



Public Notice

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

In reply refer to Public Notice No.
2008-00830

Issuance Date: September 16, 2008

Stream: Pine Creek

Closing Date: October 17, 2008

Please address all comments and inquiries to:

U.S. Army USACE 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 United States 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. 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 USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Coal-Mac, Inc. DBA Phoenix Coal-Mac Mining, Inc.
Post Office Box 1050, Harless Wood Industrial Park, 22 Mine Road
Holden, West Virginia 25625

LOCATION: The proposed project would be located approximately 2.5 miles southwest of Omar, in the Island Creek District of Logan County, West Virginia. The project area can be found at latitude 37°43'55" and longitude 82°03'11" on the Barnabas USGS 7.5-minute quadrangle. The proposed project would be constructed in the watershed of Pine Creek. Pine Creek exhibits a surface water connection to Island Creek. Island Creek is a surface tributary of the Guyandotte River, a traditional navigable water.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into approximately 14,530 linear feet or 1.38 acres of waters of the United States in conjunction with the construction, operation and reclamation of the Pine Creek No. 1 Surface Mine [Pending approval under Surface Mining Control and Reclamation Act (SMCRA) Permit S-5006-07 and National Pollutant Discharge Elimination System (NPDES) Permit WV1023098]. Project components would include three permanent valley fills (Fills No. 1-3), five in-stream sediment pond embankments, and the construction of three underdrains with impermeable liners. Construction of the sediment ponds and underdrains with impervious liners would result in temporary, direct discharges of dredged or fill material into 2,923 linear feet (0.433 acre) of intermittent stream channels. Construction of the proposed overburden and underdrain systems associated with Fills No. 1, 2, and 3 would result in the permanent, direct discharges of dredged material into 9,999 linear feet (0.903 acres) of intermittent stream channels and 1,608 linear feet (0.044 acre) of ephemeral stream channels. Details regarding these proposed activities are listed in the Table 1 attached to this public notice. The purpose of the proposed project is to discharge dredged/fill material to construct attendant and associated features (i.e. overburden disposal, coal recovery, sediment control etc.) and to facilitate efficient extraction of 2.86 million tons of coal reserves in the SMCRA permitted area (758.97 acres of which 228.37 acres would encompass the proposed valley fills and sediment ponds) for a period of 5 years. Coal removed from the project area would be processed and moved offsite for delivery to customers. Plans for the proposed facility are attached to this public notice.

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 overall project purpose. 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. The applicant considered two practicable alternatives: Alternative No. 3 using multiple seam contour and highwall/auger mining and Alternative No. 4 using mountaintop/area mining. While Alternative No. 3 would be practicable, it would sterilize coal reserves that would otherwise be recovered under Alternative No. 4. Also, Alternative No. 3 would only reduce the total impacts (14,530 linear feet) by approximately 4,000 linear feet to waters of the US. The applicant evaluated 7 hollows adjacent to the project area as potential locations for overburden storage. Alternative Valley Fill Site 2 (contains ~ 3,550 linear feet of waters of the US) would not be large enough to accommodate excess overburden storage and is located in an undisturbed hollow. Alternative Valley Fill Sites 1 (contains ~ 4,630 linear feet of waters of the US) and 4 (contains ~ 6,465 linear feet of waters of the US) would provide adequate capacity for excess overburden storage, but houses that are protected structures under the SMCRA and county routes run along the bottoms of these hollows. Alternative Valley Fill Site 3 (contains ~ 8,700 linear feet of waters of the US) would provide adequate capacity for excess overburden storage, but the excess overburden material would have to be hauled via public roads. Thus these four sites were determined not to be practicable locations for excess overburden storage. Proposed Fill Sites 1 (contains ~ 7,488 linear feet of waters of the US), 2 (contains ~ 4,460 linear feet of waters of the US), and 3 (contains ~ 3,275 linear feet of waters of the US) would provide adequate capacity for excess overburden storage, are located within a practicable distance to the mine sites, have the required slope to provide sufficient valley fill stability and no existing homes or utility lines would be affected. Of the 15,223 linear feet of waters of the US located within the Proposed Fill Sites 1, 2, and 3, the applicant has avoided proposed impacts to 693 linear feet of waters of the US.

MITIGATION PLAN: The project area has been previously timbered and gas reserves have been developed. Mining has occurred using deep and surface mining techniques within and adjacent to the project area. In evaluating a project area containing waters of the United States, consideration must be given to avoiding impacts on these sites. The USACE has determined that approximately 34,511 linear feet of intermittent streams (Streams E, G, H, I, J, L, M, N, O, P, R, DD, EE, FF, GG, HH, II, JJ, KK, and LL) and 2,710 linear feet of ephemeral stream (Streams A, B, C, D, E, F, G, H, I, J, K, R, FF, JJ, KK, and LL) are located within the area delineated for the proposed project. As a result of avoidance measures, the applicant proposes to impact 12,922 linear feet of intermittent stream (2,923 linear feet would be restored upon completion of mining activities) and 1,608 linear feet of ephemeral stream. Therefore, the applicant has avoided impacts to approximately 21,589 linear feet of intermittent stream and 1,102 linear feet of ephemeral stream within the delineated area. Upon completion of mining activities, 2,923 linear feet of intermittent stream would be re-established to their approximate pre-disturbance contours.

If waters of the United States cannot be avoided, impacts must be minimized. The applicant has proposed efforts to minimize impacts to aquatic resources throughout project implementation. The applicant proposes to incorporate best management practices (BMPs), as required by SMCRA and NPDES, to the maximum extent possible and by using the best technology currently available. To limit the impacts of the proposed operation, the design of the valley fills were optimized by placing excess overburden on top of fills higher than the lowest coal seam proposed to be mined. This procedure (Approximate Original Contour+/Excess Overburden Guidelines) was developed by the WVDEP and was endorsed by the United States Environmental Protection Agency as constituting minimization under the Section 404(b)(1) Guidelines. Fills 1, 2, and 3 comply with these guidelines. Additionally, the proposed fills would be constructed in hollows previously impacted by pre- and post-SMCRA mining, gas and timbering activities. With regard to sediment control, run-off must pass through the proposed designed sediment control structures before entering the streams to prevent downstream sedimentation in any considerable quantities. These measures would minimize the potential for excessive erosion and deposition of sediment in waters of the United States. The applicant proposes to manage discharges in accordance with WVDEP-established NPDES threshold limits for suspended solids and settleable solids. Further minimization of impacts would be achieved through timely backfilling, grading and revegetation of operational areas and stabilization of fill material, which would be expected to minimize the amount of earth disturbance at any given time and would reduce the potential for erosion and sedimentation. The applicant examined numerous alternatives to avoid all impacts to waters of the United States and determined them to be impracticable based on cost effectiveness, and technical feasibility in light of the overall project purpose.

The applicant has submitted a Compensatory Mitigation Plan (CMP) to compensate for unavoidable impacts to waters of the United States. The mitigation components include: restoring approximately 2,923 linear feet of temporarily impacted stream channels to their approximate pre-disturbance conditions; creating 20,135 linear feet of stream channel; development of approximately 17,585 linear feet of more defined channels in existing non-jurisdictional drainage ways located immediately adjacent to the project area; establishing, enhancing or restoring 50-foot riparian areas along the 23,058 linear feet for total of 52.9 acres; protecting the existing riparian corridor situated along the existing non-jurisdictional drainage ways to the extent practicable; and if acceptable by the land owner, an instrument placing deed restrictions on the mitigation areas, including riparian zones, would be prepared at final abandonment. The CMP has been developed with a watershed-based approach and incorporates the USACE Interim Functional Assessment Approach.

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 WVDEP.

HISTORIC AND CULTURAL RESOURCES: It has been determined there are no properties included in or eligible for listing in the National Register of Historic Places (NRHP) that would be affected by the proposed undertaking. A Phase I report that was submitted to the West Virginia Division of Culture and History, State Historical Preservation Office (SHPO) under FR# 95-706-Multi. SHPO has reviewed the report and, in a letter dated April 24, 2007, stated no archaeological sites were identified in this survey, but requested the opportunity to conduct a field review of the subject area. After a site review, SHPO stated in a letter dated May 14, 2007 stated no archaeological sites located within the proposed project area are eligible for or listed in the NRHP and no further consultation was necessary. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. In the summer of 2005, a bat-mist net survey was completed in the project area to determine presence or probable absence of the Indiana bat within the proposed project area. No federally-listed bats were captured during this survey. The proposed project area was also surveyed for abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. No abandoned mine portals were found within the proposed project area. Based on these facts, the WVDEP, in a letter dated April 11, 2006, has determined the proposed project is not likely to adversely affect endangered or threatened species or their critical habitat. This public notice serves as a request to the USFWS 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 ESA 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 320-332, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the United States 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 Mrs. Teresa Spagna, Project Manager, Energy Resource Section, CELRH-OR-FE, USACE 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 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 the above, please contact Mrs. Teresa Spagna of the Energy Resource Section at (304) 399-5610.

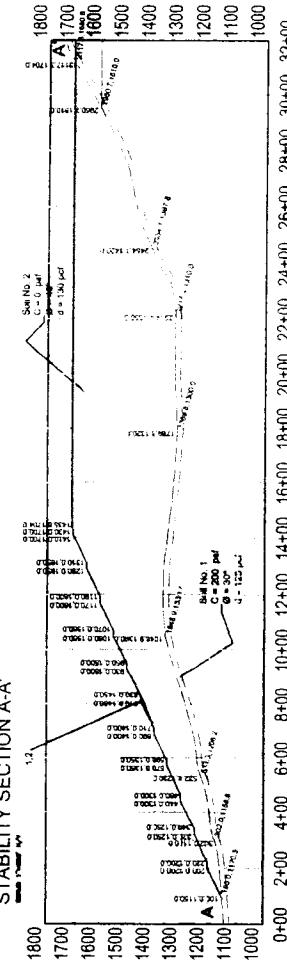


Ginger Mullins
Ginger Mullins, Chief
Regulatory Branch

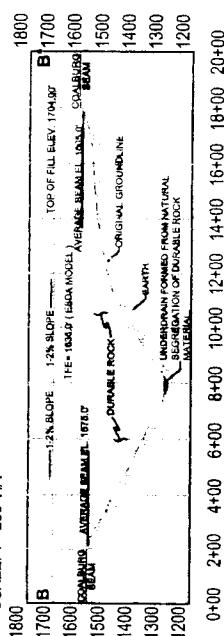
(W)

Baldwin Anshutz -
Locuston Logan County, West Virginia

FILL NO. 1
STABILITY OF SECTION A-A



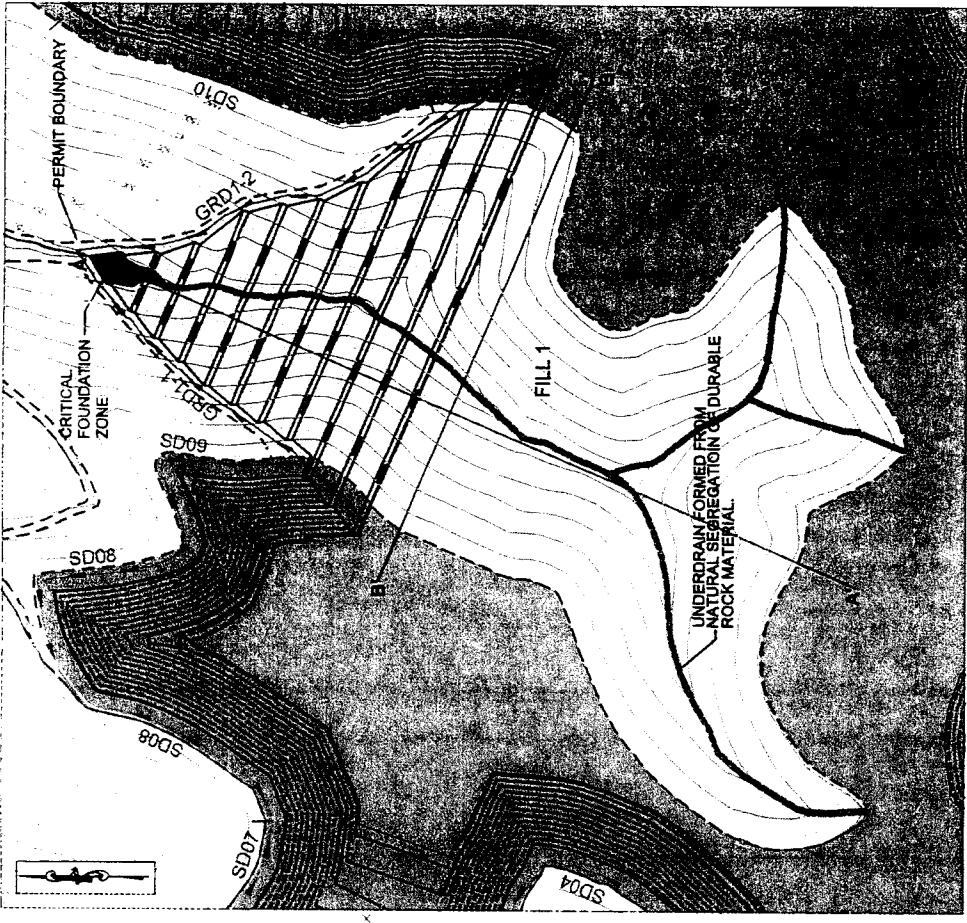
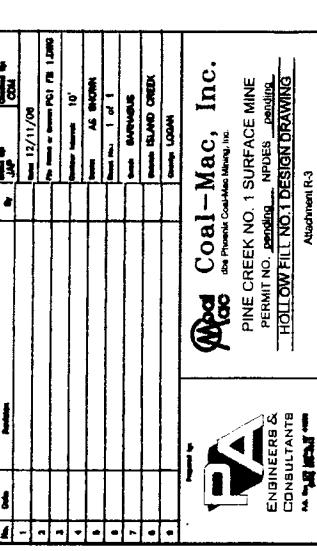
FILL NO. 1
CROSS-SECTION B-B'
SCALE 1"-200' H/V



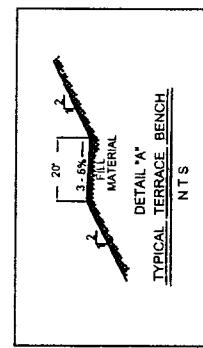
Volume Report
 Comparing GRID
 and QRD
 Grid corner location
 Grid resolution
 Area in QRD : 1
 Area in GRID : 3.16
 Total Inclusion of
 Cut to GRID ratio
 Average Cut Depth
 Cut (C.Y.) / Area
 Cut (C.Y.) / Area
 Cut volume: 2.1
 Cut volume: 688

- Natural Ground Slope at Toe is 8.6%; Therefore, Toe Buttress is Not Necessary.
AT 37°, 44°

LONG. 82° 09' 5"



HOLLOW FILL No.1
PLAN VIEW
SCALE: 1:200



TOP OF HILL ELEV. 1700 FT.
13% SLOPE!!
AVERAGE TEE BENCH (EAST MODEL)

DURABLE ROCK

EARTH

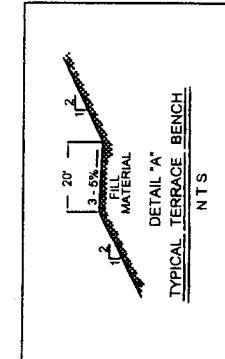
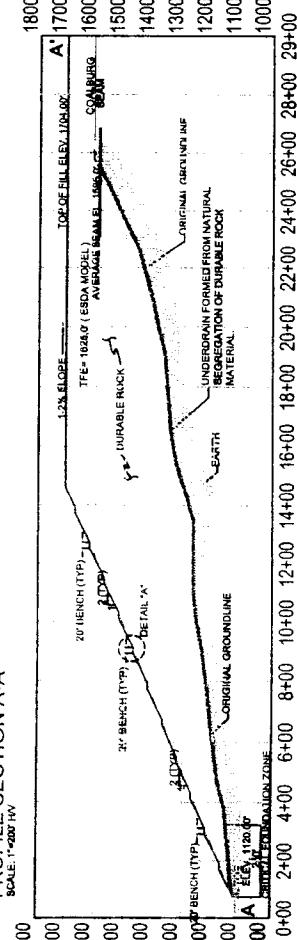
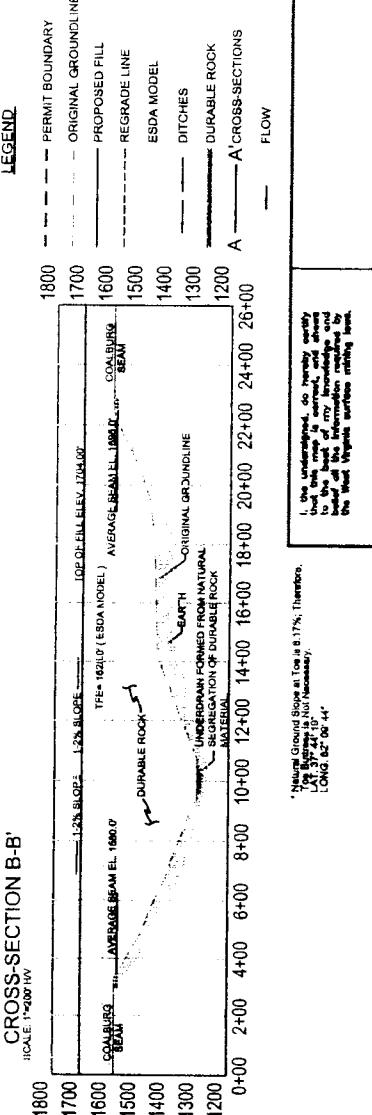
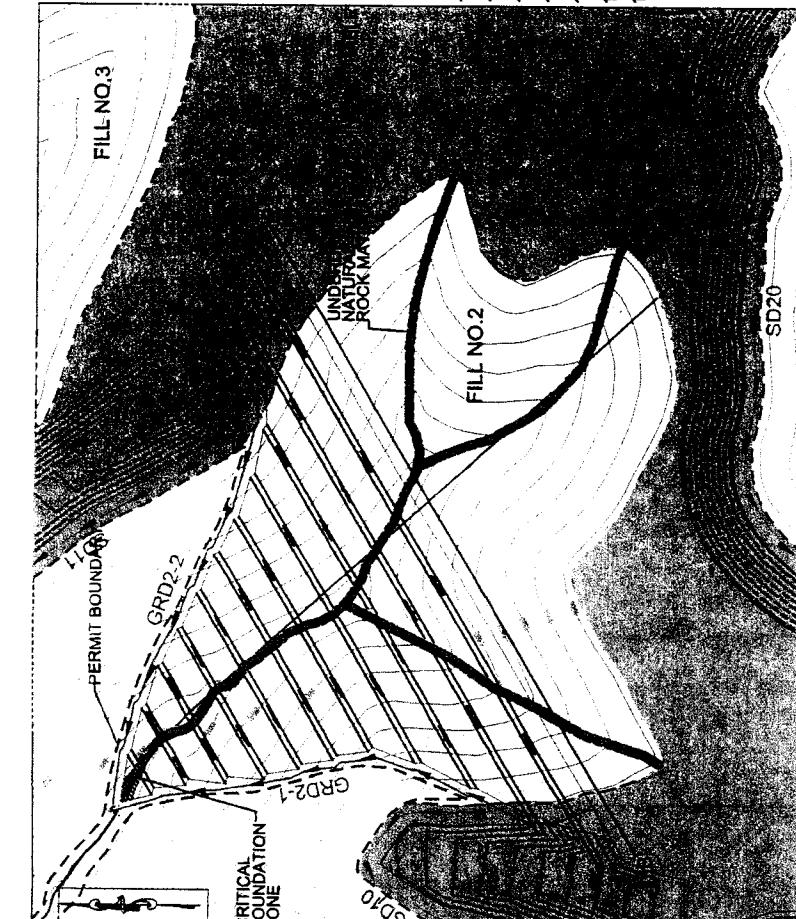
ORIGINAL GROUNDLINE
UNDERBANK FORMED FROM NATURAL
REDEPOSITION OF DURABLE
MATERIAL.

ORIGINAL BENCH (11'P-11")
2' (1'P-1")
2' (1'P-1")
2' (1'P-1")
2' (1'P-1")
2' (1'P-1")

ORIGINAL GROUNDLINE

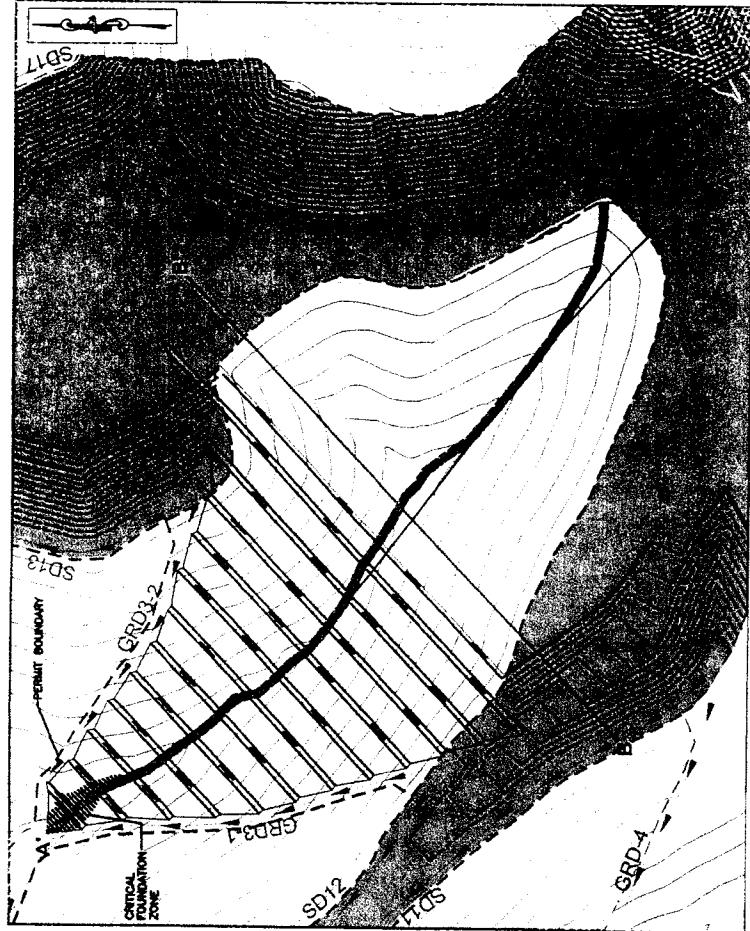
CENTRAL PROTECTION ZONE

SCALE: 1 - 200 FT

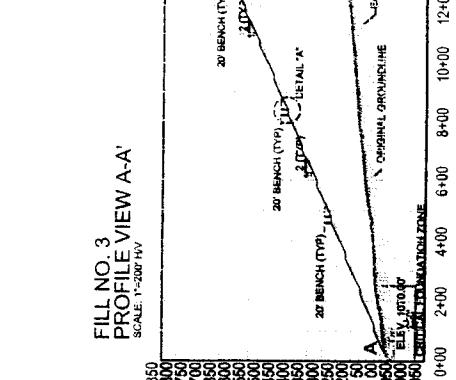


No.	Date	Permittee	Original Drawing Preparation	By	Permit No.	Comments
1	12/1/08	Original Permittee	Original Drawing Preparation	SPD	Permit No. 12/1/08	
2	03/05/08	Revised Permit Boundary	Revised Drawing Preparation	SPG	Permit No. 03/05/08	Permittee: MC1 FR 2,000'
3						Customer Number: 10'
4						
5						
6						
7						
8						
9						
10						

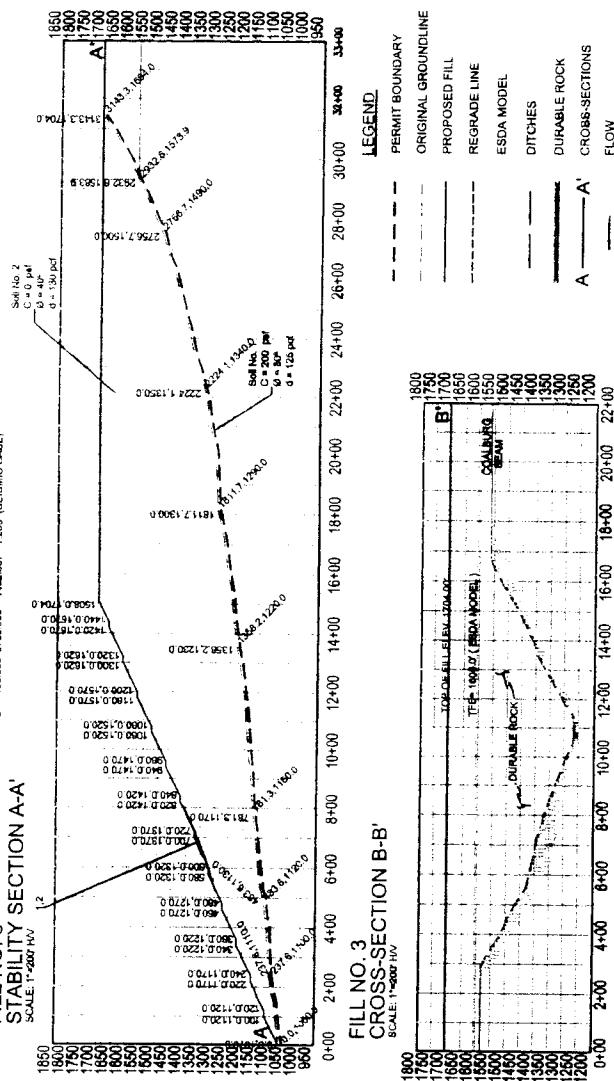
Coal-Mac, Inc.
One Thousand Coal-Mac Mining, Inc.
PINE CREEK NO. 1 SURFACE MINE
PERMIT NO. S-5002-02 NPIDES WY-1025088
HOLLOW FILLING R-3



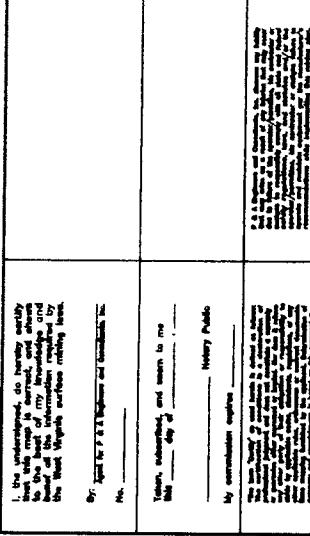
FILL NO. 3
PROFILE VIEW A-A'
SCALE: 1=200' HV



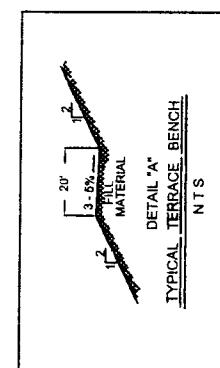
FILL NO. 3
STABILITY SECTION A-A'
SCALE: 1=200' HV



Volume Report
Comparing GRID File: C:/SCADMM/2 DATA/FILL-06.GRD and GRID file: C:/SCADMM/2 DATA/FILL-1.GRD
Grid corner locations: 184321.97, 772046.86 to 1867855.99, 273084.36
Grid resolution X: 50', Y: 50' Grid cell size: K: 68.26; Y: 52.29
Area In Cut: 5,102.5 S.F., 0.12 Acres
Area In Fill: 2,398,059.0 S.F., 55.05 Acres
Total Indication area: 2,403,161.5 S.F., 55.17 Acres
Cut to Fill ratio: 0.00
Average Cut Depth: 3.45' Average Fill Depth: 208.26
Cut (C.Y.) / Area (acres): 1,117
Fill (C.Y.) / Area (acres): 332,043.04
Cut volume: 19,623.8 C.F., 726.81 C.Y.
Fill volume: 494,630,130.3 C.F., 18,319,634.46 C.Y.

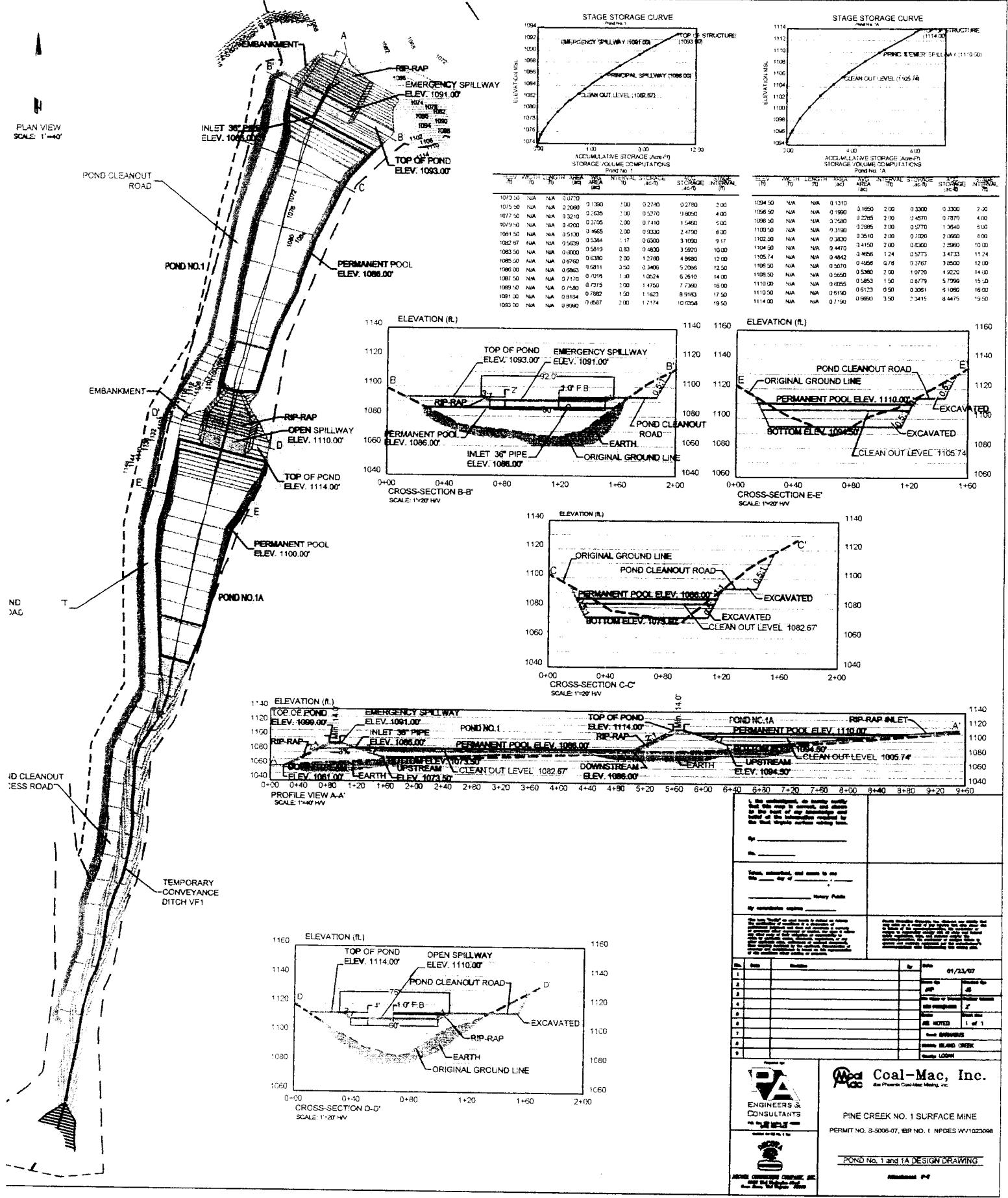


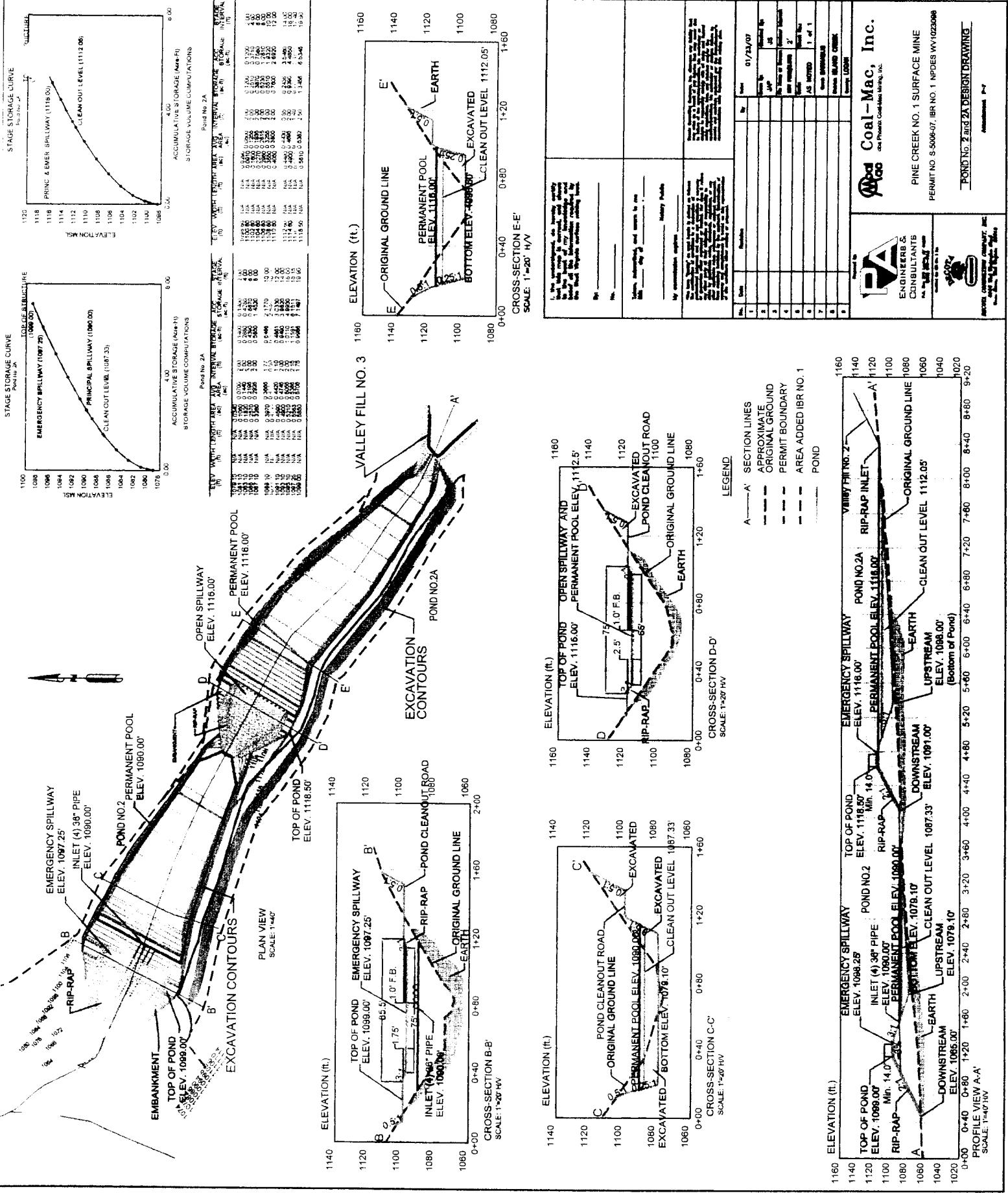
The following information is provided for your review. This document contains sensitive information and is not to be distributed outside the company without permission. If you do not have permission to receive this information, please return it to me immediately.

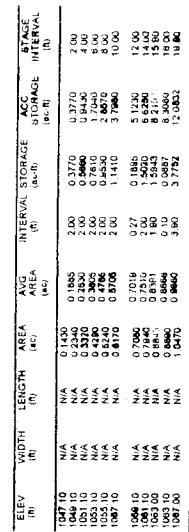
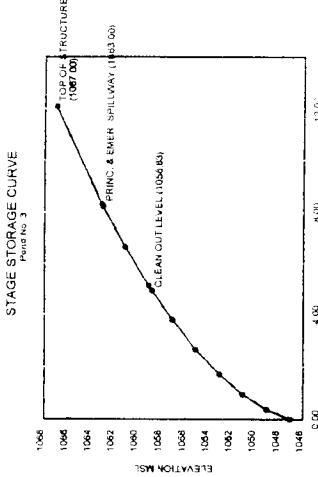


Coal-Mac, Inc.
PINE CREEK NO. 1 SURFACE MINE
PERMIT NO. 20200 NODS
TICKLE FILL NO. 3 DESIGN DRAWING
Attachment R-3

PLAN VIEW
SCALE: 1'-0"

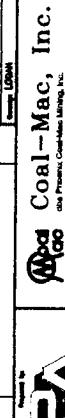
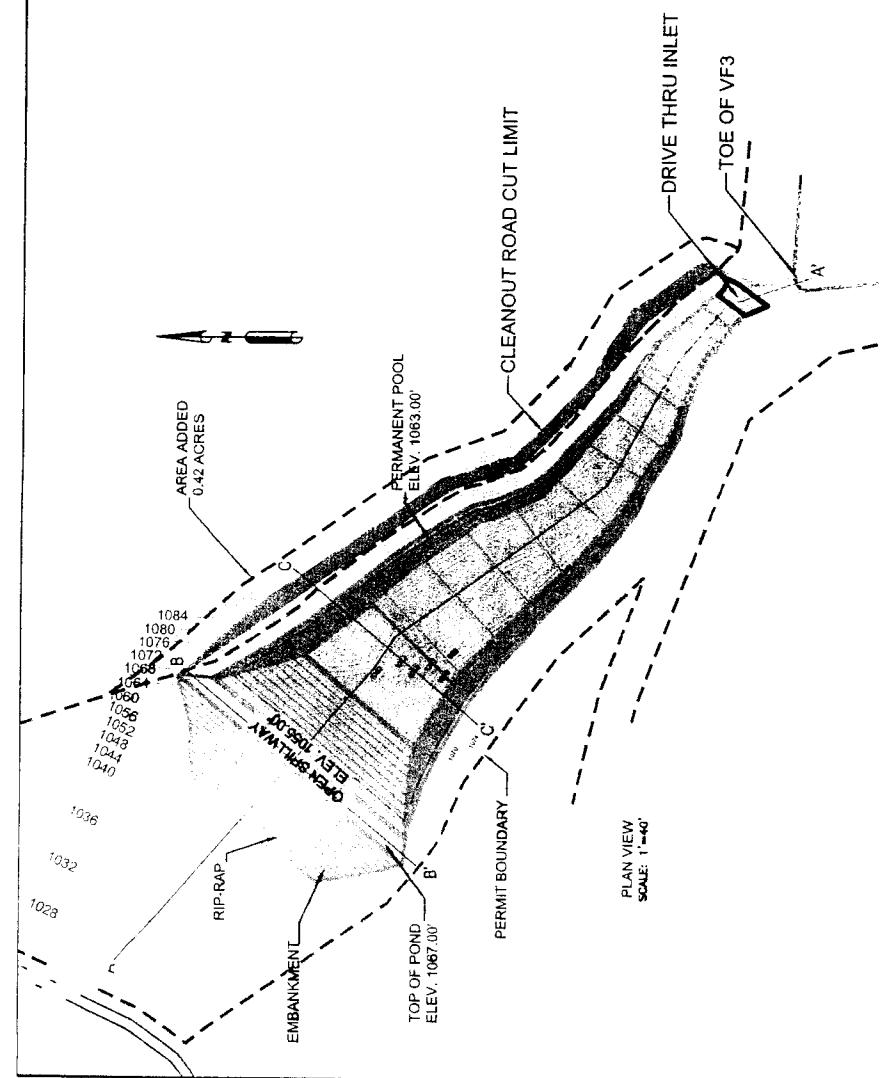
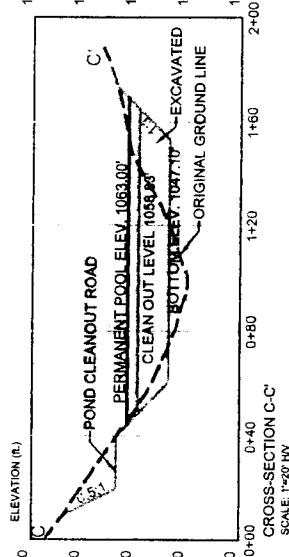
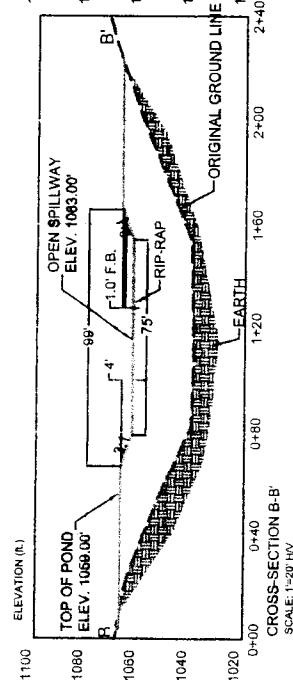
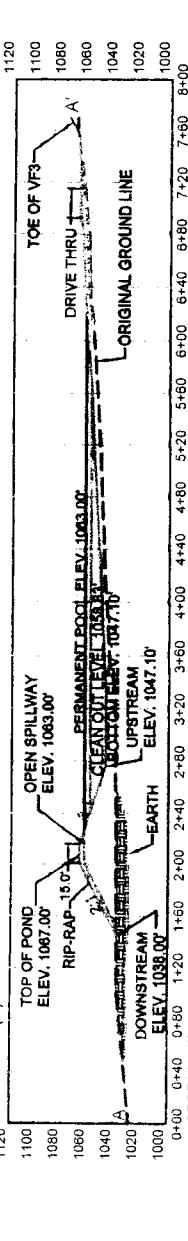
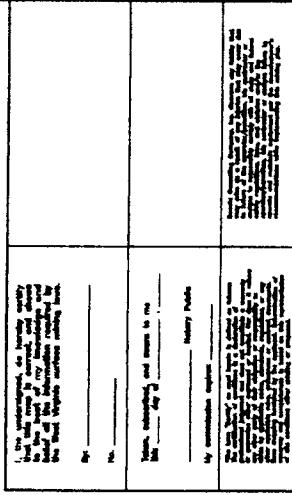






LEGEND

SECTION LINES
APPROXIMATE
ORIGINAL GROU
PERMIT BOUNDAR
AREA ADDED IBR
POND



PINE CREEK NO. 1 SURFACE MINE
PERMIT NO. S-5005-07 IIR NO. 1 NIDERS WA/10/2020/W

POND NO. 3 DESIGN DRAWING