



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

Public Notice

In reply refer to Public Notice No.
2004000030

Issuance Date: October 12, 2004

Stream: Horse Creek

Closing Date: November 10, 2004

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

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: Marfork Coal Company, Inc.
Post Office Box 457
Whitesville, West Virginia 25209

LOCATION: The proposed project is located in Horse Creek and an unnamed tributary to Horse Creek approximately 1.2 miles east of Naoma, Raleigh County, West Virginia as depicted on the attached **Drawing 1**. The location of the proposed stream enclosures, stream relocation and sediment pond are depicted on **Drawings 2-4**.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the Eagle and No.2 Gas Deep Mines. The proposal would involve the construction of two mine face up and operation areas. At the Eagle Mine, the applicant proposes to

install 1,440 linear feet of 8 foot diameter corrugated metal pipe (CMP) or a 51/2' by 51/2' concrete box culvert to temporarily enclose and divert 1,580 linear feet (0.658 acre) of Horse Creek. Additionally, at the upstream end of the proposed diversion, 240 linear feet (0.0854 acre) of an unnamed tributary to Horse Creek would be permanently relocated. At the No. 2 Gas Mine, the applicant proposes to temporarily enclose 567 linear feet (0.12 acre) of Horse Creek utilizing a 5 foot diameter CMP and to temporarily impact 273 linear feet (0.06 acre) with the construction of an in-stream sediment pond. In total, approximately 1,580 linear feet (0.658 acre) of perennial stream and 1,080 linear feet (0.2654 acre) of intermittent stream 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).

The applicant applied for the required West Virginia Department of Environmental Protection (WVDEP) Surface Mining Permit (U-3001-04 and U-3002-04) and the required NPDES permit (WV1021729) in January 2004.

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 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 applicant's goal.

MITIGATION PLAN: The applicant has submitted a conceptual compensatory 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. To compensate for permanent impacts to waters of the U.S., the applicant proposes to mitigate on-site through in-kind establishment of aquatic resources. The relocated stream would utilize Rosgen-type and other natural stream design techniques. The restored stream would slope toward one side to ensure channel flow during low flow-months and a minimum 50 foot riparian buffer zone would be established along the created channel. The proposed mitigation would result in the restoration of 240 linear feet of intermittent stream channel.

To compensate for temporary impacts, the applicant proposes to perform stream channel restoration in the temporarily disturbed segments of the sediment pond area and enclosed stream channels upon reclamation of the site. Rosgen-type and other natural stream techniques would be used in the design of the restoration sites. The restored stream would slope toward one side to ensure channel flow during low flow-months and a minimum 50 foot riparian buffer zone would be established along the created channel. The proposed mitigation would result in the restoration of 1,580 linear feet of perennial stream channel and 840 linear feet of intermittent stream channel.

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. The applicant retained the services of Cultural Resource Analysts, Inc. to complete a Phase I archaeological survey. The survey is titled "Abbreviated Technical Report for Phase I Archaeological Survey of the Horse Creek Deep Mines" and is dated May 17, 2004. The Phase I survey found no evidence of archaeological sites within the proposed project area. In a letter dated June 25, 2004, the West Virginia Division of Culture History (SHPO) stated the Phase I report addressed their concerns regarding the presence of archaeological resources within the proposed project area. The SHPO concluded no known archaeological sites listed on or eligible for inclusion in the National Register of Historic Places will be affected by the proposed project. Section 106 requirements under the

National Historic Preservation Act of 1966 have been fulfilled and no further consultation is required, unless requested by the SHPO. 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: The project is located within the known or historic range of the Indiana bat, a federally listed endangered species. In a letter dated March 18, 2004, the applicant provided information to the United States Fish and Wildlife Service regarding Indiana bat summer roosting habitat within the proposed mining area and proposed to conduct seasonal clearing during the period between November 15 and March 31.

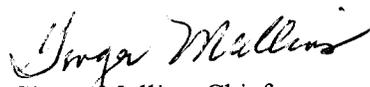
In a letter dated July 19, 2004, The United States Fish and Wildlife Service concluded that no federally listed endangered and threatened species are expected to be impacted by the project. Therefore, no biological assessment or further consultation under Section 7 of the Endangered Species Act is warranted. A copy of this public notice will be sent to the United States Fish and Wildlife Service for their review.

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 of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

Table A
Marfork Coal Company, Inc.
Horse Creek Eagle and Gas No. 2 Deep Mines Impact Summary

Structure	Permanent Intermittent		Total Permanent Impact		Temporary Perennial		Temporary Intermittent		Total Temporary Impact	
	feet	acres	feet	acres	feet	acres	feet	acres	feet	acres
Eagle Stream Enclosure					1580	0.658			1580	0.658
Eagle Stream Relocation	240	0.0854	240	0.0854						
Gas No. 2 Stream Enclosure							567	0.12	567	0.12
Gas No.2 Sediment Pond							273	0.06	273	0.06
Total	240	0.0854	240	0.0854	1580	0.658	840	0.18	2420	0.838

EAGLE MINE STREAM ENCLOSURE

0+00
ROAD "A"
21+10
ROAD "E"

7+00
30" CMP

2+50
18" CMP

4+00 ROAD "A"
24" CMP

19+08
1-60" OR
2-48" CMP'S

001
401

DIVERSION A

36" CMP PERIMETER 2

POND 1

POND 2

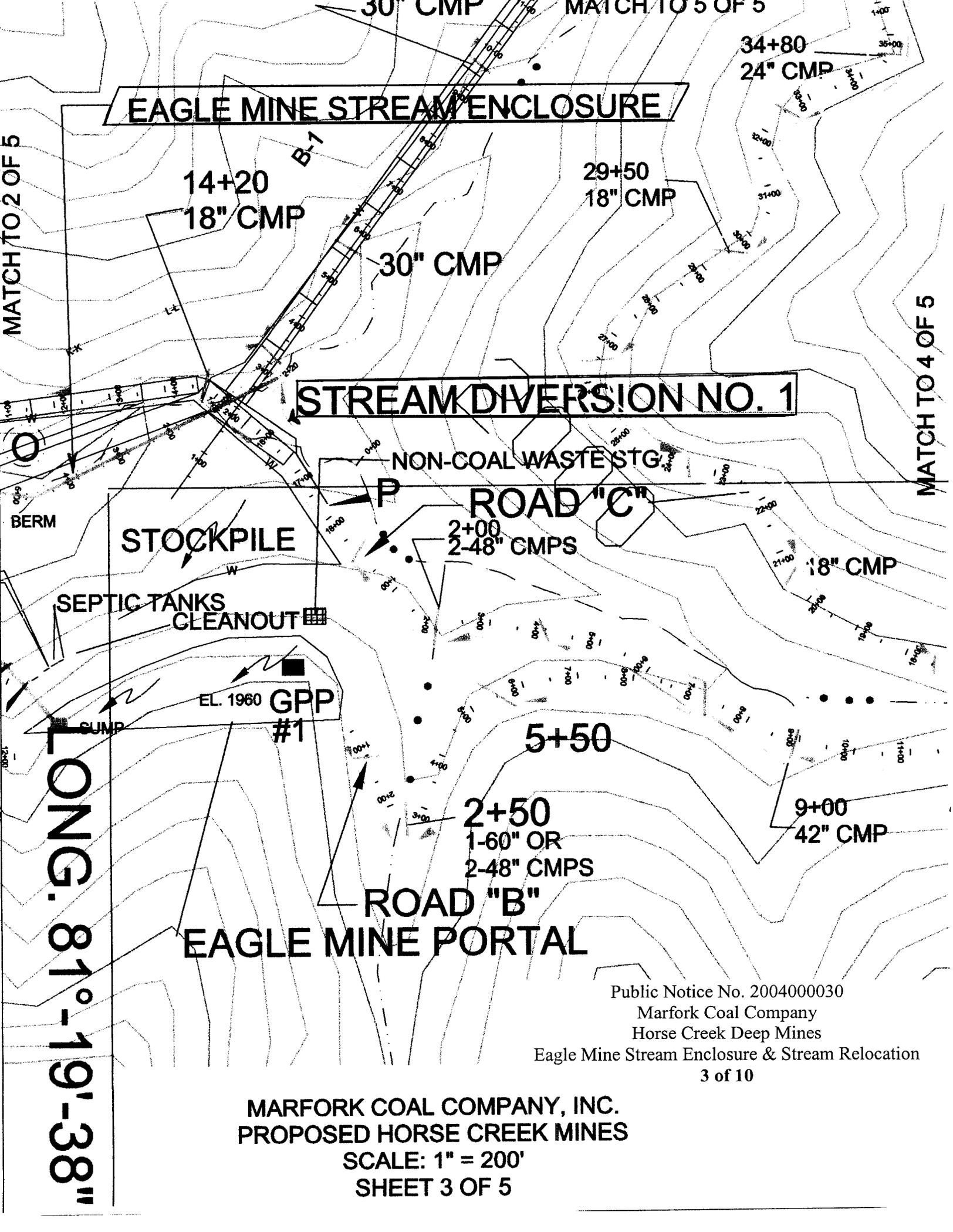
BOX E

MATCH TO 1 OF 5

MATCH TO 3 OF 5

MARFORK COAL COMPANY, INC.
PROPOSED HORSE CREEK MINES
SCALE: 1" = 200'
SHEET 2 OF 5

Public Notice No. 2004000030
Marfork Coal Company
Horse Creek Deep Mines
Eagle Mine Stream Enclosure
2 of 10



Public Notice No. 2004000030

Marfork Coal Company

Horse Creek Deep Mines

Eagle Mine Stream Enclosure & Stream Relocation

3 of 10

MARFORK COAL COMPANY, INC.
PROPOSED HORSE CREEK MINES

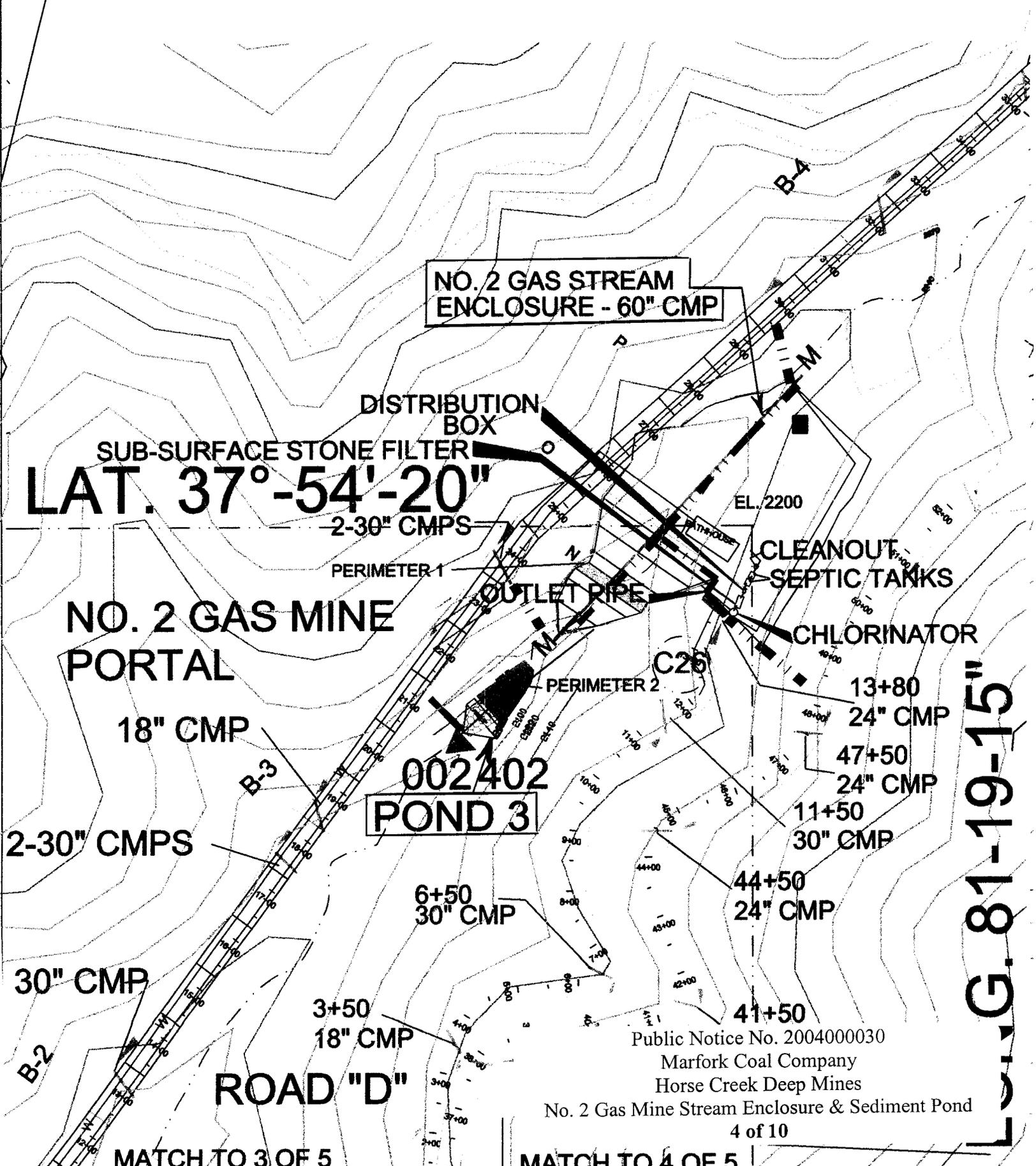
SCALE: 1" = 200'

SHEET 3 OF 5

MARFORK COAL COMPANY, INC.
PROPOSED HORSE CREEK MINES

SCALE: 1" = 200'

SHEET 5 OF 5



LAT. 37°-54'-20"

NO. 2 GAS MINE
PORTAL

NO. 2 GAS STREAM
ENCLOSURE - 60" CMP

DISTRIBUTION
BOX

SUB-SURFACE STONE FILTER

2-30" CMPS

EL. 2200

PERIMETER 1

OUTLET PIPE

CLEANOUT
SEPTIC TANKS

CHLORINATOR

18" CMP

PERIMETER 2

002402
POND 3

13+80
24" CMP

47+50
24" CMP

11+50
30" CMP

6+50
30" CMP

44+50
24" CMP

30" CMP

3+50
18" CMP

41+50

ROAD "D"

Public Notice No. 2004000030
Marfork Coal Company
Horse Creek Deep Mines

No. 2 Gas Mine Stream Enclosure & Sediment Pond

4 of 10

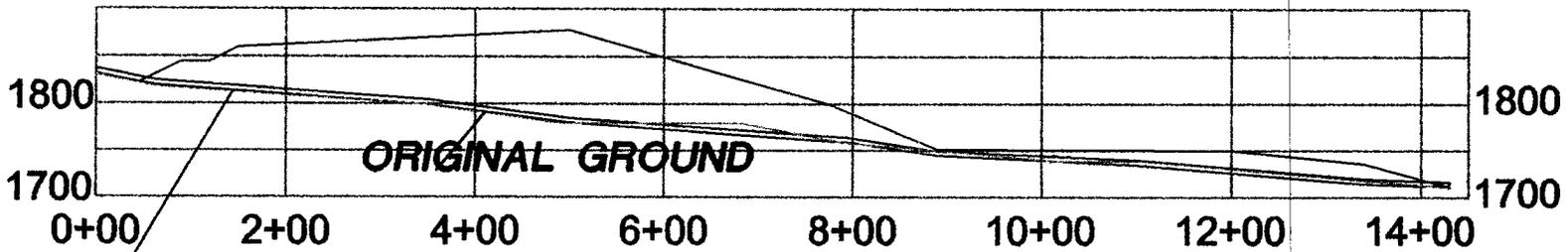
MATCH TO 3 OF 5

MATCH TO 4 OF 5

LONG. 81-19-15"

SCALE: 1" = 200'

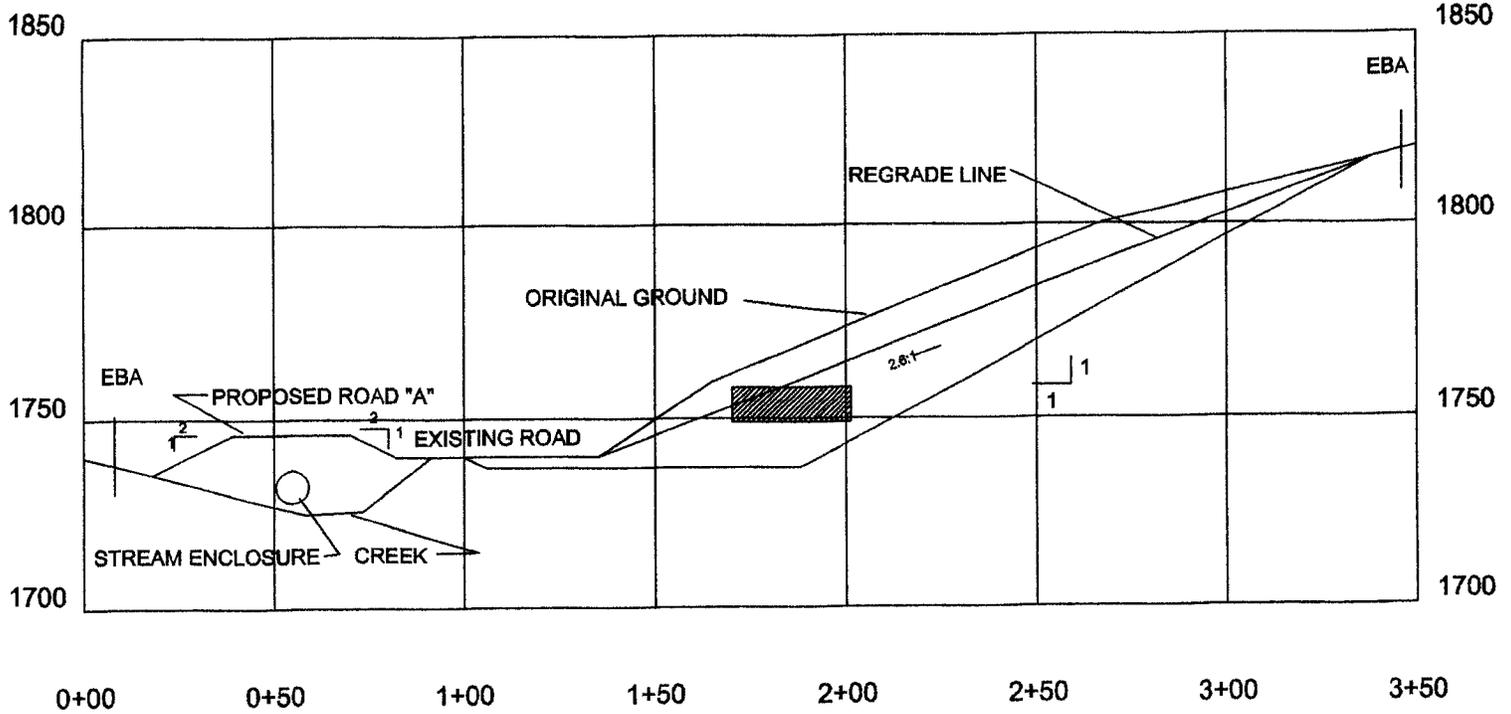
PROFILE VIEW - STREAM ENCLOSURE - EAGLE FACE-UP



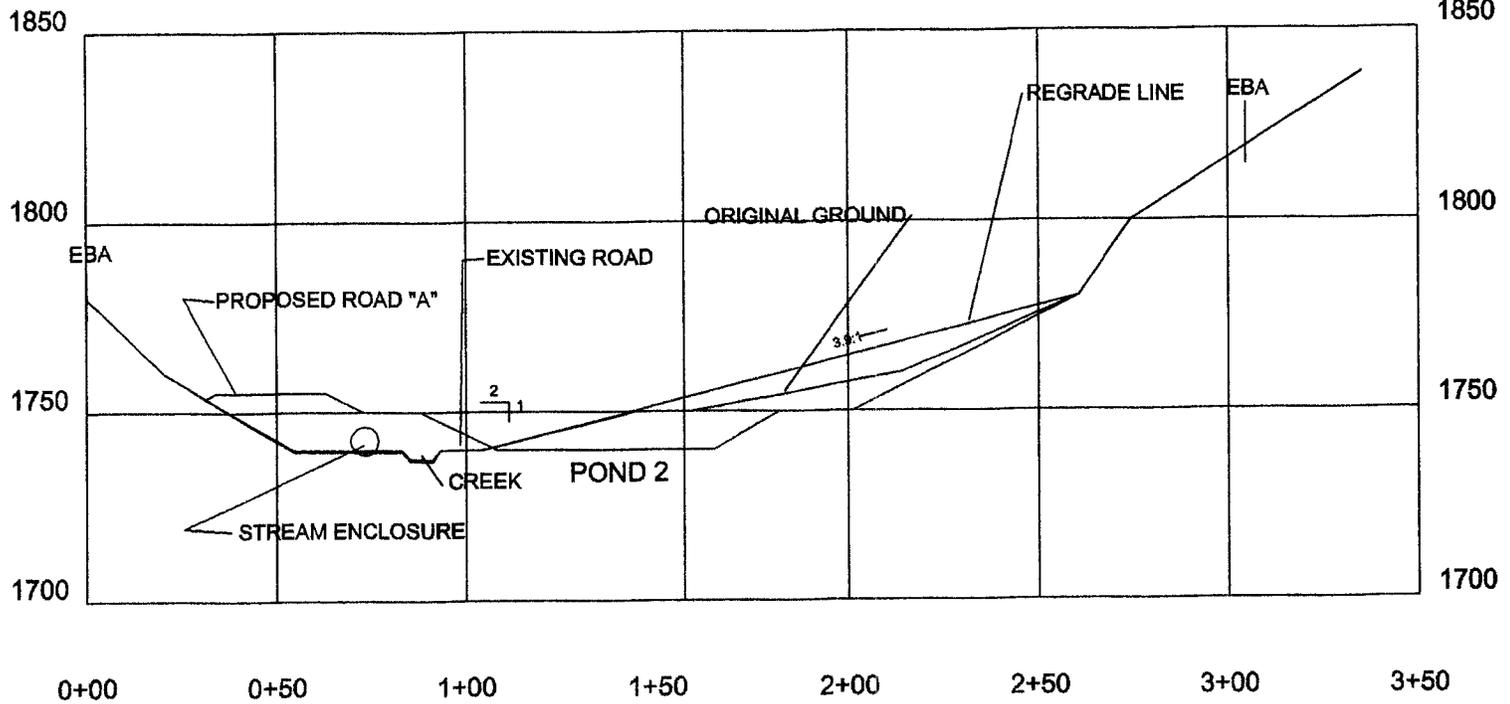
STREAM ENCLOSURE/REMOVED AFTER MINING IS COMPLETE AND STREAM BED RETURNED TO APPROX. ORIGINAL CONFIGURATION AND LOCATION

NOTE: PROFILE SKEWED OFF PERPENDICULAR

E-E



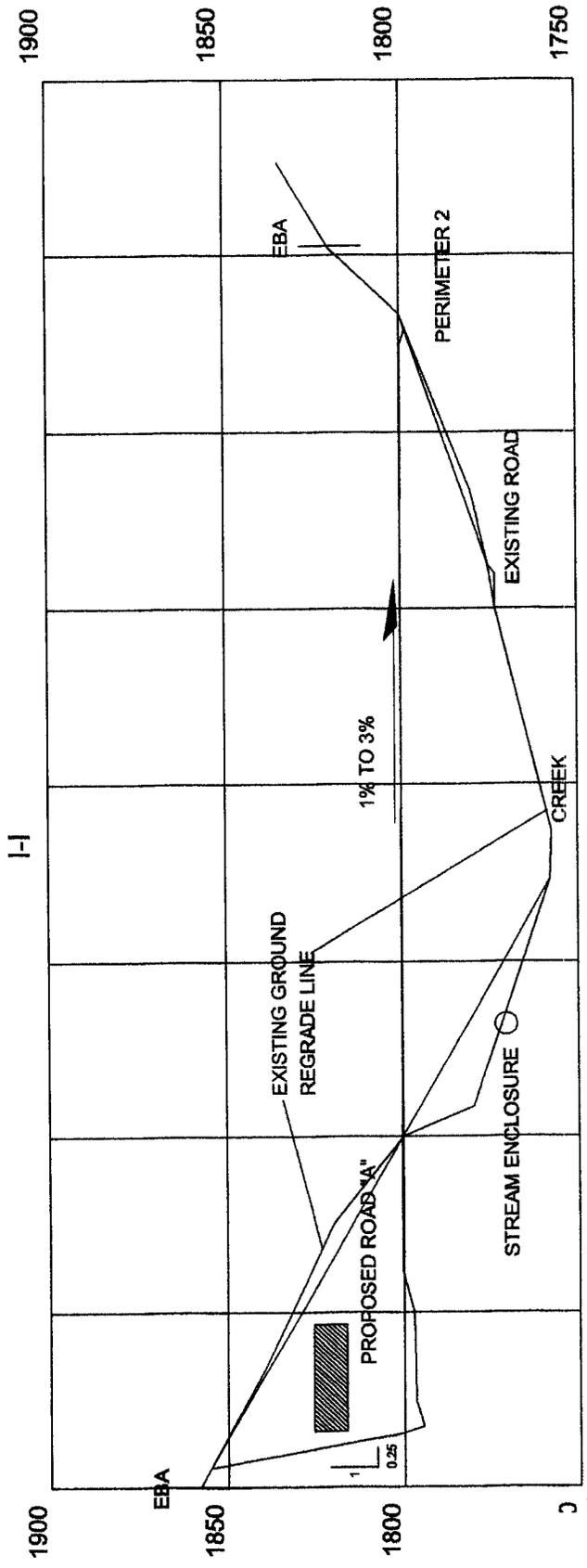
G-G



Eagle Face Up

CROSS-SECTIONS HORSE CREEK STREAM ENCLOSURE
MARFORK COAL COMPANY, INC.
SCALE: 1" = 50'

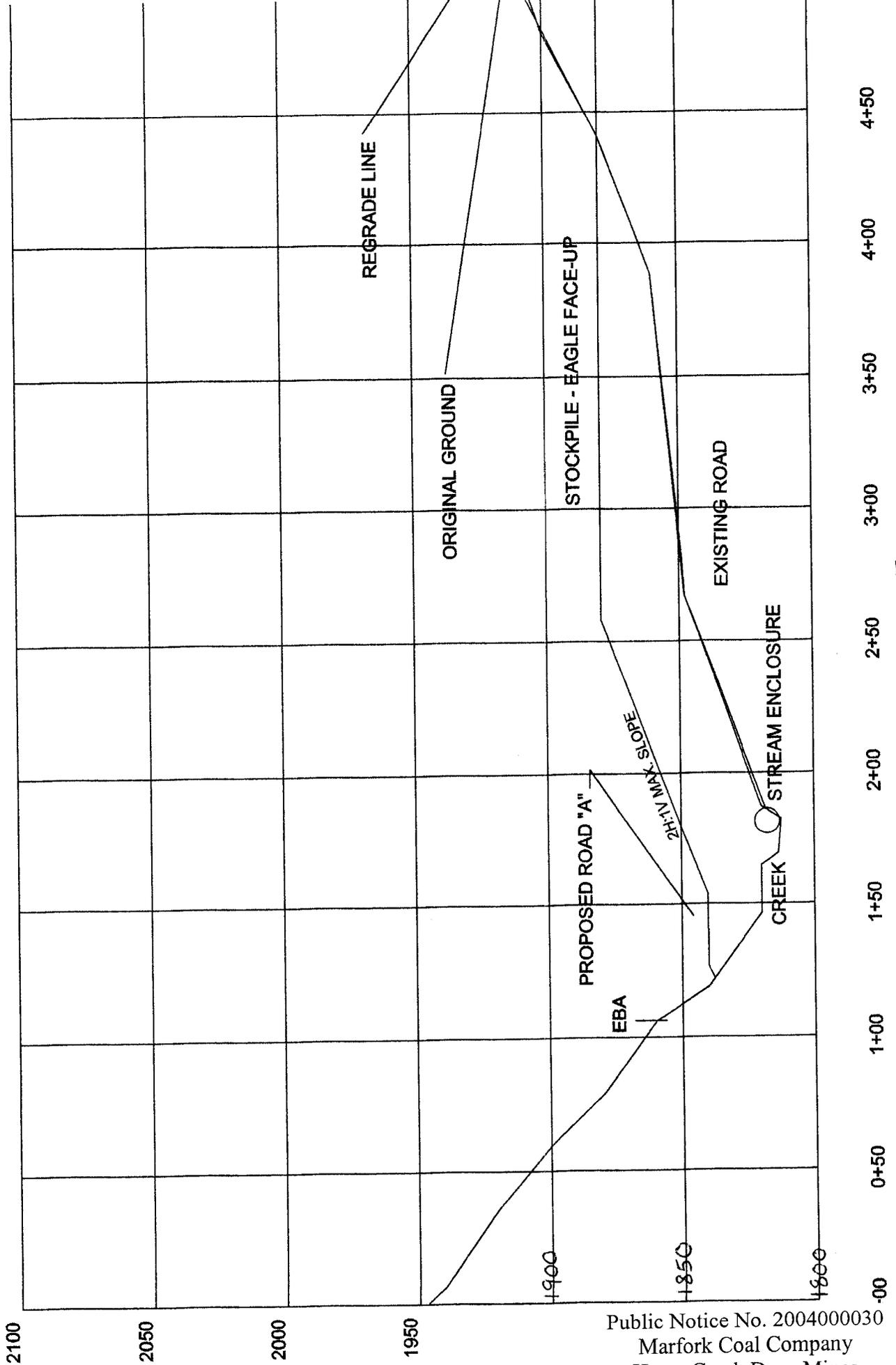
Public Notice No. 2004000030
Marfork Coal Company
Horse Creek Deep Mines
Eagle Mine - Stream Enclosure Cross-Sections
6 of 10



Eagle Face up

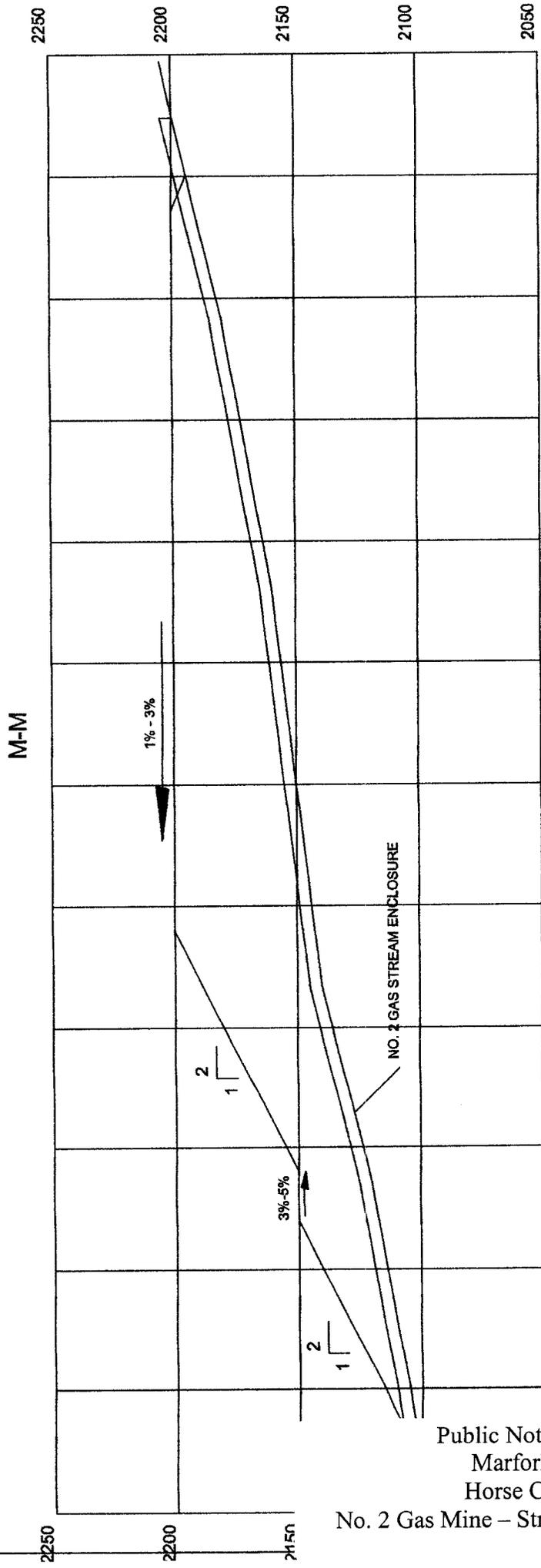
**CROSS-SECTIONS HORSE CREEK STREAM ENCLOSURE
MARFORK COAL COMPANY, INC.
SCALE: 1" = 50'**

L-L



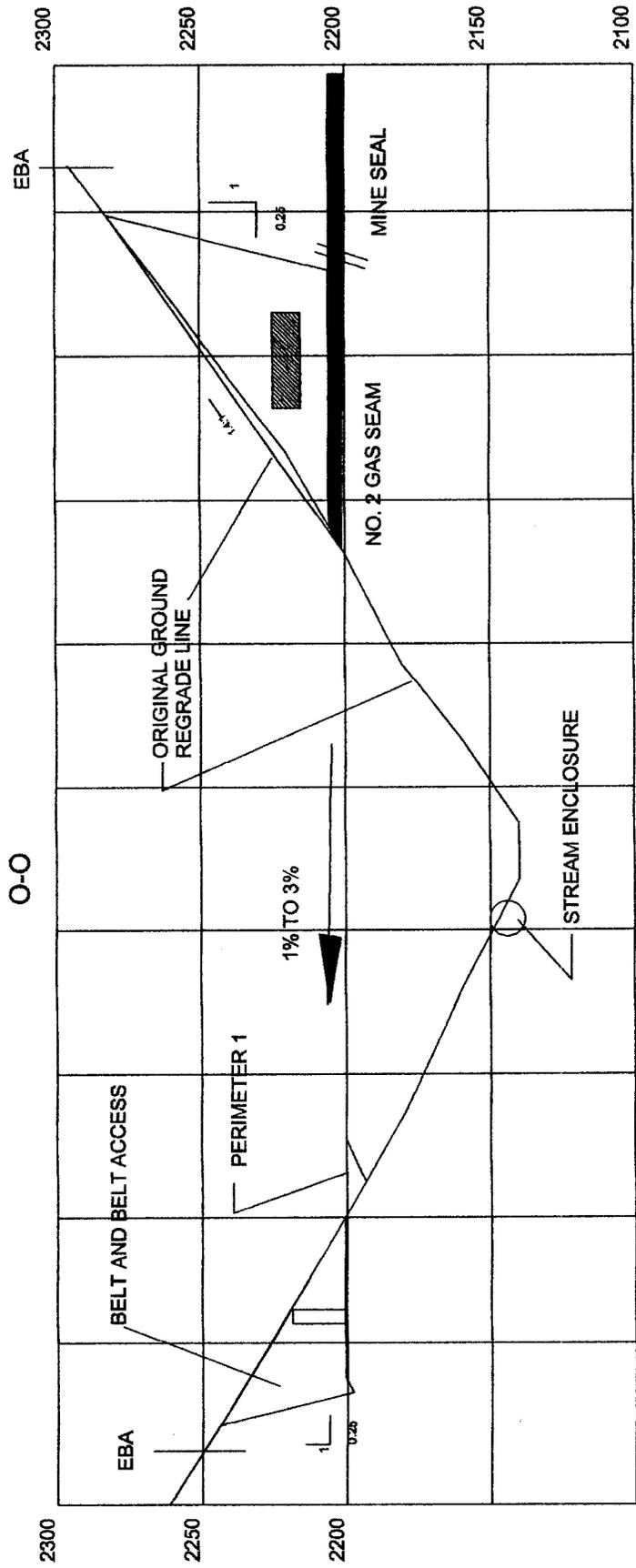
Eagle Face up

CROSS-SECTIONS HORSE CREEK STREAM ENCLOSURE
MARFORK COAL COMPANY, INC.
SCALE: 1" = 50'



No. 2 Gas Mine

CROSS-SECTIONS HORSE CREEK STREAM ENCLOSURE
 MARFORK COAL COMPANY, INC.
 SCALE: 1" = 60'



No. 2 Gas Mine

CROSS-SECTIONS HORSE CREEK STREAM ENCLOSURE
 MARFORK COAL COMPANY, INC.
 SCALE: 1" = 60'