



**US Army Corps  
of Engineers**  
Huntington District

# Public Notice

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In reply refer to:	Issuance Date:
<b>Public Notice No.</b> 200400624	July 15, 2004
<b>Stream:</b>	Expiration Date:
Jacks Branch	August 14, 2004

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Address comments to: US Army Corps of Engineers, Huntington District  
602 Eighth Street  
ATTN: CELRHE  
Huntington, West Virginia 25701-2070

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## PUBLIC NOTICE

**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:** Independence Coal Company  
HC 78 Box 1800  
Madison, West Virginia 25130

**LOCATION:** The proposed project is located in Jacks Branch, Gore Branch, Trace Branch, Griffith Branch, Hunter Branch and unnamed tributaries of Spruce Fork, all tributaries of the Little Coal River of the Coal River, approximately 1.0 miles south of Uneeda, in Boone County, West Virginia as depicted on the attached **Drawing 1**. **Drawings 2** depicts the locations of the proposed valley fills and associated sediment ponds.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to place fill material into waters of the U.S. in conjunction with the construction of seven valley fills and nine associated sediment ponds at the Constitution Surface Mine. The proposed activities would impact ephemeral and intermittent stream channels. The proposed project would impact a total of 30,925 linear feet of waters of the U.S. Of this total, approximately 10,225 linear feet would be temporarily impacted (including 1,996 linear feet of indirect impacts associated with sediment transport) and 20,700 linear feet would be permanently impacted. **Table A** of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations, stream loss (linear feet and acres). Each of the proposed valley fills would drain watersheds of less than 250 acres, ranging from 74.70 acres to 220.10 acres as detailed on **Table B** of this public notice.

The proposed surface mine would result in surface disturbance to 1550.30 acres that drain into Hunters Branch of/and unnamed tributaries of Spruce Fork and Jacks Branch, Trace Branch, Mack Gore Branch and Griffith Fork of Pond Fork of the Little Coal River of the Coal River of the Kanawha River. The post-mining land use is Commercial Forestry.

The applicant proposes to surface mine an 18 million ton reserve of high quality low sulfur coal. Five major coal horizons will be mined within a vertical interval of approximately 370 feet. In descending order, the seams are the 5-Block, Clarion, Stockton, Coalburg and Winifrede. The mining operation would generate approximately 287 million cubic yards of excavated material of which roughly 193 million would be placed on the mined area as backfill with the remainder proposed for storage in valley fills. The proposed valley fills are designed to contain 94 million cubic yards of durable rock. Approximately 2,456 cubic yards of this material would be placed within the Corps' regulatory jurisdiction. This durable rock would be primarily sandstone and sandy gray shales and would be nontoxic. All non-rock types of material (dirt, sand etc.) would be used for regrade and reclamation purposes on the mine site. **Table C** of this public notice details the individual volumes of spoil material to be placed in each proposed valley fill.

The West Virginia Department of Environmental Protection (WVDEP) approved the applicant's Surface Mining Permit application (S-5025-97) on December 17, 2003 pursuant to the Surface Mining Control and Reclamation Act of 1977.

Mining and reclamation activities would take place over the course of eight phases as discussed below. **Table D** of this public notice details the ten phases.

The proposed project relies on its ability to develop and maintain a cross-ridge mining configuration with mining advancing sequentially through the uppermost seams down to the Winifrede seam. That is, mining of the top seams would have to stay ahead of the activity in the next lower seam and so on down through the range of seams to be mined. The resulting "stair step" configuration would be maintained to the end of the operation.

Drainage control would be provided in each active phase by temporary structures installed and maintained in accordance with Section P of the applicant's SMCRA permit. In order to provide full sediment control for the proposed mining area without utilizing extensive on-bench temporary structures, the sediment ponds are designed to provide adequate volume for the entire disturbed area. In certain instances, temporary structures within the boundary of the valley fill are required to satisfy this objective. Permanent drainage control would be installed in conjunction with final grading or as soon as practicable.

Sediment control structures would be installed at various times during each mining phase but would not be in place at the very beginning of that phase. Adequate sediment storage volume for the current disturbed area would be provided by certified sediment control at any time. Additional storage volume would be added prior to the disturbance of acreage in excess of that covered by existing structures. At no time shall the disturbed area exceed the area defined by the installed and certified sediment volume divided by 0.125 acre-feet per acre.

**Phase I:** Under Phase I, the applicant would utilize an existing road that begins on Jacks Branch and extends to near the gap between Jacks Branch and Hunter Branch for the primary access route. This road would be upgraded as required to comply with DEP haulroad standards. A small box-cut would be made through the ridge to connect Hunter Branch with the primary access route. A temporary road would be constructed to Hunter Branch to provide equipment access as the box cut would be constructed from Hunter Branch. Spoil generated from the cut through would be placed in Valley Fill B. The primary road would continue down to the Winifrede seam outcrop in Hunter Branch and to the Winifrede outcrop in Trace Branch along the routes. Pond A would be constructed and certified prior to any disturbance in Valley Fill A and Pond B would be constructed and certified prior to any disturbance in Valley Fill B. Ponds D2 and D3 would be constructed and certified to provide additional sediment control before the design capacity of Pond B is exceeded.

After the development phase of the site, the deep mine "punch-out" site in Trace Branch would be established to allow surface mined coal to be transported through the existing Jacks Branch Buffalo Creek deep mine. Material from the face-up and from a contour cut on the Winifrede seam would be placed in Valley Fill A, which would provide space for the long-term coal blending, storage, and shipping facility. This 15 acre site would remain in place throughout the life of this mine and would be considered a support area relative to the calculation of disturbed versus reclaimed acreage.

A major box-cut from Hunter Branch to Trace Branch would be developed in Phase I, with work progressing from both sides to expedite completion. Valley Fills A and B would be used to contain most of the overburden material generated in Phase I. The dimensions of the cut would vary depending on the operating space requirements of the equipment assigned to each coal bench. Backfilling against the initial highwall may begin once mining has advanced to allow adequate operating room, but the wall would not be eliminated in this phase.

Contour mining in areas outside of Valley Fills A and B would prepare a solid bench area for disposal of the overburden from the No. 5 Block seam and from the Stockton Rider horizon. Material from the remaining upper seams would be placed in the fills.

At the conclusion of Phase I, the mining scenario will be fully developed. Typically, contouring will precede and set up the cross-ridge cut, so most of the material from the contouring will be placed in the nearest fill. Spoil from the cross-ridge operation will be placed as backfill on the Winifrede bench just behind the active pit.

**Phase II:** Contour mining and upper seams “pre-stripping” would continue in advance of the primary cross-ridge cut mining. Typically, the material from the contouring would be placed in the nearest fill (either Valley Fills A, B or C). Pond C would be constructed and certified prior to any disturbance within Valley Fill C. Access to Valley Fill A would be via the box-cut, so the internal road system that provided initial access can be abandoned, allowing contour mining to commence along the southern perimeter of Valley Fill A. These would be contoured and augered and then completely reclaimed during Phase II. The Lower No. 5 Block seam would not be augered due to its limited areal extent. As part of that activity, the Clarion and No. 5 Block horizon south of the initial cut would be mined with some of the spoil being used to backfill the lower contour walls at Valley Fill A. All coal removal and reclamation in this area would take place in Phase II.

**Phase III:** A permanent access road would be reestablished to the cemetery on the south of Valley Fill A as this area is reclaimed. Mining activity would be focused on the cross-ridge development between Valley Fills C and D1 and upper seams “pre-stripping” near Valley Fill F in Phase III. The entire Valley Fills C and D1 areas would be disturbed and in use for active spoil disposal. Pond D1 would be constructed and certified during this phase to insure adequate sediment control. Excess spoil would go to Valley Fills C and D1 while backfilling continues in the rear of the active Winifrede pit. Reclamation of Valley Fill B would be completed in this phase.

**Phase IV:** The northern point between Mack Gore Branch and Griffith Branch is the center of activity during Phase IV. An AEP power line would be temporarily relocated or otherwise managed in accordance with an agreement to be negotiated between the land owner and AEP. Mining would proceed to the property line near the northern extremity of the point. Mining on this northern point would be completed during Phase IV. Lower seams mining along the perimeter of Valley Fill D1 would take place during Phase IV in preparation for further spoil placement and backfilling. The cross-ridge cut to the Winifrede seam would continue in the area between Valley Fills C and D1. Active spoil disposal would be taking place in Valley Fills C and D1. Excess spoil generated from mining the northern point would be placed in backfill.

**Phase V:** Phase V begins with the installation of Sediment Pond E, which would allow sediment control for the activation of Valley Fill F. Upper seams mining would advance to the end of the Clarion reserve east of the first left fork of Hunter Branch, while the development of the lower seams would be about 2,000 feet behind. Both Valley Fills D1 and D2 would now be in use along with Valley Fill F during this phase. At the end of Phase V, the reclamation of the north point would be completed between Mack Gore Branch and Griffith Branch and Valley Fill C.

**Phase VI:** Ponds G1 and G2 would be installed prior to any disturbance within the area of Valley Fill G. Mining through the low gaps between the head of Griffith Branch and the first left fork of Hunter Branch would occur in Phase VI. Valley Fill G would be placed into service to receive most of the spoil since the Winifrede bench narrows in that vicinity and doesn't contain much backfill. Mining in the lower seams would continue in the proximity of Valley Fills D2 and F. Valley Fill F would be reclaimed in the zone below the Winifrede seam while the area above the Winifrede bench would remain in use for backfill material. Valley Fill D1 would be reclaimed while Valley Fill D2 would remain active until Phase VII.

**Phase VII:** The final mining phase would include the point removal between Griffith Branch and Spruce Fork and completion of the lower seams near Valley Fill G. Any necessary adjustments to the final spoil balance would be accommodated by varying the volume of spoil placed in Valley Fill G and the amount of backfill placed on the remaining Winifrede bench. Reclamation of Valley Fill D2 would be completed during this phase.

**Phase VIII:** Reclamation would be finished with the closure of Valley Fill G and regrading of the point northwest of Valley Fill G.

According to the applicant, the purpose of the project is to construct valley fills to dispose of excess overburden spoil generated by surface mining operations into waters of the United States in order to achieve optimal recovery of available coal reserves within the project area and to provide the mandatory sediment control and access. Plans of the proposed valley fills and associated sediment ponds can be found on **Drawings 3 through 8** attached to this public notice.

**MITIGATION PLAN:** The applicant has submitted a conceptual mitigation plan to compensate for permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. The applicant has submitted a compensatory mitigation plan to offset the permanent and temporary impacts to waters of the U.S.

To compensate for permanent impacts, the applicant proposes to mitigate on-site through in-kind enhancement of 26,780 linear feet of aquatic resources. The proposed mitigation sites are located in Griffith Branch, Hunters Branch, the first left unnamed tributary of Hunters Branch, and Jacks Branch. **Table C** details the extent (linear feet) of the proposed enhancement measures. A functional assessment of each mitigation stream reach was determined to identify deficient stream morphological features for purposes of stream enhancement to be used as stream mitigation. At each mitigation site, site benthic macroinvertebrate, physical and chemical water chemistry, habitat, riparian, and stream morphology parameters were collected at several stations and would serve as data monitoring points for both the pre- and post-mining impacts. The primary attributes measured for stream enhancement projects included bank stability, riparian quality, substrate composition, elevation and slope, quantity of in-stream structures, and in-stream habitat types.

To compensate for temporary impacts, the applicant proposes to perform stream channel restoration in the temporarily disturbed segments of the sediment pond areas and associated drainage corridors upon reclamation of the site. Rosgen natural stream techniques would be used in the design of the restoration sites. A minimum of a 50-foot vegetated riparian zone would be established along the restoration sites. This proposed restoration would result in the restoration of 10,225 linear feet of intermittent stream channels.

**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 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 would 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.

**ENDANGERED/THREATENED SPECIES REVIEW:** The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species, which has been determined to be critical. This public notice serves as a request to the U.S. Fish and Wildlife Service 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 which 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.

Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit would be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision would 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 would 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. In addition, the evaluation of the impact of the activity on the public interest would 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 would become a part of the record and would be considered in the final determination. A permit would 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 would 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.

If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)

**Table A**  
**Independence Coal Company**  
**Constitution Surface Mine**  
**Proposed Mining Activities**

PROPOSED MINING ACTIVITY	STREAM LOCATION	PERMANENT IMPACTS (LINEAR FEET)		TEMPORARY IMPACTS (LINEAR FEET) INTERMITTENT	SECONDARY IMPACTS (LINEAR FEET) INTERMITTENT
		INTERMITTENT	EPHEMERAL		
Valley Fill A	Trace Branch	1600	2000		
Sediment Pond A	Trace Branch			1025	900
Valley Fill B	Hunters Branch	2800	1900		
Sediment Pond B	Hunters Branch			2635	265
Valley Fill C	Mack Gore Branch	1600	800		
Sediment Pond C	Mack Gore Branch			255	245
Valley Fill D1	Unnamed Tributary Hunters Branch	2600	900		
Valley Fill D2	Unnamed Tributary Hunters Branch	200	1700		
Sediment Pond D1	Unnamed Tributary Hunters Branch			100	0
Sediment Ponds D2 and D3	Hunters Branch			1234	66
Valley Fill F	Unnamed Tributary Griffith Branch	900	200		
Sediment Pond E	Unnamed Tributary Griffith Branch			880	355
Valley Fill G	Unnamed Tributary Hunters Branch	3200	300		
Sediment Ponds G1 and G2	Unnamed Tributary Hunters Branch			880	20
<b>Total</b>		<b>12,900'</b>	<b>7,800'</b>	<b>8,229'</b>	<b>1,996'</b>

**Table B**  
**Independence Coal Company**  
**Constitution Surface Mine**  
**Watershed Acreages for Proposed Valley Fills**

<b>PROPOSED VALLEY FILL</b>	<b>WATERSHED ACREAGE (ACRES)</b>
Valley Fill A	172.15 acres
Valley Fill B	220.10 acres
Valley Fill C	209.79 acres
Valley Fill D1	190.31 acres
Valley Fill D2	83.82 acres
Valley Fill F	74.70 acres
Valley Fill G	192.55 acres

**Table C**  
**Independence Coal Company**  
**Constitution Surface Mine**  
**Valley Fill Storage Volumes**

<b>STRUCTURE I.D.</b>	<b>STORAGE VOLUME</b>
FILL A	7,020,200
FILL B	10,427,376
FILL C	19,272,200
FILL D1	22,057,549
FILL D2	2,174,198
FILL F	3,236,600
FILL G	16,877,700

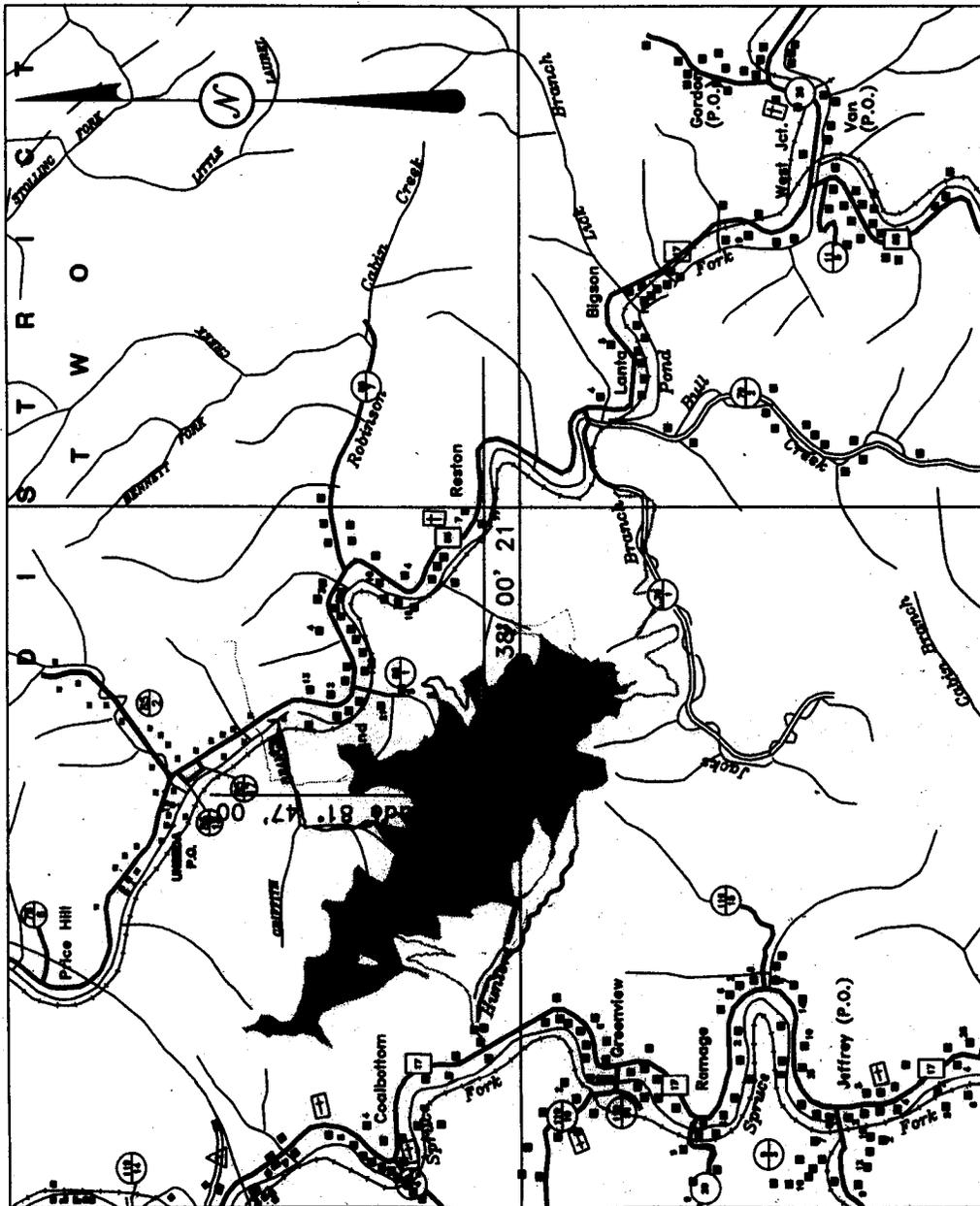
**Table D  
Independence Coal Company  
Constitution Surface Mine  
Mining and Reclamation Phases**

PHASE	MINING*			RECLAMATION			UNRECLAIMED
	START	END	ACRES	START	END	ACRES	ACRES
Development	02/04	06/04	Included in Phase 1	02/04	06/04	Included in Phase 1	Included in Phase 1
I	06/04	06/06	498.96	06/04	06/06	0	356.71
II	06/06	08/08	153.03	06/06	08/08	90.37	412.91
III	08/08	06/10	307.93	08/08	06/10	316.54	380.31
IV	06/10	07/12	132.81	06/10	07/12	142.75	368.57
V	07/12	05/13	196.90	07/12	05/13	195.69	358.46
VI	05/13	03/14	200.07	05/13	03/14	173.36	366.59
VII	03/14	11/14	100.60	03/14	11/14	189.73	269.12
VIII	11/14	06/15	0	11/14	06/15	441.86	0
Total			1550.30			1550.30	

\* Ancillary areas included in totals. Reference chart on sequence maps for breakdown of ancillary areas.

**Table E  
Independence Coal Company  
Constitution Surface Mine  
Proposed Stream Enhancement Efforts**

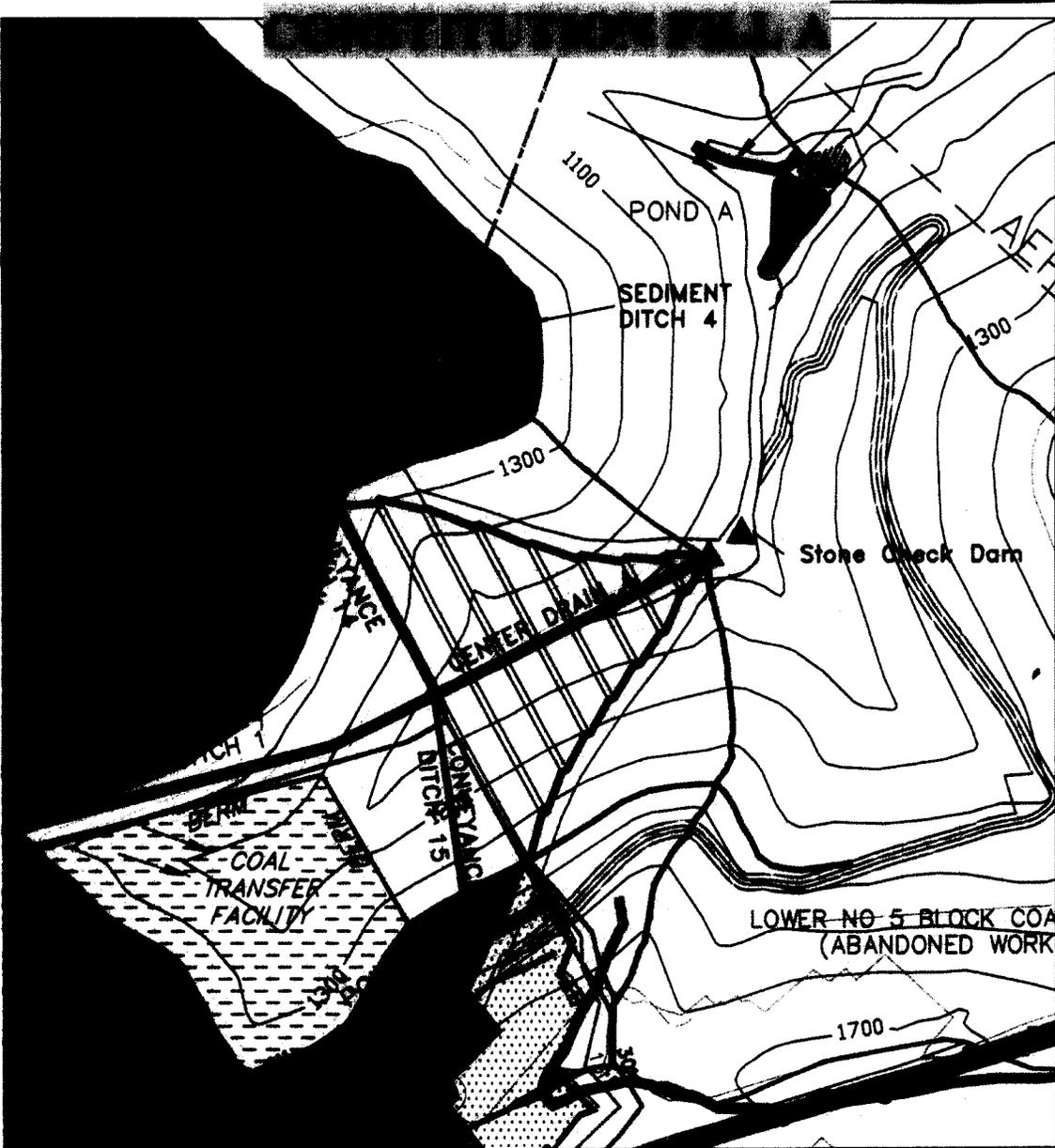
PROPOSED MITIGATION SITE	EXTENT OF PROPOSED ENHANCEMENT (LINEAR FEET)
Griffith Branch	7392
Hunters Branch	4041
First left unnamed tributary of Hunters Branch	2685
Jacks Branch	12,662

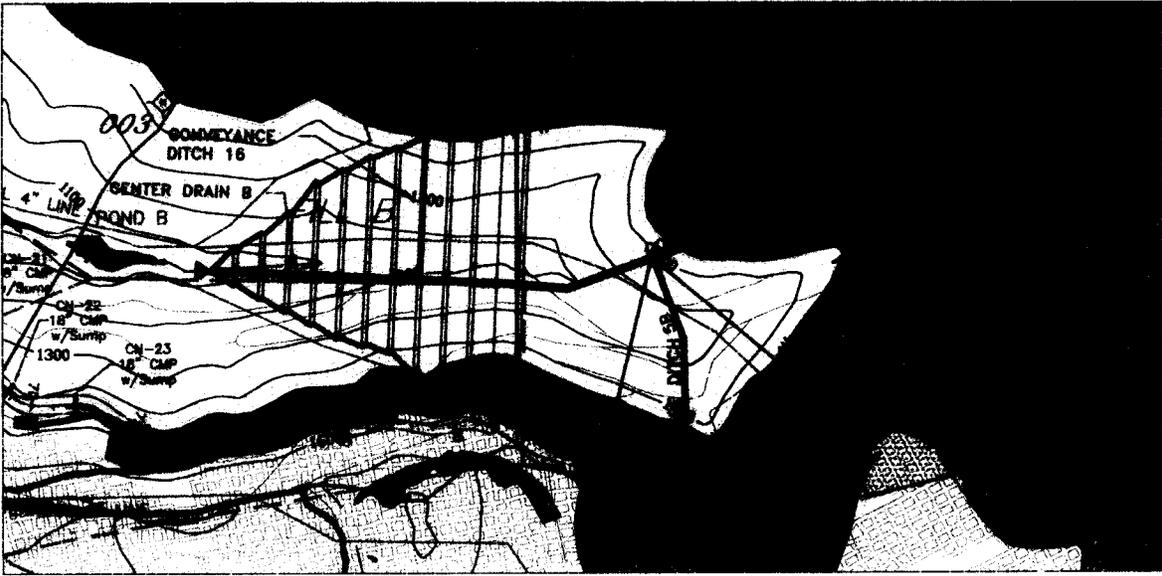


GENERAL LOCATION MAP

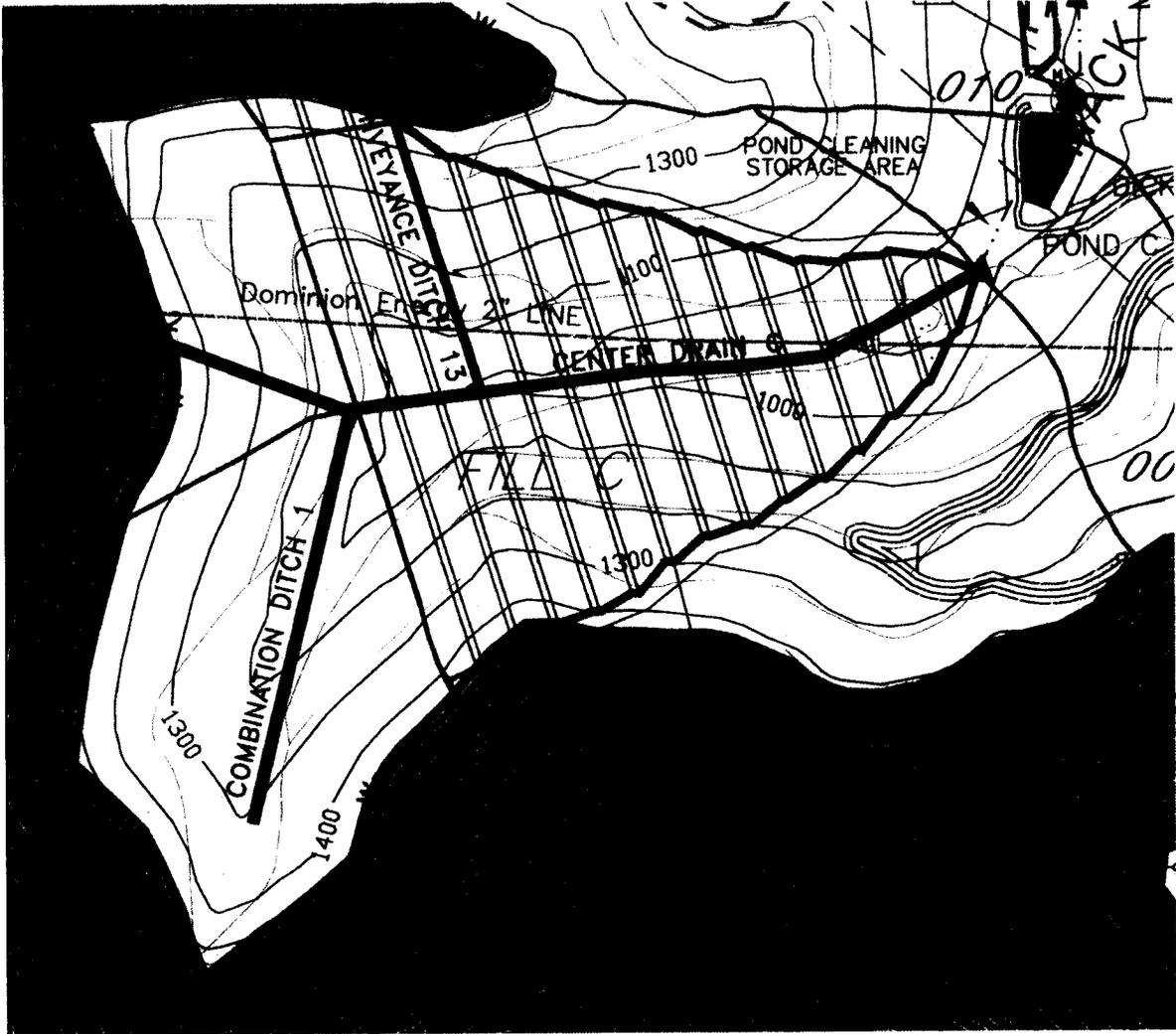




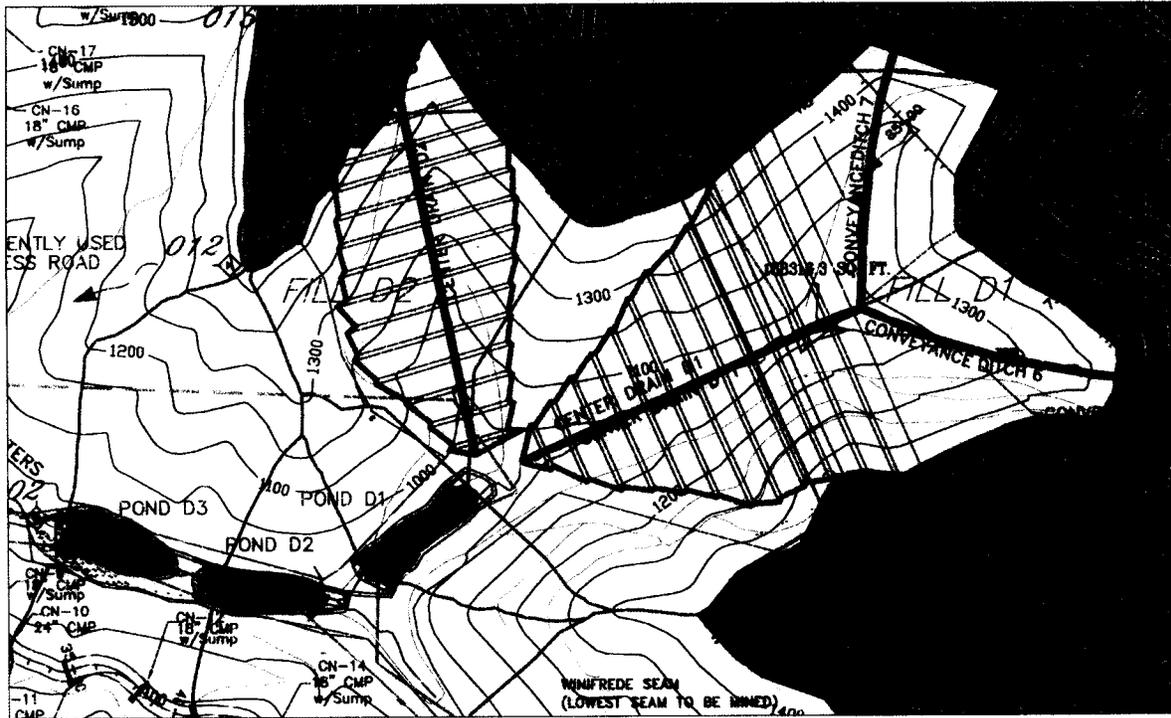


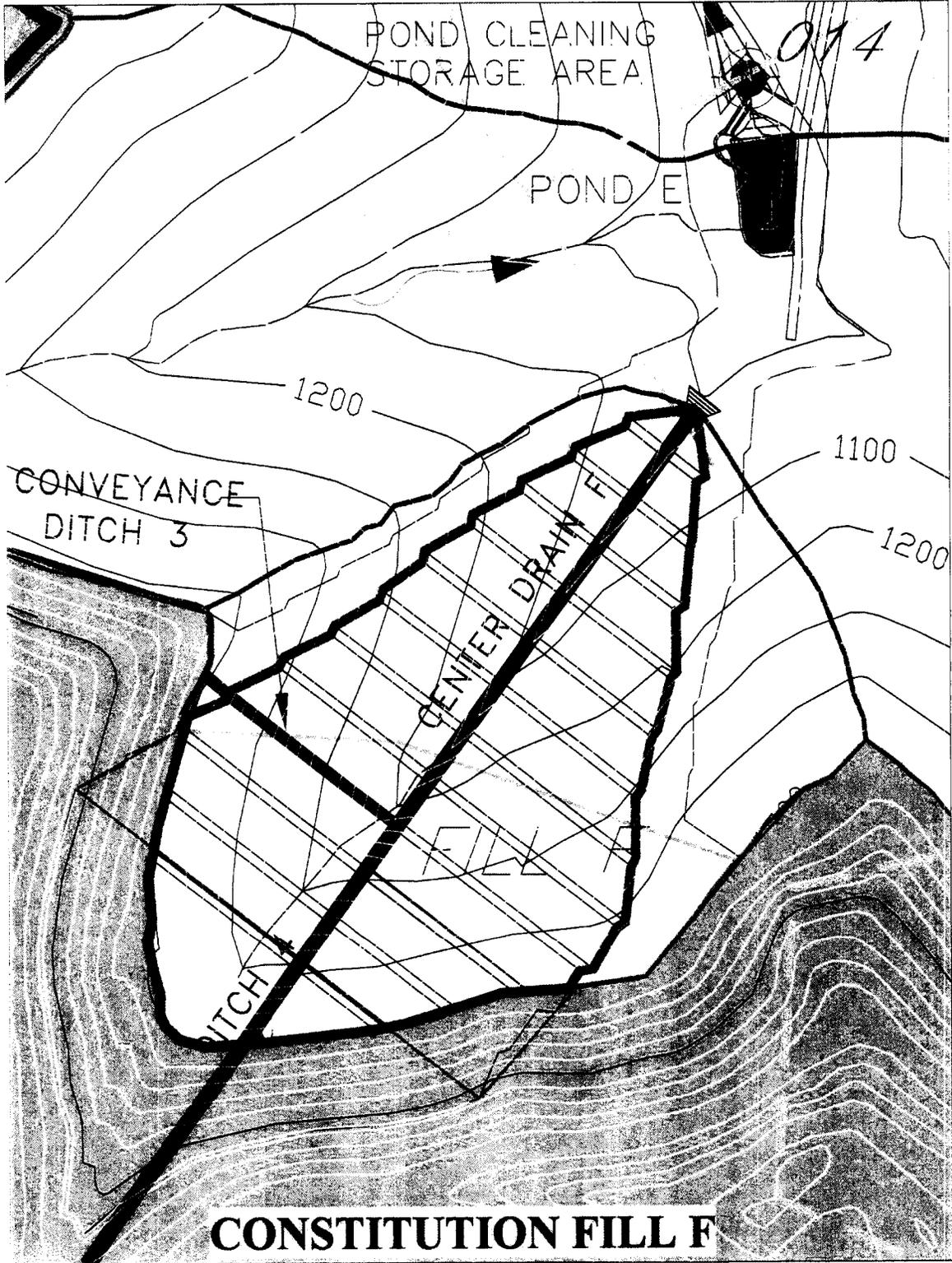


# CONSTITUTION FILL C



# CONSTITUTION FILL D





# CONSTITUTION FILL G

