



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 200300050	July 23, 2004
Stream:	Expiration Date:
UT White Oak Creek	August 22, 2004
Address comments to:	US Army Corps of Engineers, Huntington District 502 Eighth Street ATTN: CELRHF Huntington, West Virginia 25701-2070

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: Kingston Resources, Inc.
400 Patterson Lane
Charleston, West Virginia 25311-1570

LOCATION: The proposed project is located in an unnamed tributary of White Oak Creek and three unnamed tributaries of Horse Creek near Clear Creek, in Raleigh County, West Virginia.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the Horse Creek Surface Mine. The proposal would involve the construction of four valley fills and three in-stream sediment ponds. These proposed valley fills and sediment ponds were authorized on April 1, 2003 by the Huntington District under the January 15, 2002 Federal Register, Final Notice of Issuance of Nationwide Permits (67 FR 2020), Nationwide Permit 21.

The United States District Court for the Southern District of West Virginia at Huntington issued a Memorandum Opinion and Injunctive Order in the case of Ohio Valley Environmental Coalition, et al. v. William Bulen, Colonel, District Engineer, U.S. Army Corps of Engineers, Huntington District, et al. (Civil Action No. 3:03-2281). In this Order, the Court enjoined the Corps "from issuing authorizations pursuant to NWP 21 in the Southern District of West Virginia." Additionally, regarding the eleven specific mining authorizations challenged by the Plaintiffs in the case, the Court ordered the Corps "to suspend those authorizations for valley fills and surface impoundments on which construction has not commenced as of July 8, 2004." Therefore, Kingston Resource's NWP 21 authorization for its Horse Creek Surface Mine was suspended for "valley fills and surface impoundment on which construction has not commenced as of July 8, 2004."

The construction of the proposed valley fills would result in the discharge of fill material into approximately 10,616 linear feet or 0.806 acre of waters of the U.S. Further, approximately 1,300 linear feet or 0.139 acre of stream channels would be temporarily impacted by the construction of the proposed sediment ponds. In total, approximately 11,916 linear feet or 0.945 acre of waters of the U.S. would be impacted by the proposed project. **Table A** of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and stream loss (linear feet and acres). Each of the proposed valley fills would drain watersheds of less than 250 acres and range from 21.40 acres to 84 acres also detailed on **Table A** of this public notice.

The proposal is a contour and mountaintop removal operation that is expected to recover approximately 4.1 million tons of the Lower Cedar Grove, Alma, Upper No. 2 Gas, Lower No. 2 Gas, Lower Campbells Creek, Upper Powellton Rider, Upper Powellton, Lower Powellton, Eagle A, Upper Eagle and Lower Eagle seams. The proposed operation would generate approximately 81.3 million cubic yards of overburden, of which over 33.8 million cubic yards would be excess spoil that would be placed in the proposed valley fill sites. The type of material placed in the valley fills would consist of rock and soil overburden that is excavated during the mining operation. Approximately 457.47 acres of land would be disturbed, including 226.33 acres of mineral removal area, 216.15 acres of disturbed area and 14.99 acres of drainage control structures.

No coal or coal waste would be placed in the fills. No wetlands would be affected by any portion of this proposed project. All disturbed areas would be seeded and mulched immediately after the mining operations. Runoff from all disturbed areas would be routed through the sediment control structures and monitored before leaving permitted areas.

Overburden material removed during the pre-strip activities, with the exception of any potential toxins, would be placed within the proposed valley fills. The development stages would include the construction of appropriate drainage and sediment control structures in advance of the mining operations. Sediment ditches would be constructed on the elevation of the lowest seam extracted in advance of mining operations.

The initial excavation would begin in the White Oak drainage area adjacent to a surface mine permitted by Kingston. Coal haulage from the proposed operation would cross adjacent permits via trucks and then be transferred to belt haulage through the mountain and then to the Kingston's preparation plant.

Phase I. Initially, Diversion Ditch 1 would be constructed and certified prior to any disturbance in the Valley Fill 1 area. Existing Ponds 1 and 2 would be utilized for sediment control in this area. Mining would begin on the northeast portion of the operation with Valley Fill 1 being activated. Mining would progress in a westerly direction along the contour cut and into the mountaintop area. A cut-through would occur at the first low gap in a southerly direction into Valley Fill 4. Prior to utilizing Valley Fill 4 for spoil disposal, Sediment Pond 4 would be constructed and certified. Mining would continue in both a westerly and easterly direction within the Horse Creek watershed simultaneously with mining in the White Oak watershed in a westerly direction. A total of 110.25 acres would be mined and left unreclaimed during Phase I, which represents 24 percent of the total permit area.

Phase II: Mining would continue in a westerly direction in both White Oak and Horse Creek drainage areas. Sediment Pond 3 and 2 would be constructed and certified prior to activating Valley Fills 3 and 2 respectively. During Phase II, a total of 40.56 acres would be reclaimed and 63.32 mined, which leaves 133.01 acres unreclaimed. This represents 29 percent of the total permit area disturbed.

Phase III. In Phase III, mining associated with Valley Fill 4 would be completed and reclamation would be completed on the faces of Valley Fill 1 and 3. The upper seams would be reclaimed along the eastern side of the operation and the lower seams on the northern side. A total of 92.59 acres would be mined and 85.12 acres would be reclaimed. This leaves 140.48 acres unreclaimed, which represents 31 percent of the total permit area.

Phase IV: In Phase IV, mining would concentrate in the area of Valley Fill 2 on the western end of the project. The total unreclaimed area would be 144.90 acres, which is 32 percent of the total permit area. The mining acreage would be 90.87 with 86.45 acres reclaimed. Reclamation would concentrate in the area of Valley Fill No. 4 area.

Phase V: All mining would be completed during this phase, as all remaining mountaintop areas would be mined. Reclamation would be completed on the western and northern areas of the permit. A total of 46.08 acres would be mined and 62.71 acres would be reclaimed during this phase. A total of 128.27 acres would be left disturbed, which represents 28 percent of the total permit area.

Phase VI: All reclamation (128.27 acres) would be completed during Phase VI.

The West Virginia Department of Environmental Protection (WVDEP) has approved the applicant's Surface Mining Permit application (S-3015-99) pursuant to the Surface Mining Control and Reclamation Act of 1977.

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 for the proposed project are attached to this public notice.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. To compensate for stream impacts, the applicant proposes to mitigate on-site through in-kind establishment and restoration of 18,336 linear feet of aquatic resources. The work required to install the mitigation sites consists of installing intermittent stream channels in the proposed sediment ditches and ephemeral stream channels across the shallow sloped tops of Valley Fill 2 and 4, as shown on the enclosed drawings. Upon installation, any unstable channel banks noted to exist are to be stabilized by compaction of the bank and adjacent material. Construction of the mitigation sites would take place as mining activities are completed and site reclamation would be performed in each area of the site. The ephemeral stream sections and attenuation basins would be constructed before the intermittent stream sections in the areas, to the greatest extent practicable. Constructing and planting of the stream sections before constructing the intermittent stream sections to the greatest extent practicable are expected to minimize the need for removing sediment from constructed intermittent stream sections. After grade release and the sediment ditches can be removed; mitigation can be completed by removing the earthen barriers in the sediment ditches, constructing stream segments in these locations and performing the final breach of each sediment ditch at its corresponding National Pollutant Discharge Elimination System (NPDES) outfall. In order to prevent sediment transport from the site, the breach at each NPDES outfall would be the last phase of construction in each area. Initial physical and biological improvements in the mitigation plan would be completed no later than the first full growing season following permission granted to modify the sediment ditches to the greatest extent practicable. Two main factors were considered during the mitigation site selection process. First, since the proposed project would remove aquatic resources from the Horse Creek and White Oak Creek watersheds, it was decided the lease cumulative impact to the watersheds could be achieved by performing any mitigation efforts within these same watersheds. Additionally, much of the land within the boundary

of the proposed Horse Creek Surface Mine has already been acquired by Kingston and would have been disturbed by the proposed mining activities. This enables Kingston to construct the mitigation sites without disturbing additional off-site areas. The mitigation project contributes to the specific needs of the impacted watershed by serving as a conduit for the transportation of water and sediment through the watershed in a manner similar to a natural stream, which supports riparian vegetation within the watershed. The applicant indicated the practicability of the site is high as previously mentioned, the site would have already been disturbed by the mining operation and the need to disturb an off-site area is eliminated, and the sediment ditches that would be constructed as part of the proposed mining activities serve as a location for the installation of a riparian corridor.

The goal of the mitigation plan is to create 18,336 linear feet of self-sustaining, stable intermittent and ephemeral stream environment consisting of a natural stream and riparian habitat.

In addition, the affected stream channels (areas affected by proposed sediment ponds and the associated sediment transport) would be restored to their approximate original contours (AOC). The contours of the restored stream channels would be based on actual pre-mining cross-sections.

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. A copy of this public notice will 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).

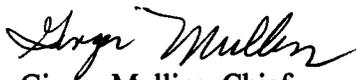
PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the 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 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. In addition, the evaluation of the impact of the activity on the public interest will 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 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.

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 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.

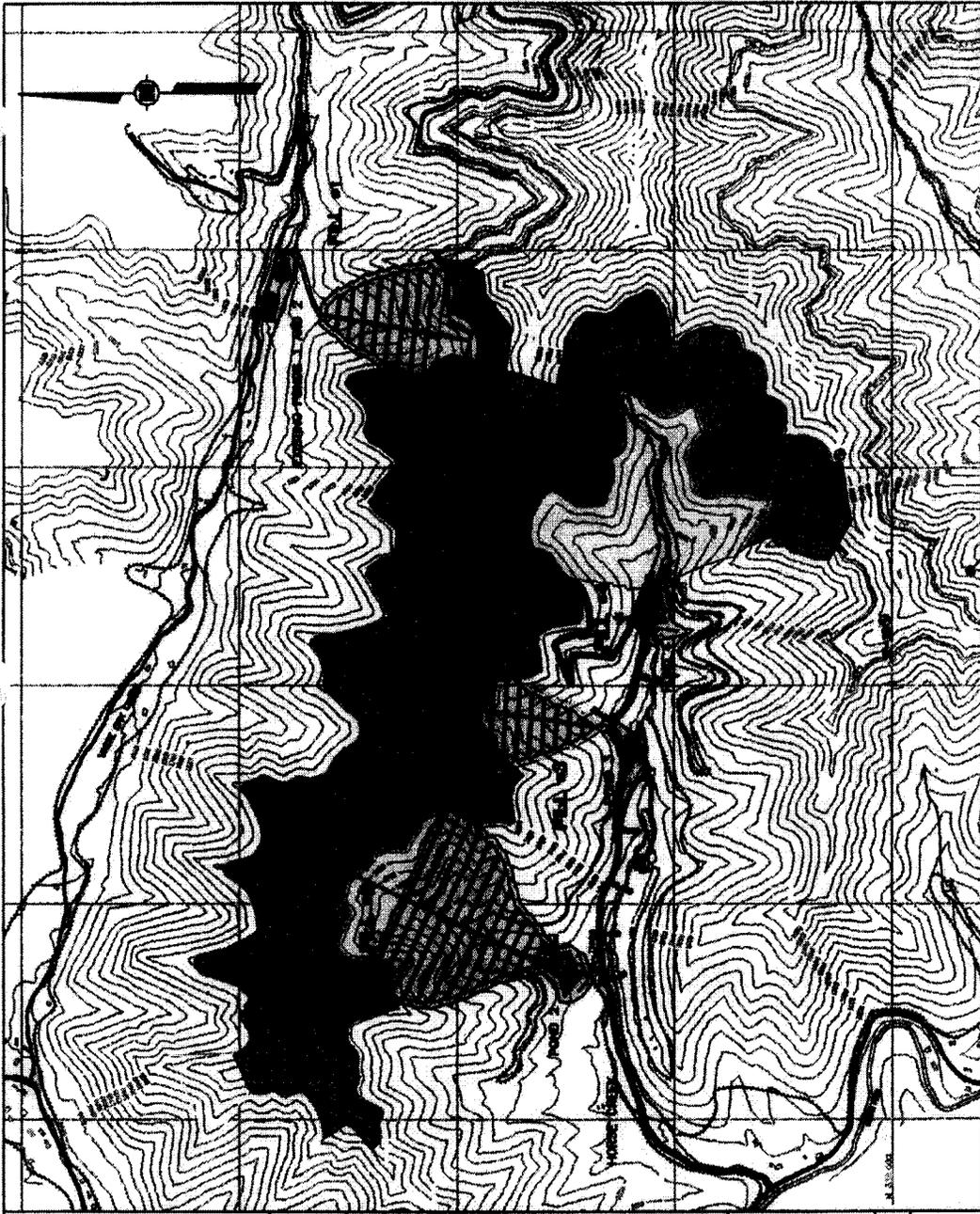
If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

Table A
Kingston Resources, Inc.
Horse Creek Surface Mine-S-3015-99
Jurisdictional Waters Impact Summary

Activity	Stream	Length of stream impacts (Linear feet)	Acreage of stream impacts	Drainage area (Acres)
Valley Fill 1	Unnamed tributary of White Oak Creek	1,573	0.114	28.70
Valley Fill 2	Unnamed tributary of Horse Creek	3,616	0.202	79.00
Valley Fill 3	Unnamed tributary of Horse Creek	1,400	0.081	21.40
Valley Fill 4	Unnamed tributary of Horse Creek	4,027	0.409	84.00
Sediment Pond 2	Unnamed tributary of Horse Creek	400	0.025	-----
Sediment Pond 3	Unnamed tributary of Horse Creek	400	0.043	-----
Sediment Pond 4	Unnamed tributary of Horse Creek	500	0.071	-----
		10,616	0.806 ac.	
		1,300	0.139 ac.	
		11,916	0.945 ac.	



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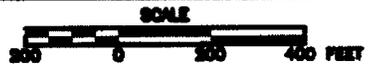
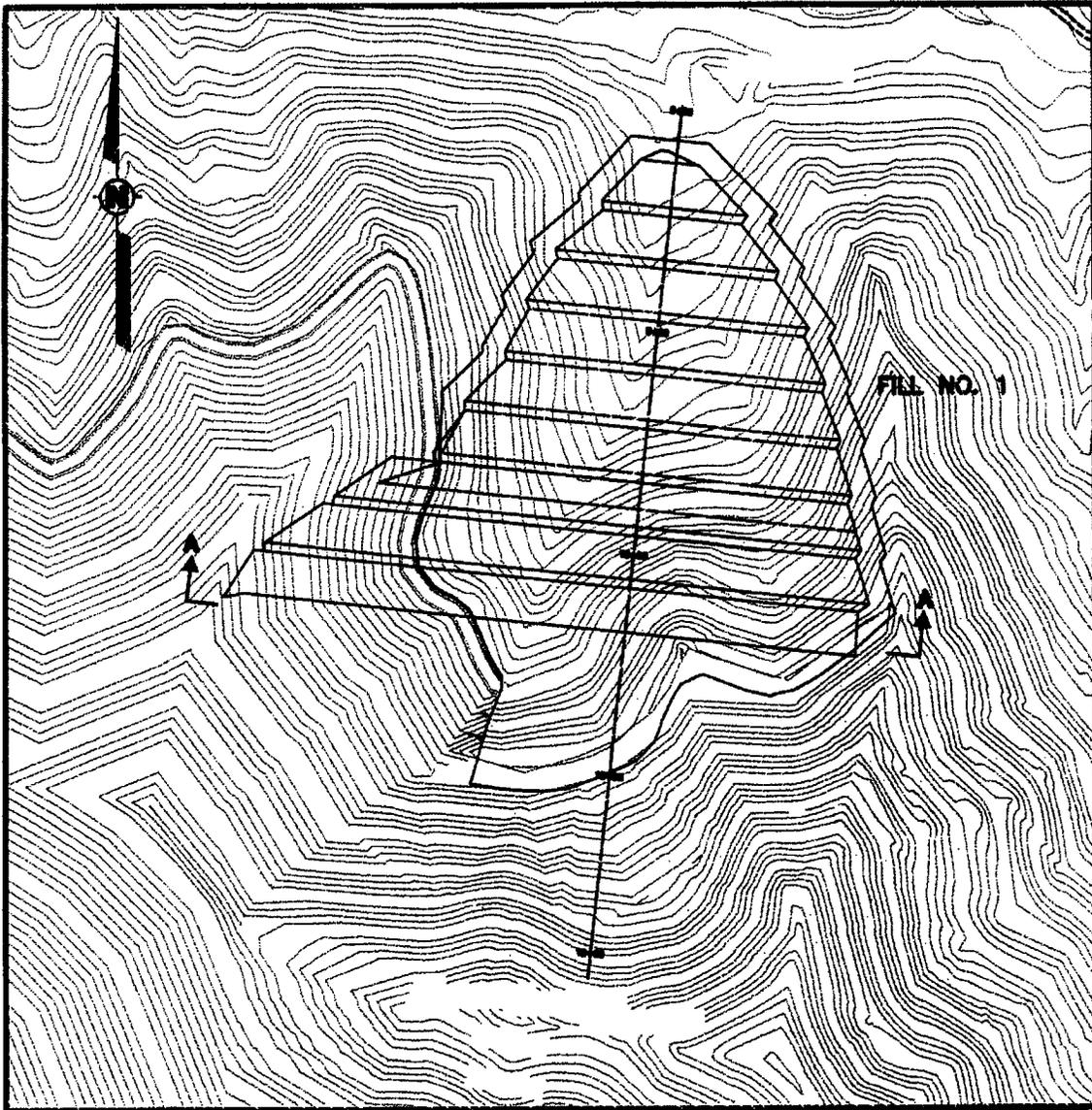
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LOCATION MAP

HORSE CREEK SURFACE MINE
 RALEIGH COUNTY, WEST VIRGINIA
 PREPARED FOR
 KINGSTON RESOURCES, INC.
 ROUTE 1 BOX 78-C SCARBORO, WV 25817

SCALE 1"=1200'

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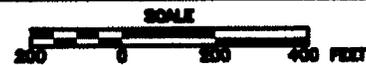
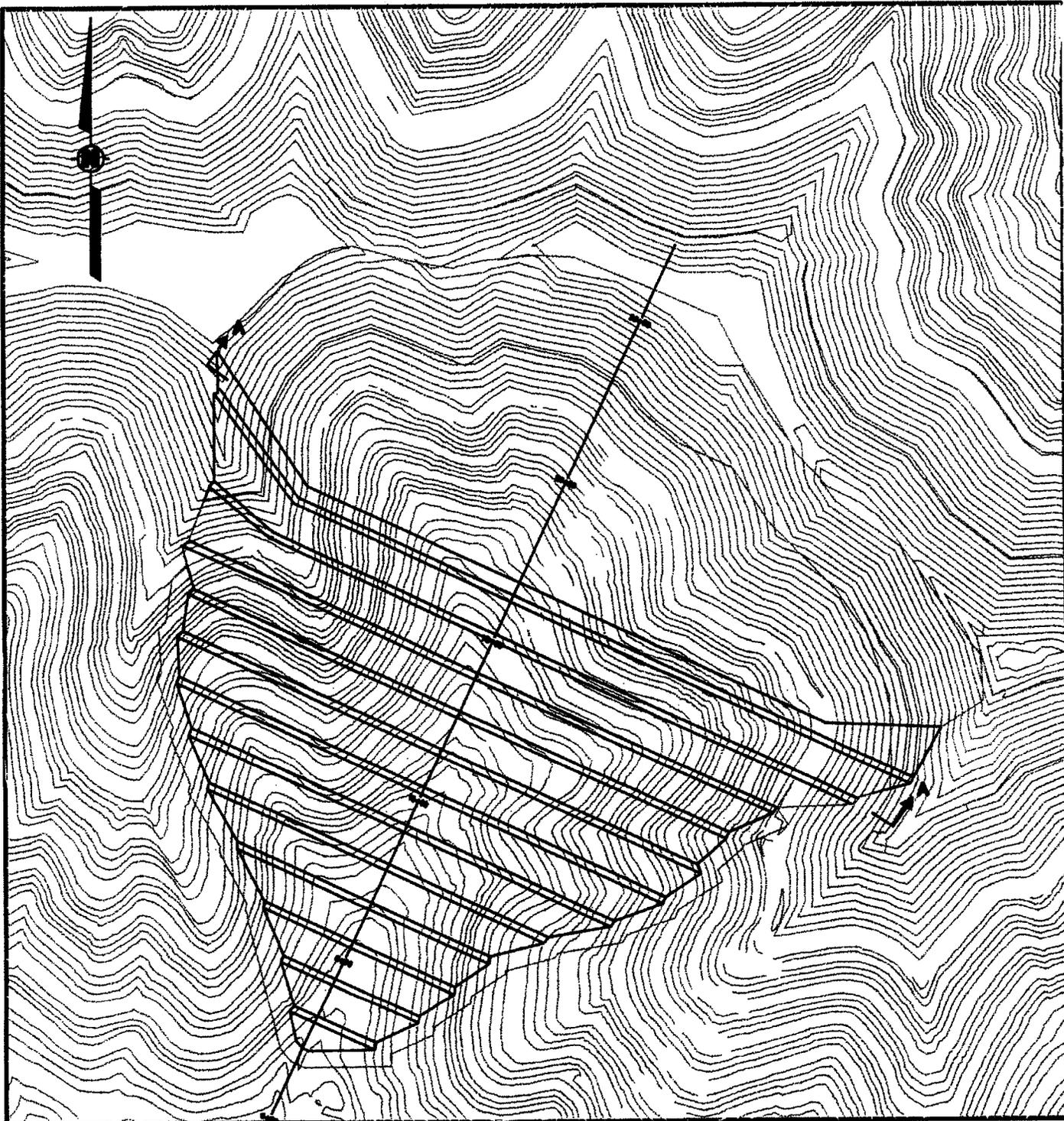
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**PLAN VIEW
VALLEY FILL NO. 1**

HORSE CREEK SURFACE MINE
RALEIGH COUNTY, WEST VIRGINIA
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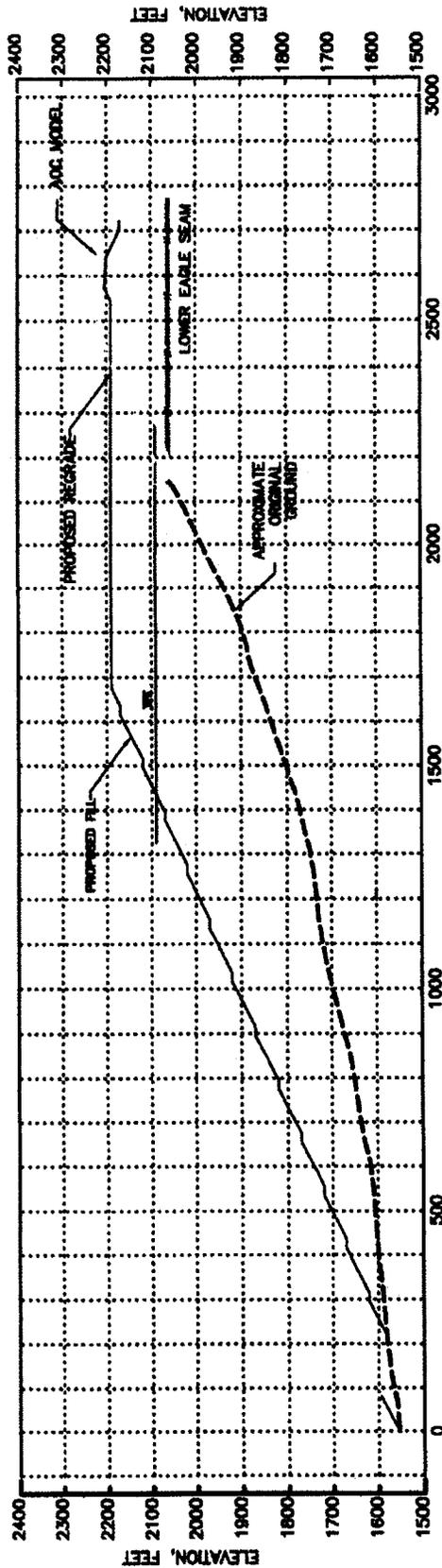
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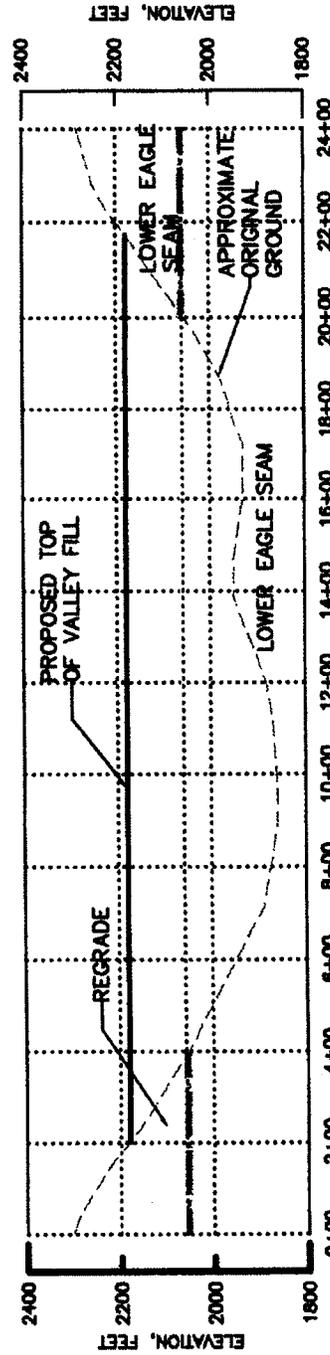
**PLAN VIEW
 VALLEY FILL NO. 2**

HORSE CREEK SURFACE MINE
 RALEIGH COUNTY, WEST VIRGINIA
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 ROUTE 1 BOX 76-C SCARBRO, WV 25917

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PROFILE FILL NO. 2



SECTION A-A

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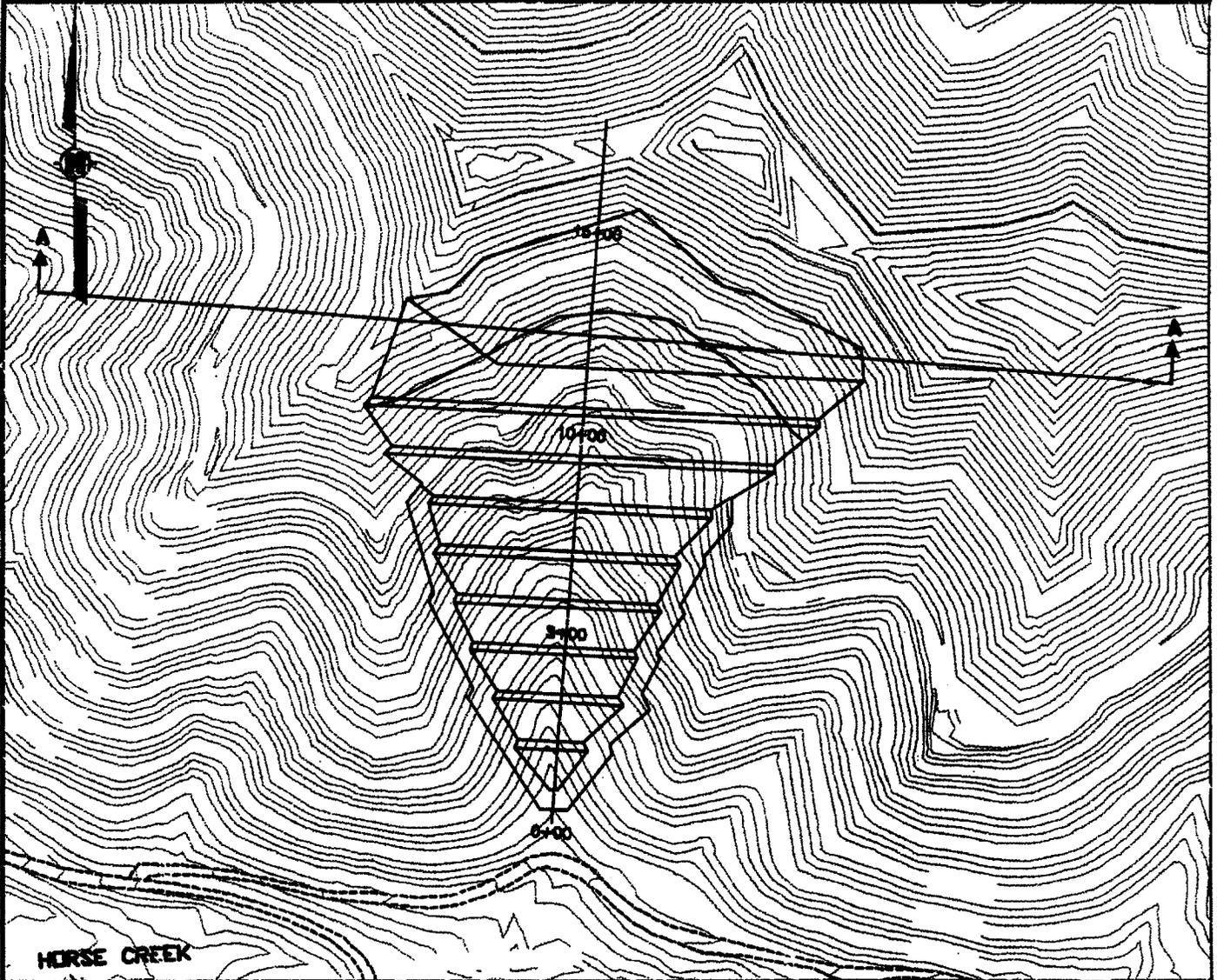
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SECTIONS VALLEY FILL NO. 2

HORSE CREEK SURFACE MINE
RALEIGH COUNTY, WEST VIRGINIA
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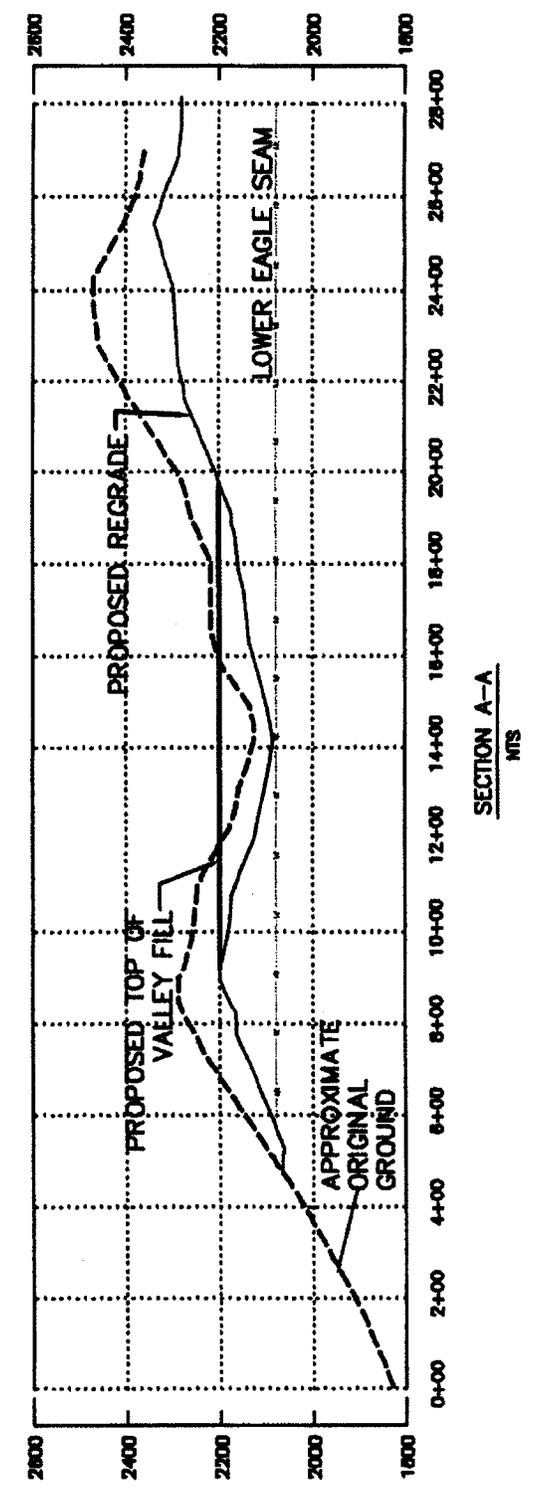
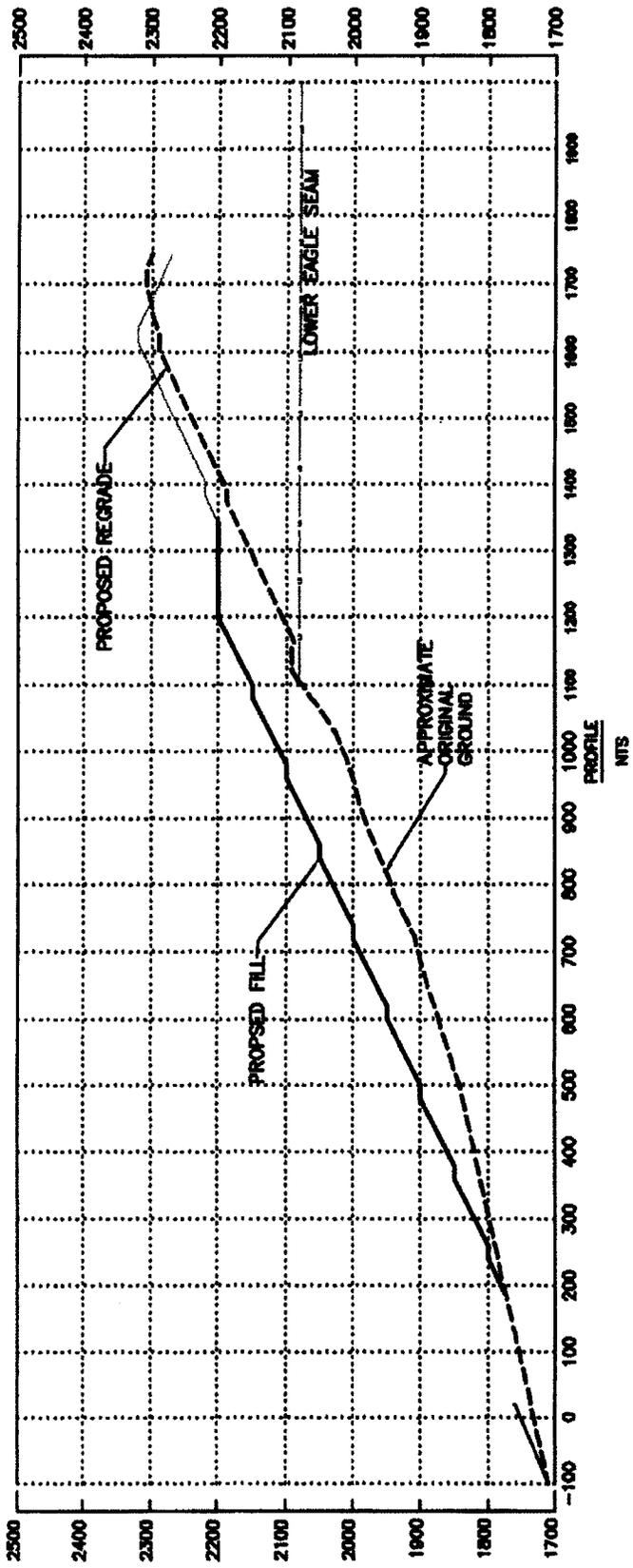
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**PLAN VIEW
 VALLEY FILL NO. 3**

HORSE CREEK SURFACE MINE
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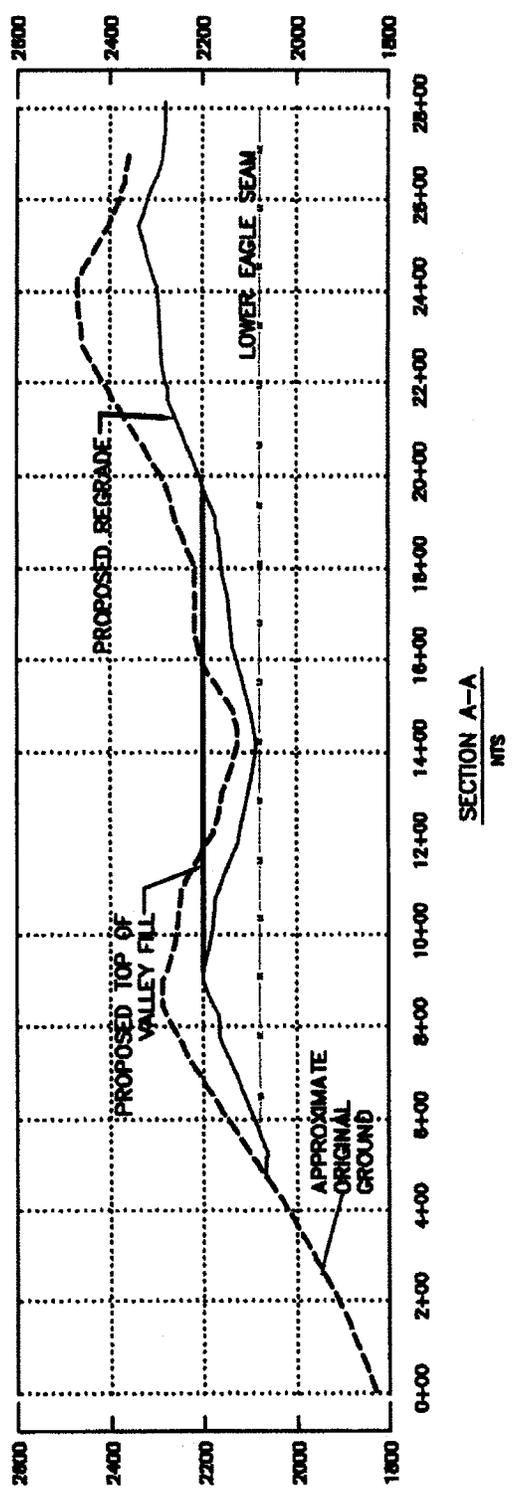
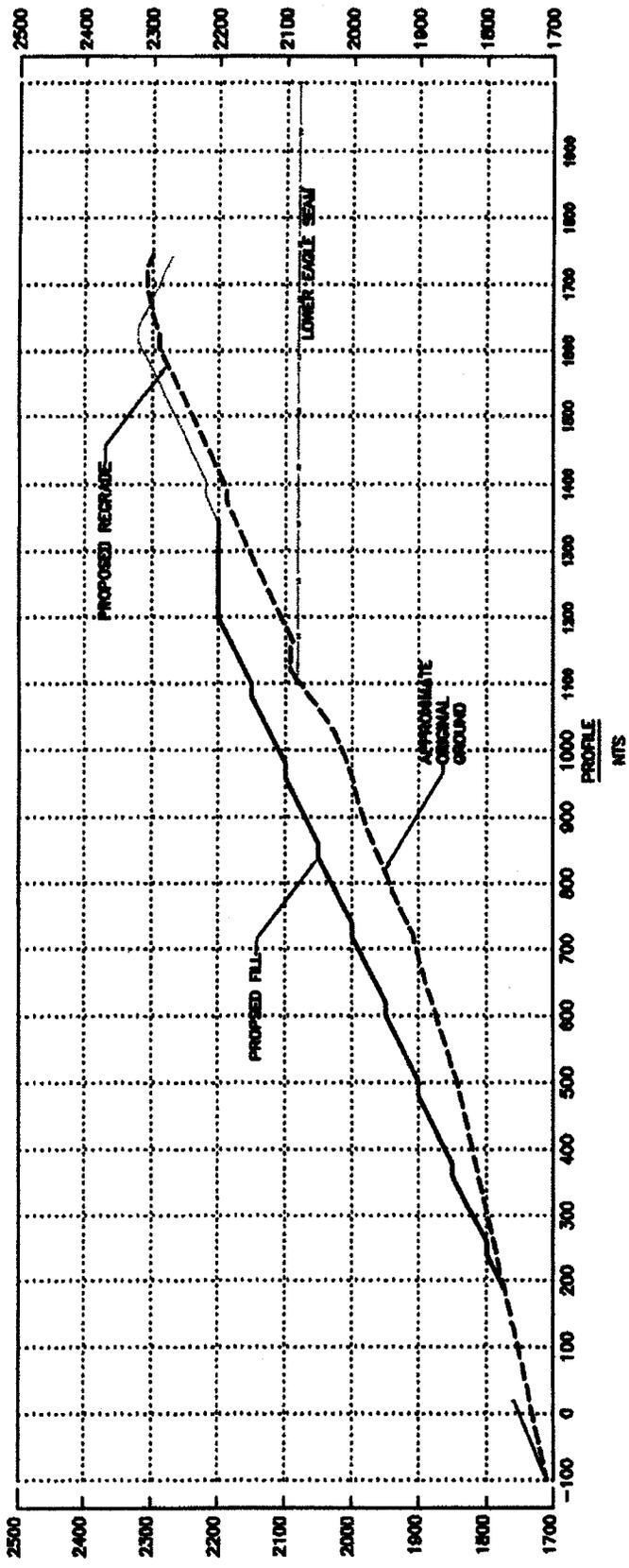
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SECTIONS VALLEY FILL NO. 3
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SECTION A-A
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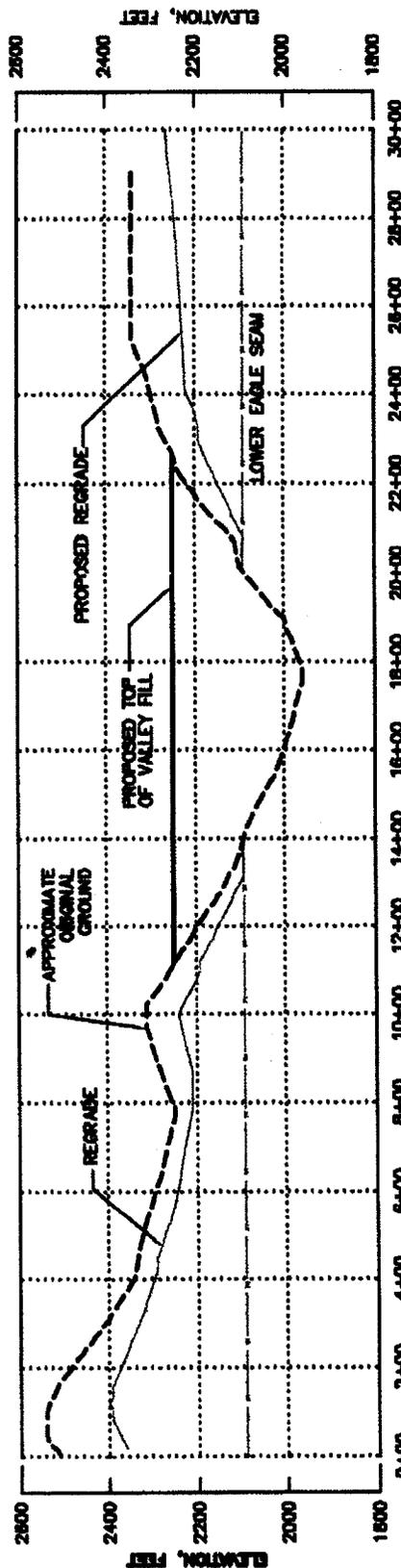
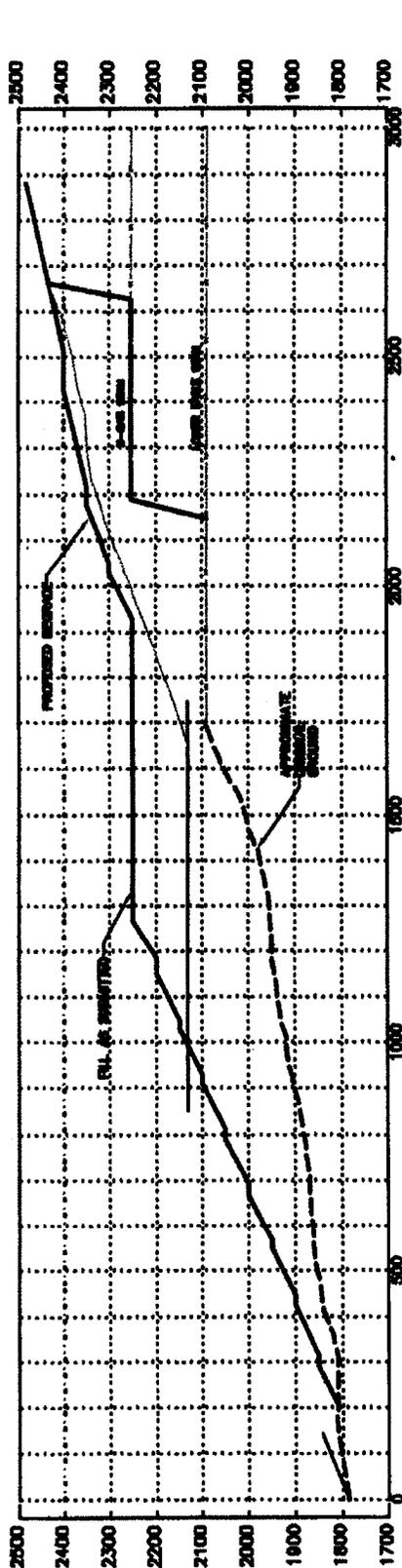
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**PLAN VIEW
VALLEY FILL NO. 4**

HORSE CREEK SURFACE MINE
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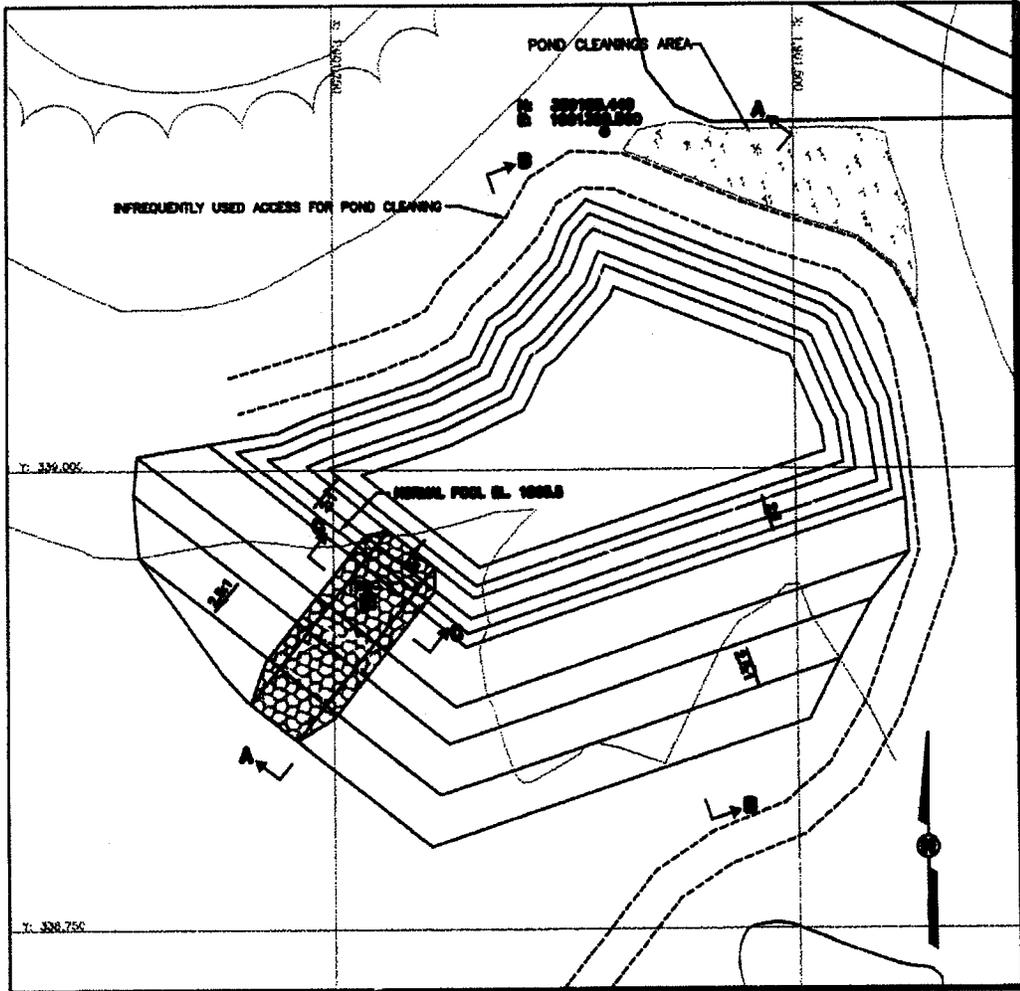
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SECTIONS VALLEY FILL NO. 4
 HORSE CREEK SURFACE MINE
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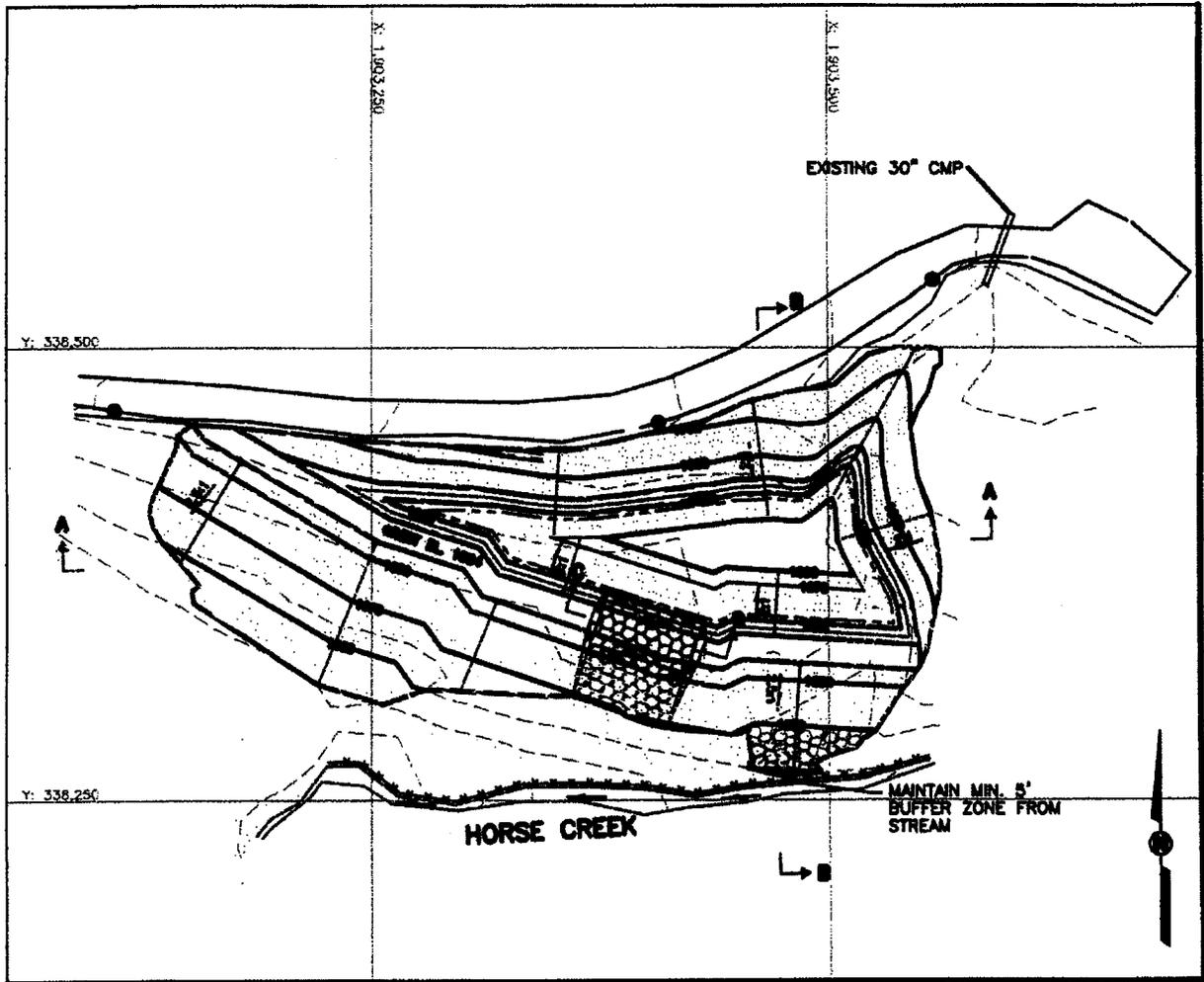
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**PLAN VIEW
 POND NO. 2**

HORSE CREEK SURFACE MINE
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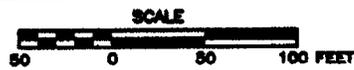
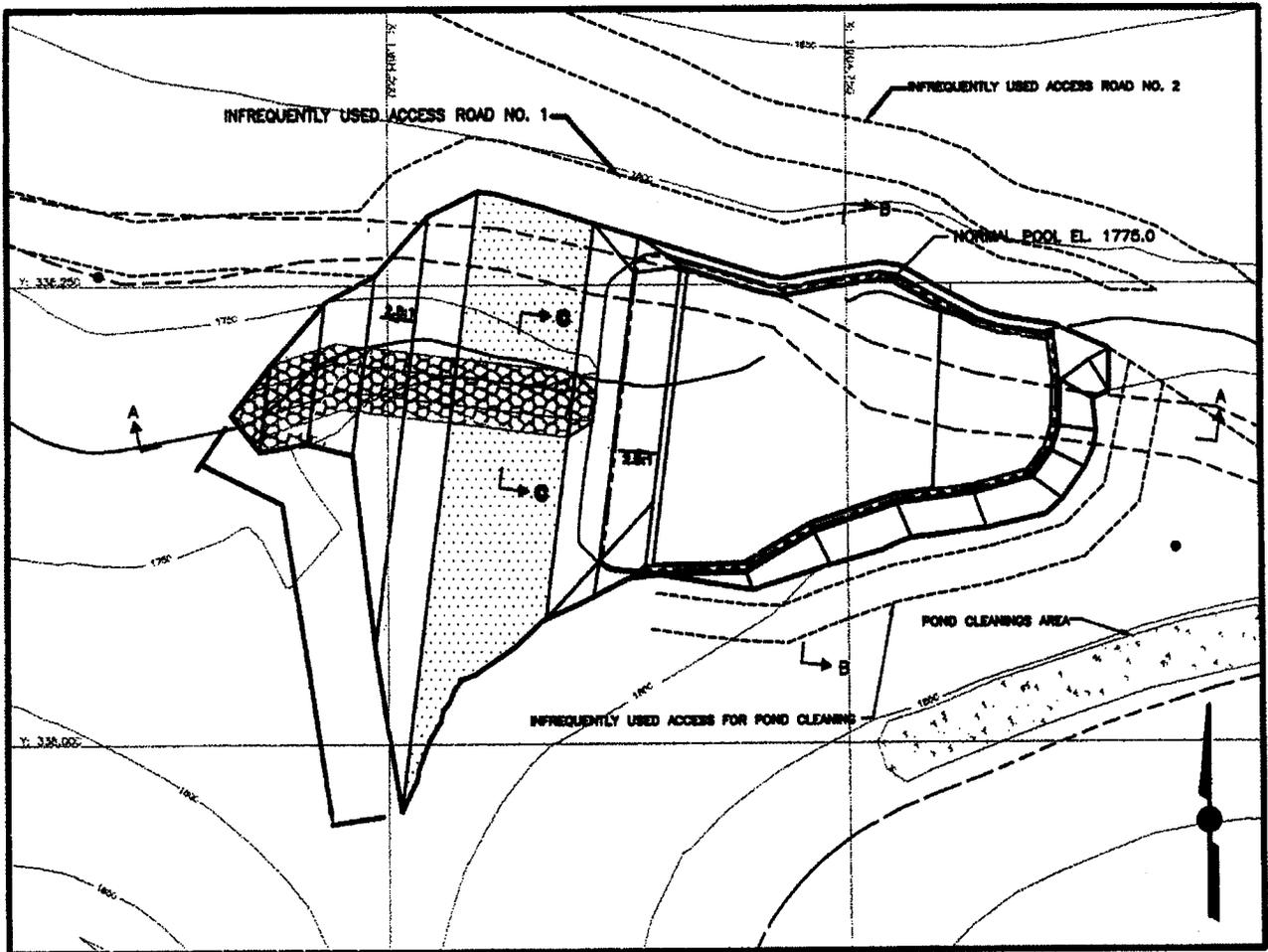
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**PLAN VIEW
 POND NO. 3**

HORSE CREEK SURFACE MINE
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**PLAN VIEW
 POND NO. 4**

HORSE CREEK SURFACE MINE
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