



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 199900662-1	September 15, 2004
Stream:	Expiration Date:
UT Trace Fork	October 15, 2004
Address comments to:	US Army Corps of Engineers, Huntington District 502 Eighth Street ATTN: CELRHE 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: Alex Energy, Inc.
Post Office Box 877
Stollings, West Virginia 25646

LOCATION: The proposed fill would be located in an unnamed tributary of Trace Fork, a tributary of Copperas Mine Fork, approximately 2.3 miles southwest of Holden, in Logan County, West Virginia (latitude 37° 47' 36" and longitude 82° 05' 25") as depicted on the attached **Drawing No. 1**.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. to construct one hollow fill and one sediment pond associated with the Whitman No. 2 Surface Mine. The purpose of the project is to surface mine bituminous coal reserves. This project was previously evaluated and coordinated with the resource agencies under the NWP 21 pre-construction notification process on October 3, 2003. This project was authorized by NWP 21 and included the construction of five hollow fills and five sediment ponds. All previously authorized activities were completed with the exception of Hollow Fill No. 4 and Sediment Pond No. 4. The proposed project involves the construction of the remaining hollow fill and sediment pond.

The size of the watershed to be impacted is approximately 105 acres measured from the toe of the fill. Plans of the proposed hollow fill configuration may be referenced on the attached **Drawing No. 2**. The proposed project would permanently impact 2,240 linear feet of intermittent stream and 338 linear feet of ephemeral stream. The temporary impacts would involve 1,150 linear feet of intermittent stream. These figures may be referenced by the corresponding **Drawing No. 3**.

The West Virginia Department of Environmental Protection (WVDEP) authorized the proposed mining operation by Permit No. S-5053-89 (dated January 31, 2001) pursuant to the Surface Mining Control and Reclamation Act of 1977. A National Pollutant Discharge Elimination System (NPDES) Permit No. WV1008277 (dated March 15, 2000) was issued by the WVDEP, which includes a state General Mitigation and Compensation Agreement.

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. The goal of the proposed CMP is to replace the unavoidable impacts to streams associated with the project. The applicant has proposed to accomplish this goal by restoring all stream segments temporarily impacted by the sediment pond. A stream would also be constructed in sediment channel ESD-1 for the permanent intermittent stream loss. The applicant proposes to compensate for the permanent ephemeral stream loss by vegetating the centerline ditch of the fill. Rosgen-type natural stream design techniques would be applied to each mitigation site. The applicant is not proposing any mitigation for secondary impacts associated with the temporary sediment corridor other than removal of any accumulated sediment and re-establishing any riparian vegetation removed during the sediment removal operations.

The applicant proposes monitoring of completed mitigation sites for a minimum of five years in accordance with their proposed performance standards parameters, which include: pH, Specific conductance, Dissolved Oxygen, Epifaunal Substrate, Embeddedness, Velocity/Depth Regime, Sediment Deposition, Channel Flow Status, Channel Alteration, Frequency of Riffles, Bank Stability, Vegetative Protection and Riparian Zone Diversity. In the event successful mitigation is not obtained, the applicant has provided a contingency plan that includes the following options: request additional time, full or partial in-lieu-fee payment, re-design of the stream mitigation, mitigation banking and/or preservation mitigation.

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 serves as coordination with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) believe any potential effects to historic properties may result from the proposed permitting action, we request the WVDCH provide information to this office pursuant to Section 106 of the National Historic Preservation Act.

Previous correspondence dated October 9, 2003 (FR No. 04-21-LG), received from the WVDCH during the NWP 21 application process indicated no known historical, architectural or archaeological sites listed on or eligible for inclusion in the National Register of Historic Places would be affected by this project. This determination was based upon concurrence with "An Archaeological Reconnaissance of the Whitman Strip No. 2 Permit Area, Logan County, West Virginia", submitted by DuVall & Associates.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or

endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, we request the Service provide any additional information pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

Previous correspondence pursuant to Section 7 of the Endangered Species Act, dated October 31, 2003, received from the USFWS, Elkins Field Office indicated the proposed project may effect the potential existence or habitat of the Indiana (*Myotis sodalis*) and/or Virginia big-eared (*Corynorhinus townsendii virginianus*) bats.

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.

Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

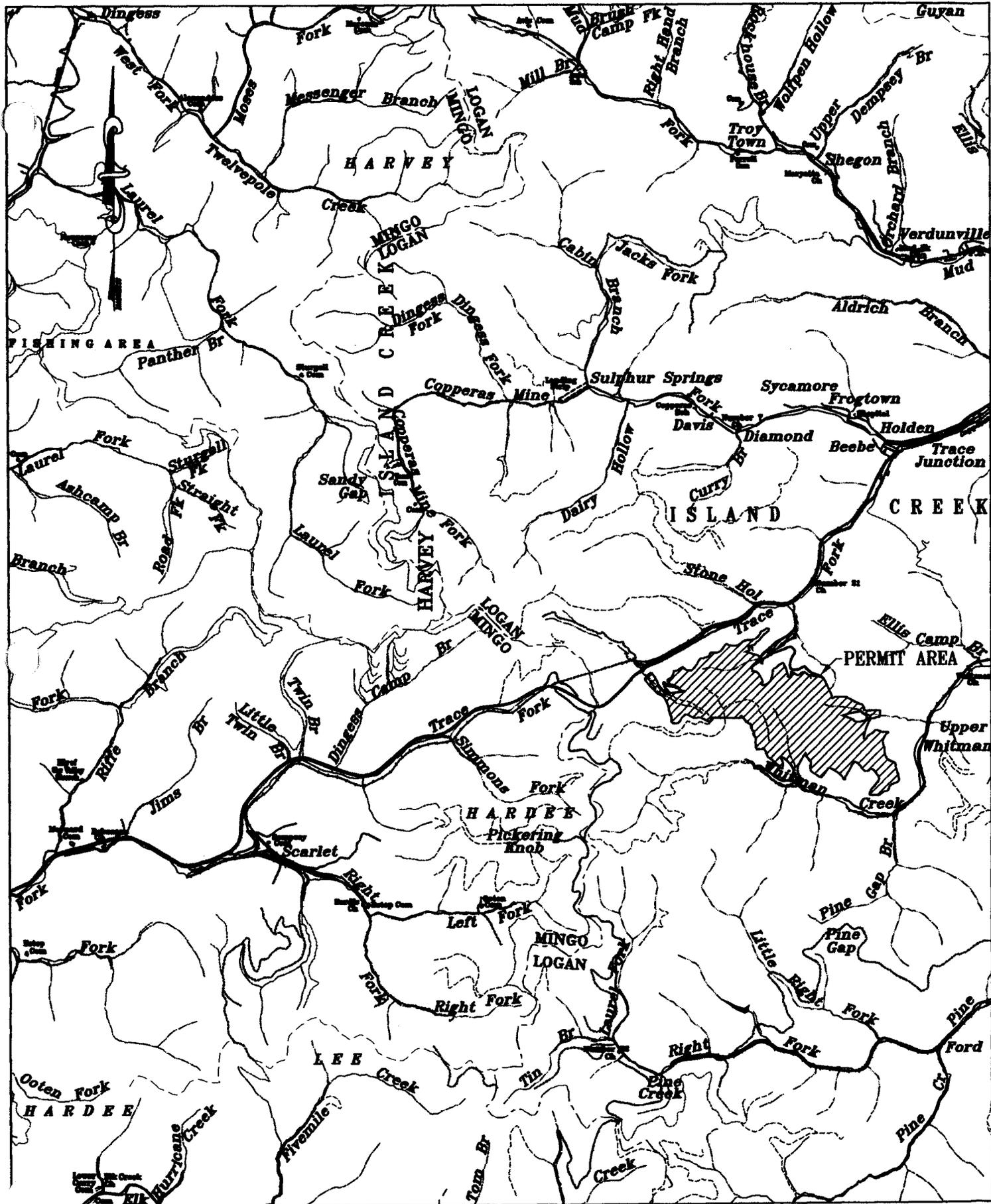
U. S. Army Corps of Engineers
ATTN: CEORH-OR-F Public Notice No. 199900662-1
502 Eighth Street
Huntington, West Virginia 25701-2070

If you have any questions concerning this public notice, please call Mr. Mike Hatten of the South Regulatory Section at 304-399-5710.



Ginger Mullins, Chief
Regulatory Branch

(W)



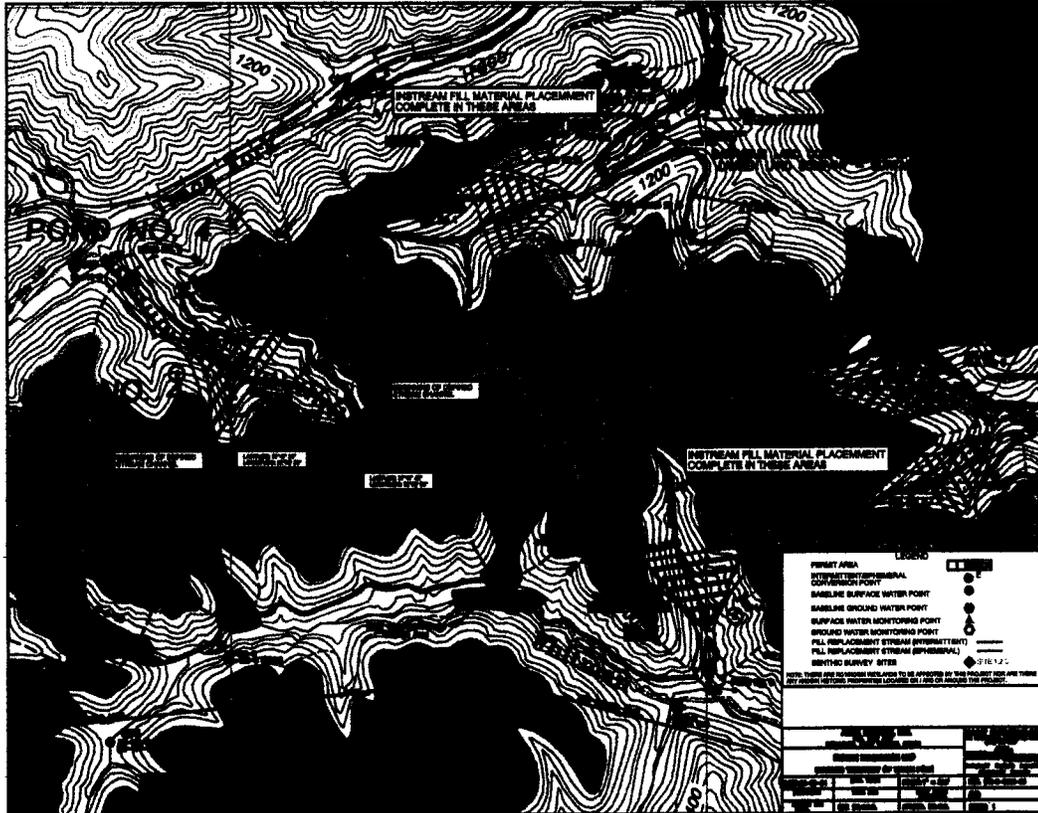
Alex Energy, Inc.
 Whitman No. 2 Surface Mine
 199900622-1 - UnTrib Trace Fork
 Drawing 1: General Location map

ALEX ENERGY, INC.
 P.O. BOX 877
 STOLLINGS, WEST VIRGINIA 25646

SUMMIT ENGINEERING, INC.
 101 Summit Drive, Pineville, Ky. 41501
 (606) 432-1447

GENERAL LOCATION MAP
 UNNAMED TRIBUTARY OF TRACE FORK

Leadington, KY Grundy, VA Logan, WV
 Charleston, WV Hazard, KY



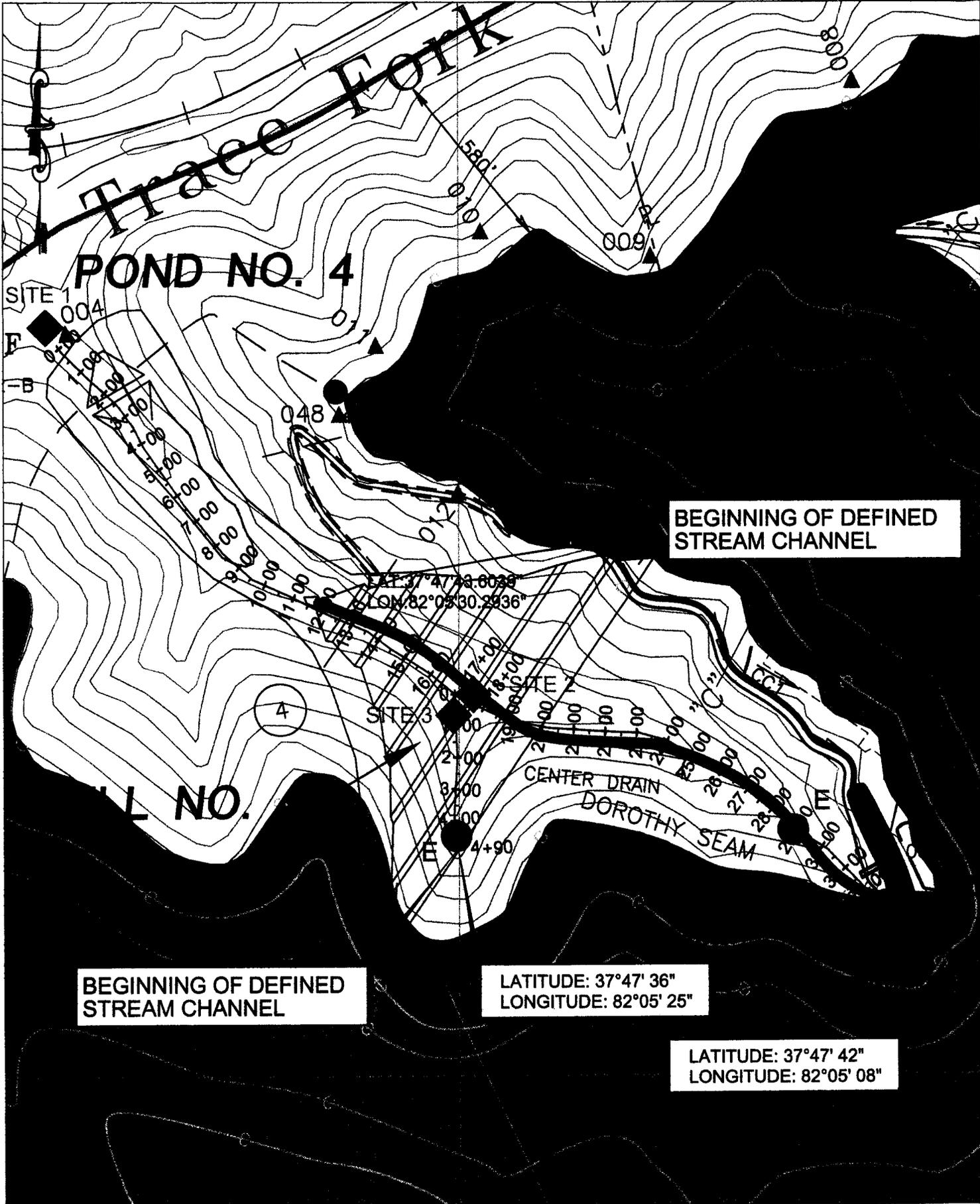
Alex Energy, Inc.
 Whitman No. 2 Surface Mine
 199900622-1 – UnTrib Trace Fork
 Drawing 2: Overall plan

ALEX ENERGY, INC.
 P.O. BOX 877
 STOLLINGS, WEST VIRGINIA 25646

STREAM DELINEATION MAP
UNNAMED TRIBUTARY OF TRACE FORK



Grundy, VA Pikeville, KY
 Logan, WV Lexington, KY
 Charleston, WV Hazard, KY



BEGINNING OF DEFINED
STREAM CHANNEL

BEGINNING OF DEFINED
STREAM CHANNEL

LATITUDE: 37°47' 36"
LONGITUDE: 82°05' 25"

LATITUDE: 37°47' 42"
LONGITUDE: 82°05' 08"

Alex Energy, Inc.
Whitman No. 2 Surface Mine
199900622-1 – UnTrib Trace Fork
Drawing 3: Vally Fill 4/Pond 4

ALEX ENERGY, INC.
P.O. BOX 877
STOLLINGS, WEST VIRGINIA 25646
POND NO. 4 AND VALLEY FILL NO. 4
(STREAM DELINEATION)
UNNAMED TRIBUTARY OF TRACE FORK

SUMMIT ENGINEERING INC.
Grundy, VA
Logan, WV
Charleston, WV
Pikeville, KY
Lexington, KY
Hazard, KY