). The life of the mine is approximately 5 years. Upon reclamation, the site would be returned to approximate original contour with a post mining land use of fish and wildlife habitat. The West Virginia Department of Environmental Protection is reviewing the applicant's Surface Mining Permit application (S-5010-06) pursuant to the Surface Mining Control and Reclamation Act of 1977.

**ALTERNATIVE ANALYSIS:** The applicant's stated overall project purpose is to mine coal from the Pond Creek, Alma, and Lower and Upper Cedar Grove coal seams. 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. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

**MITIGATION PLAN:** To compensate for permanent and temporary adverse impacts to waters of the U. S. associated with the proposed project, the applicant has developed a compensatory mitigation plan as depicted in **Sheets 3-4** of 4, that includes the following elements: restoration of approximately 1,197 linear feet of stream proposed to be temporarily adversely impacted as a result of this project; creation of approximately 3,321 linear feet of intermittent and ephemeral channel; and enhancement of approximately 1,405 linear feet of intermittent reaches of Pickering Branch and the Right Fork of White Oak Branch.

**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 West Virginia Department of Environmental Protection.

**HISTORIC AND 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. This public notice will serve as coordination with the West Virginia Division of Culture and History regarding the project and its potential effects to known historical, architectural, or archeological sites listed in or eligible for inclusion in the NRHP.

**ENDANGERED/THREATENED SPECIES REVIEW:** The U.S. Fish and Wildlife Service's latest published version of endangered and threatened species has been reviewed to determine if any endangered or threatened species may occur in the project area. The proposed project would be located in counties where the endangered Indiana bat (*Myotis sodalis*) is known to occur. In accordance with the protocol outlined in the Draft Indiana Bat Recovery Plan, the applicant performed a bat survey within the project area. The survey was conducted at 4 net sites from June 25, 2005 to June 26, 2005. No federally-listed bats were captured. The site was also surveyed for abandoned mine portals (potential winter habitat) and none were found on the property. The results of these surveys were provided to the U.S. Fish and Wildlife Service (USFWS) for review. Based on the information provided, the USFWS concluded in a letter dated March 7, 2006, that no federally-listed endangered and threatened species are expected to be impacted by the project. Therefore, the proposed project is not likely to adversely affect federally-listed species and no further consultation under the Endangered Species Act (ESA) is required with the USFWS. This public notice serves as a request to the USFWS for any additional information the agency may have on the extent to which the proposed project would affect 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).

**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 Regulatory Program of the U. S. Army Corps of Engineers (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.

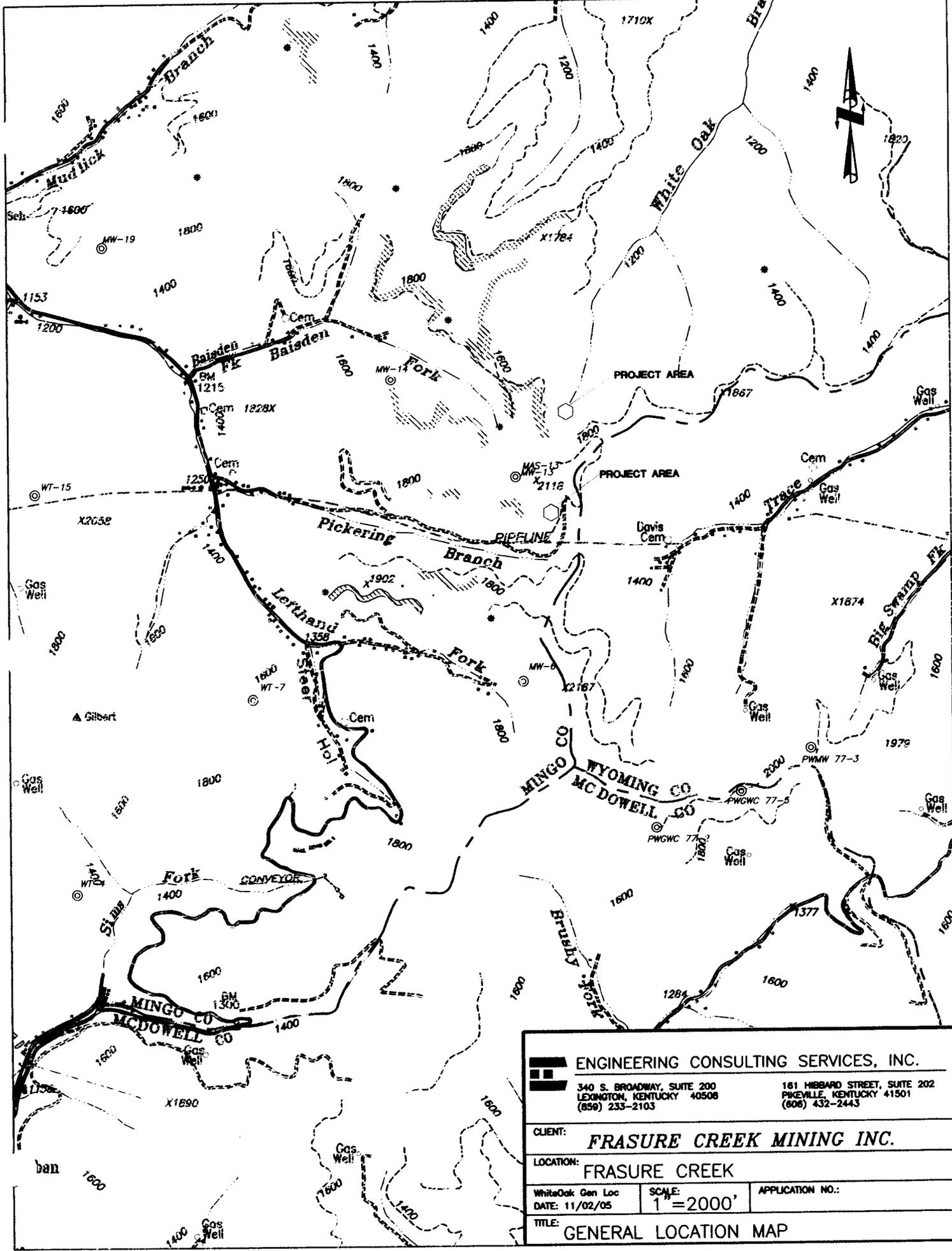
**SOLICITATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative 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 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.

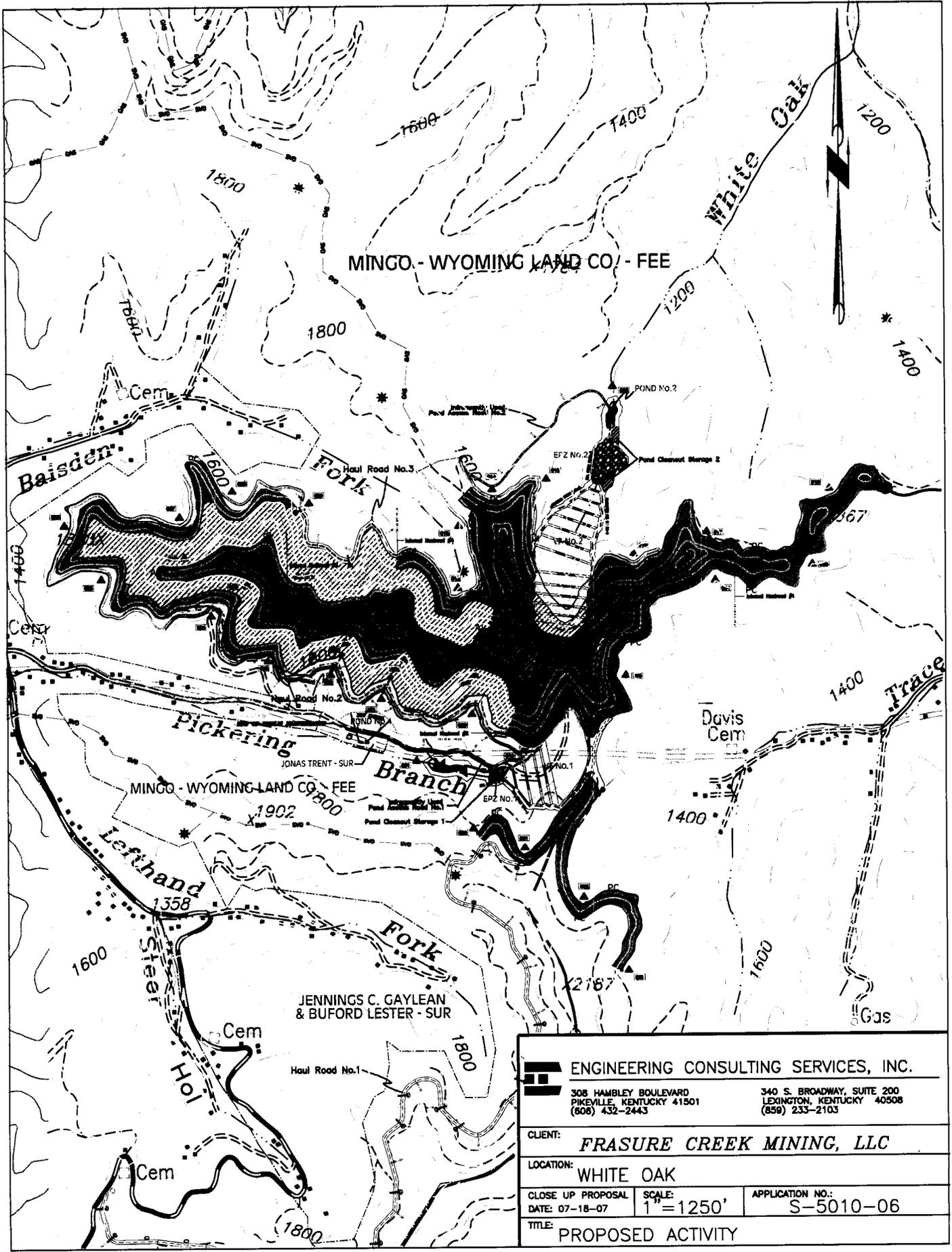
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. LuAnne Conley, Environmental Engineer, 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 Ms. LuAnne Conley, South Regulatory Section at 304-399-5710.

  
Ginger Mullins  
Chief, Regulatory Branch

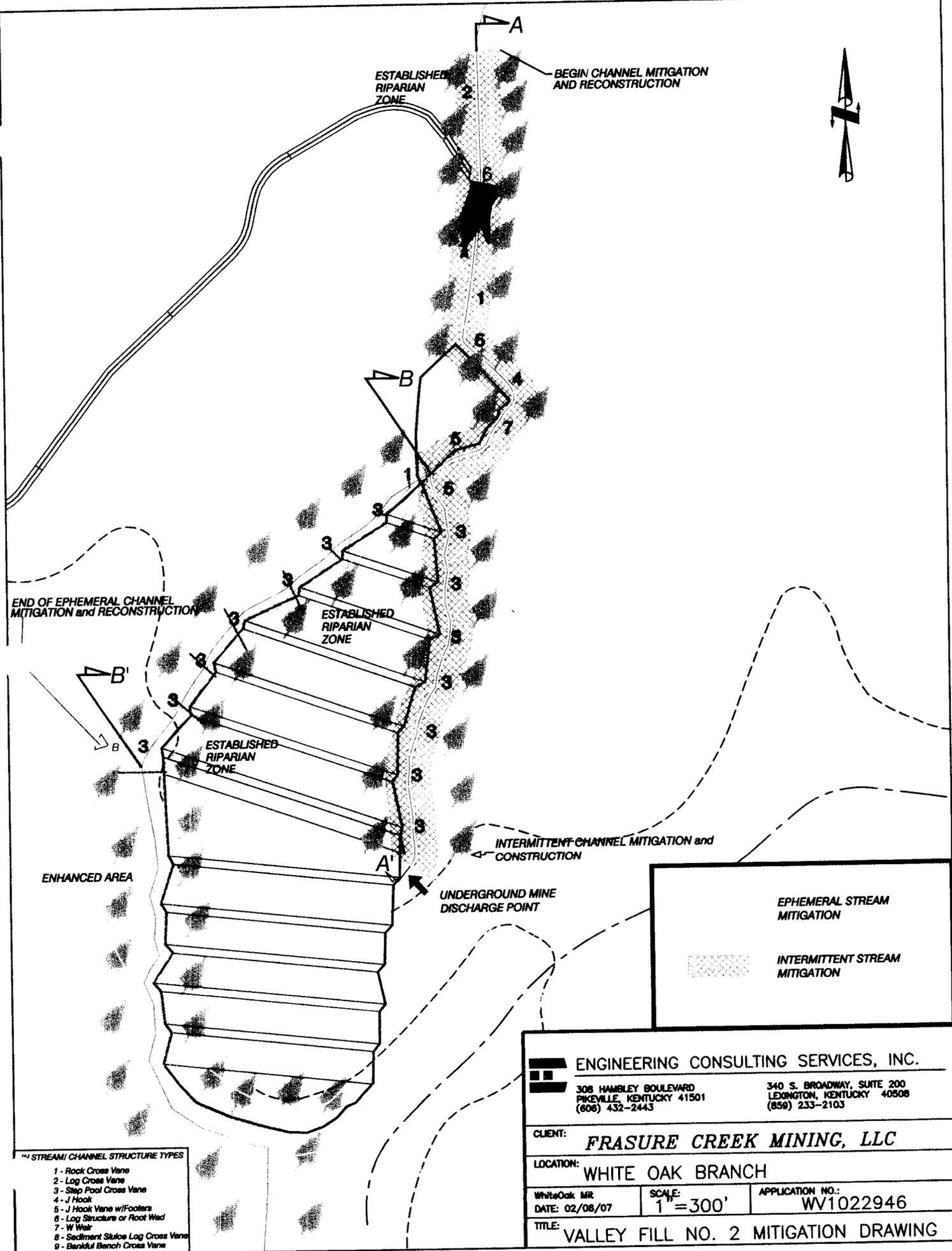
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 <b>ENGINEERING CONSULTING SERVICES, INC.</b> 340 S. BROADWAY, SUITE 200 LEXINGTON, KENTUCKY 40508 (859) 233-2103			161 HIBBARD STREET, SUITE 202 PIKEVILLE, KENTUCKY 41501 (806) 432-2443		
CLIENT: <b>FRASURE CREEK MINING INC.</b>					
LOCATION: <b>FRASURE CREEK</b>					
WhiteOak Gen Loc DATE: 11/02/05		SCALE: 1" = 2000'		APPLICATION NO.:	
TITLE: <b>GENERAL LOCATION MAP</b>					



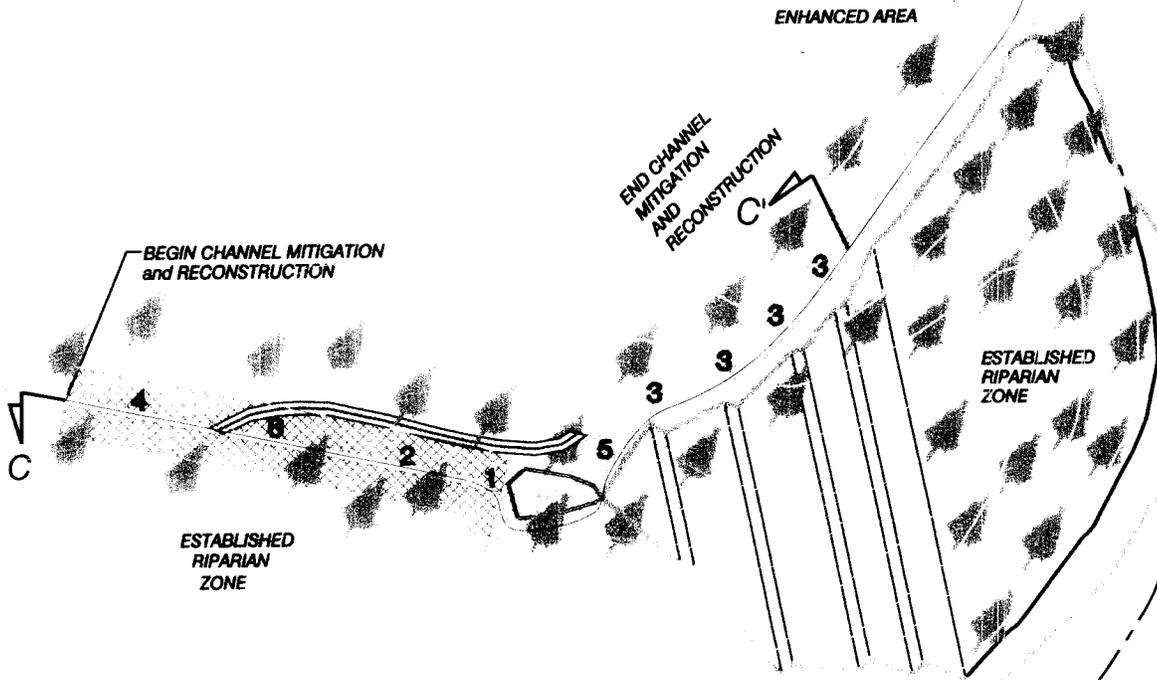
 <b>ENGINEERING CONSULTING SERVICES, INC.</b>		
308 HAMBLEY BOULEVARD PIKEVILLE, KENTUCKY 41501 (606) 432-2443		340 S. BROADWAY, SUITE 200 LEXINGTON, KENTUCKY 40508 (609) 233-2103
<b>CLIENT:</b> FRASURE CREEK MINING, LLC		
<b>LOCATION:</b> WHITE OAK		
<b>CLOSE UP PROPOSAL DATE:</b> 07-18-07	<b>SCALE:</b> 1" = 1250'	<b>APPLICATION NO.:</b> S-5010-06
<b>TITLE:</b> PROPOSED ACTIVITY		



- STREAM/ CHANNEL STRUCTURE TYPES**
- 1 - Rock Cross Vane
  - 2 - Log Cross Vane
  - 3 - Step Pool Cross Vane
  - 4 - J Hook
  - 5 - J Hook Vane w/ Footers
  - 6 - Log Structure or Root Wad
  - 7 - W Weir
  - 8 - Sediment Staloe Log Cross Vane
  - 9 - Bankful Bench Cross Vane

<p>EPHEMERAL STREAM MITIGATION</p> <p>INTERMITTENT STREAM MITIGATION</p>
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<p><b>ENGINEERING CONSULTING SERVICES, INC.</b></p> <p>308 HAMBLEY BOULEVARD PIKEVILLE, KENTUCKY 41501 (606) 432-2443</p> <p>340 S. BROADWAY, SUITE 200 LEXINGTON, KENTUCKY 40508 (859) 233-2103</p>		
<p>CLIENT: <b>FRASURE CREEK MINING, LLC</b></p>		
<p>LOCATION: <b>WHITE OAK BRANCH</b></p>		
<p>WhiteOak MR DATE: 02/08/07</p>	<p>SCALE: 1" = 300'</p>	<p>APPLICATION NO.: WV1022946</p>
<p>TITLE: <b>VALLEY FILL NO. 2 MITIGATION DRAWING</b></p>		



**EPHEMERAL STREAM MITIGATION**

**INTERMITTENT STREAM MITIGATION**

- IN STREAM/ CHANNEL STRUCTURE TYPES**
- 1 - Rock Cross Vane
  - 2 - Log Cross Vane
  - 3 - Step Pool Cross Vane
  - 4 - J Hook
  - 5 - J Hook Vane w/Footers
  - 6 - Log Structure or Root Wad
  - 7 - W Weir
  - 8 - Sediment Sluice Log Cross Vane
  - 9 - Bankful Bench Cross Vane

<b>ENGINEERING CONSULTING SERVICES, INC.</b>		
306 HAMBLEY BOULEVARD PIKEVILLE, KENTUCKY 41501 (606) 432-2443	340 S. BROADWAY, SUITE 200 LEXINGTON, KENTUCKY 40508 (859) 233-2103	
CLIENT: <b>FRASURE CREEK MINING, LLC</b>		
LOCATION: <b>PICKERING BRANCH</b>		
WHITEOAK MIT DATE: 02/08/07	SCALE: <b>1" = 300'</b>	APPLICATION NO.: <b>WV1022946</b>
TITLE: <b>VALLEY FILL NO. 1 MITIGATION DRAWING</b>		