



Public Notice

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

In reply refer to Public Notice No.
200401325

Issuance Date: October 20, 2004

Stream: Unnamed Tributary Robinson Fork Closing Date: November 19, 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: Alex Energy, Inc.
Post Office Box 857
Summersville, West Virginia 26651

LOCATION: The proposed project is located on the Lockwood USGS quadrangle at latitude 38° 18'21" and longitude 81° 01'15" within an unnamed tributary of Robinson Fork, Right Fork of Robinson Fork, Sugarcamp Branch and an unnamed tributary (first left hand) to Sugarcamp Branch, approximately 2.85 miles north-northwest of Drennen, in Grant and Jefferson Districts of Nicholas County, West Virginia as depicted on the attached **Drawing 1**. The location of the proposed valley fills and associated sediment ponds is depicted on **Drawing 2** titled "Location Map." The unnamed tributaries of Robinson Fork and the Right Fork of Robinson Fork flow into main Robinson Fork. Robinson Fork flows into Twentymile Creek. The unnamed tributary of Sugarcamp Branch flows into main Sugarcamp Branch. Sugarcamp Branch also flows into Twentymile Creek. Twentymile Creek flows into the Gauley River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the Right Fork Surface Mine. The proposal would involve the construction of two valley fills, three in-stream sediment ponds, and one temporary stream crossing. The construction of the proposed valley fills would result in the discharge of fill material into approximately 1,917 linear feet or 0.22 acre of intermittent streams and 76 linear feet or 0.004 acre of ephemeral streams for a total impact of approximately 1,993 linear feet or 0.226 acre of waters of the United States. The proposed valley fills would overbond existing valley fill areas. Further, approximately 799 linear feet or 0.11 acre of intermittent streams would be temporarily impacted by the construction of the proposed sediment ponds. Approximately 60 linear feet of intermittent stream would be impacted by the proposed road construction activity. Also, approximately 866 linear feet of intermittent stream channels and 235 linear feet of ephemeral stream channel would be indirectly impacted by sediment transport. In total, approximately 3,953 linear feet 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). All of the proposed valley fills would drain watersheds of less than 250 acres as detailed on the **Table B** of this public notice. Approximately 941 cubic yards of unspecified, non-toxic, durable material would be discharged within the Corps' regulatory jurisdiction in conjunction with construction of the proposed structures.

The West Virginia Department of Environmental Protection (WVDEP) has approved the applicant's Surface Mining Permit application (S-3007-02) pursuant to the Surface Mining Control and Reclamation Act of 1977. Details regarding the phases can be found in Section N of the applicant's Surface Mining Application on file at the WVDEP.

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 valley fills and associated sediment ponds 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 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 (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 permanent impacts to waters of the U.S., the applicant proposes to mitigate on-site through out-of-kind enhancement of aquatic resources. Approximately 4,220 linear feet of Twentymile Creek would be enhanced using natural stream design techniques.

To compensate for temporary impacts to waters of the U.S., the stream segments temporarily impacted by sediment pond construction and associated drainage corridors would be restored to their pre-mining conditions. Restoration of the temporarily affected stream channels would include the re-establishment of bankfull and flood prone areas as well as a 50-foot vegetated riparian zone.

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 to complete a Phase I archaeological survey. The survey is titled "Phase I Archaeological Survey of the Proposed Right Fork Surface Mine Permit Area, Jefferson and Grant Districts, Nicholas County, West Virginia" and is dated June 13, 2002. The survey resulted in the location of one previously unrecorded archaeological site (46Ni585) and the determination one previously recorded site (46Ni97) had been destroyed by earthmoving activities. Site 46Ni585 is recorded as a rock shelter and investigation of the structure resulted in the recovery of five pieces of lithic debitage. This site does not exhibit the potential to produce significant information and is not considered eligible for listing in the NRHP. In a letter dated May 5, 2003, the West Virginia Division of Culture History (SHPO) concurred with the survey findings. 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: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. Two options are available to the applicant to address potential adverse effects to the Indiana bat. The applicant may conduct a mist net survey from May 15 to August 15 using the mist net protocol outlined in the draft Indiana bat Recovery Plan. Another option is to presume Indiana bats are present and conduct all timber removal on the project area from November 15 to March 31. If this option is chosen, an analysis of the post-project Indiana bat

summer habitat must be performed within a two-mile radius of the center point of the project area. If the United States Fish and Wildlife Service (Service) determines the extent of disturbance is not significant to affect the Indiana bat, the project may proceed with seasonal restrictions. Conversely, if the Service determines the extent of disturbance is significant and would likely adversely affect the Indiana bat, a mist net survey can be conducted to determine if the Indiana bats are present. The applicant's proposed project area must also be surveyed to determine the presence of old abandoned mine portals to determine their presence and likelihood to support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. Upon receipt of the required surveys and/or analyses, a determination of effect will be made by the Huntington District concerning compliance with Section 7(c) of the Endangered Species Act of 1972 (as amended). 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. 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 Mrs. Teresa Spagna, Project Manager, 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 Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

Table A
Alex Energy, Inc.
Right Fork Surface Mine
Jurisdictional Waters Impact Summary

Impact Name	Permanent Impacts (Score / Eff.)		Temporary Impacts (Score / Eff.)		Secondary Impacts (Score / Eff.)	
	I	E	I	E	I	E
Valley Fill 1	1367 / 0.107	76 / 0.004	0	0	0	0
Pond 3A & 3B	0	0	487 / 0.081	0	0	0
Valley Fill 3	550 / 0.115	0	0	0	0	0
Pond 5	0	0	312 / 0.029	0	0	0
TSX-3	0	0	60 / 0.012	0	0	0
TOTAL IMPACTS:	1917 / 0.222	76 / 0.004	859 / 0.122	0	0	0
MITIGATION DEBIT:	1993 / 0.226		859 / 0.122			
TOTAL DEBIT:	2,852 / 0.348					

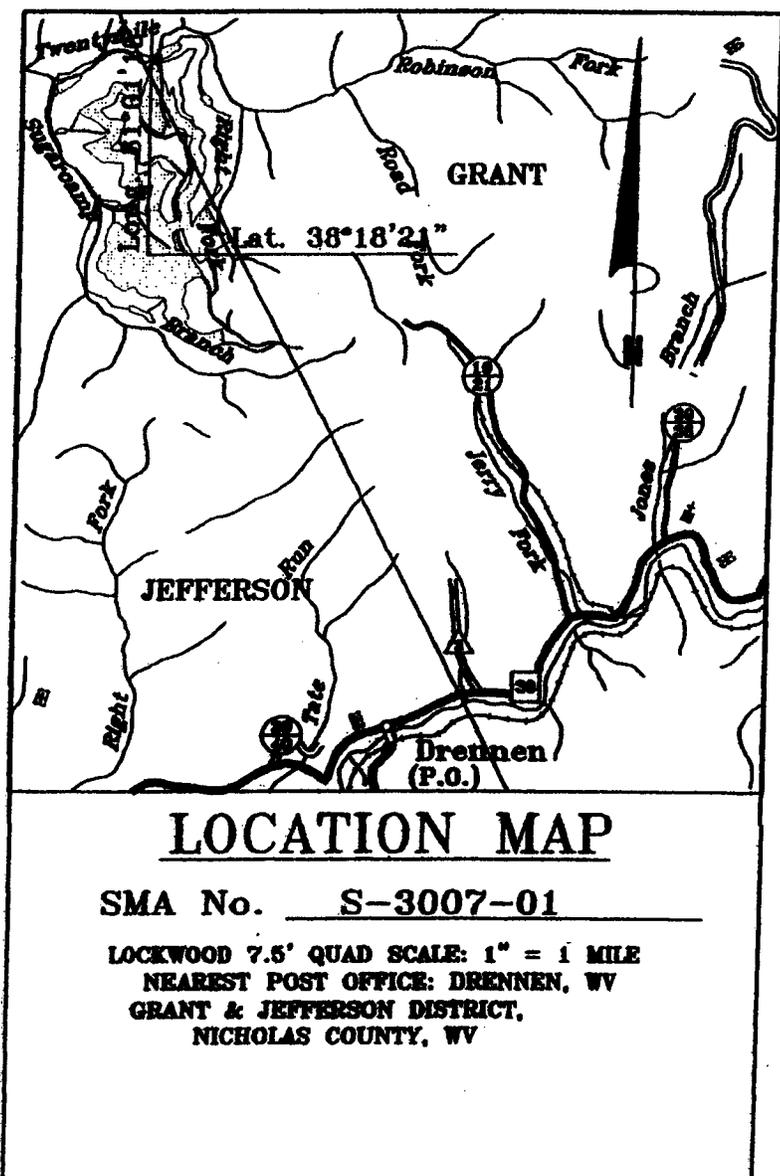
Table B

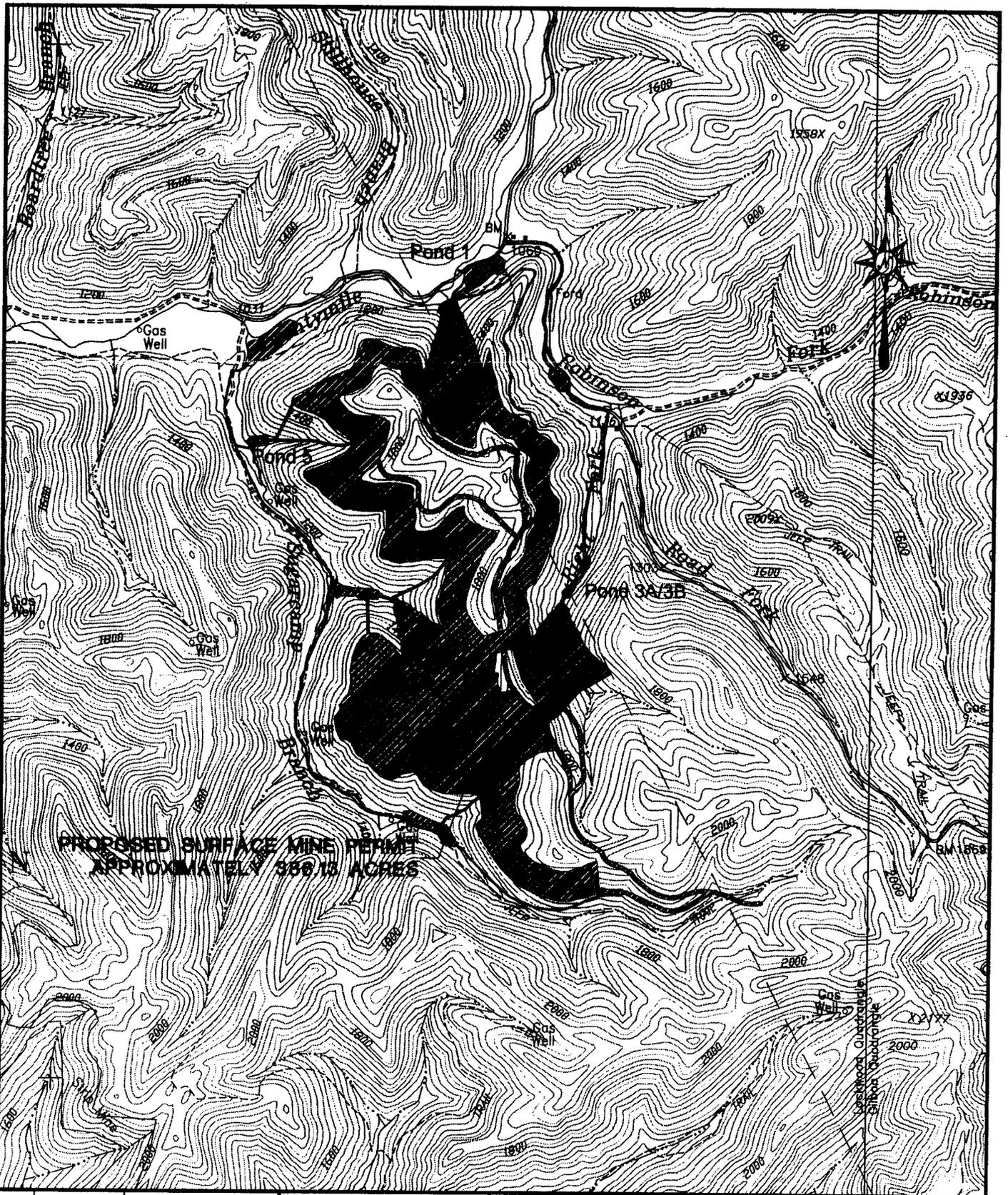
**Alex Energy, Inc.
Right Fork Surface Mine
Affected Drainage Areas**

Disposal Site	Drainage Area at Toe of Fill (acres)
Valley Fill No. 1	119.05
Valley Fill No. 3	229.99

C-10

Correction No: 2
Correction Date: 3/20/03
Inserted By: RAB



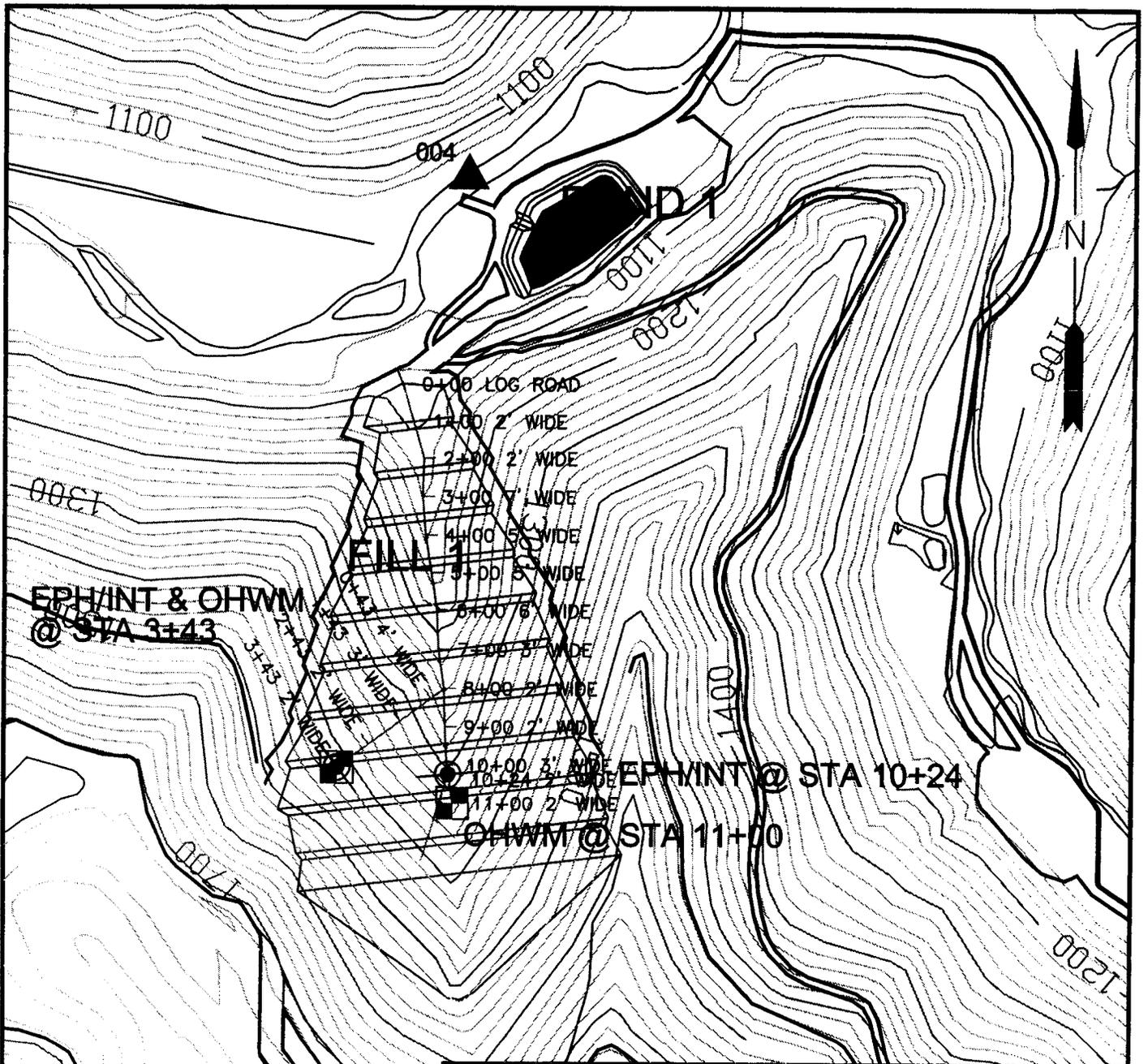


No.	Date	Revision	File Name:	
1	10/04/04	Original	2000_Loc_S-3007-02_IP.dwg	
2			Date:	Contour Interval:
3			10/04/04	40'
4			Scale:	Sheet No.:
5			1"=2000'	1 of 1
			Quad:	
			Lockwood & Gilboa	
			County:	
			Nicholas	

ALEX ENERGY, INC.
RIGHT FORK SURFACE MINE
 Permit No. S-3007-02
 NPDES NO. WV1019601

LOCATION MAP
Lockwood & Gilboa Quadrangles

Appendix A, Map 1



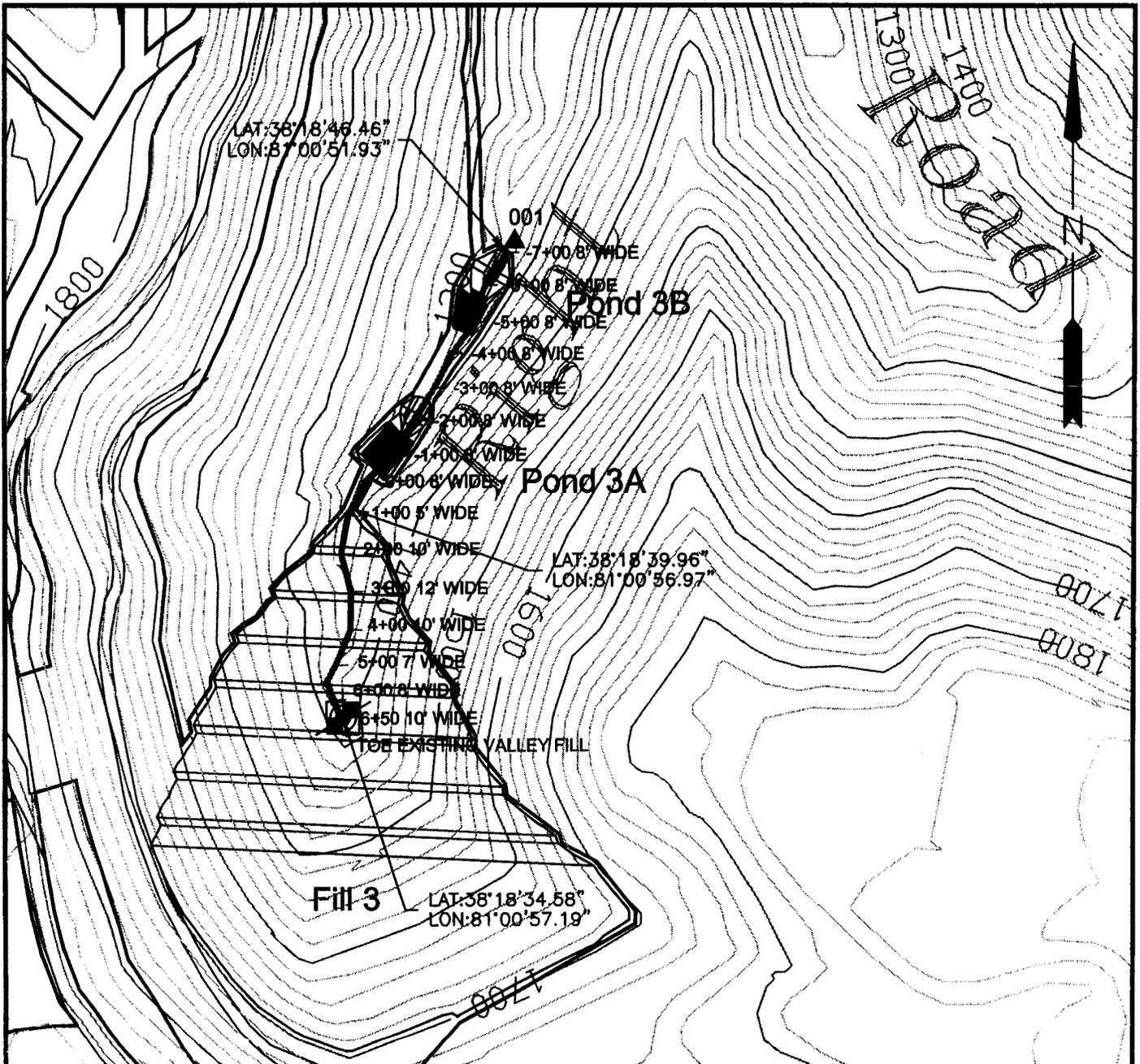

 EPHEMERAL / INTERMITTENT POINT

 ORDINARY HIGH WATER MARK

No.	Date	Revision	File Name:
1	10/04/04	Original	Fill 1 Area Loc at 400.dwg
2			Date: 10/04/04 Contour Interval: 20'
3			Scale: 1"=400' Sheet No.: 1 of 1
4			Quad: HOLDEN
5			County: NICHOLAS

ALEX ENERGY, INC.
RIGHT FORK SURFACE MINE
 PERMIT No. S-3007-02
 NPDES NO. WV1019601
HOLLOW FILL NO. 1
 Appendix A, Map 2

3 of 4



 EPHEMERAL / INTERMITTENT POINT
 ORDINARY HIGH WATER MARK

No.	Date	Revision	File Name:
1	10/04/04	Original	Fill 3 400.dwg
2			Date: 10/04/04 Contour Interval: 20'
3			Scale: 1"=400' Sheet No.: 1 of 1
4			Quad: HOLDEN
5			County: NICHOLAS

ALEX ENERGY, INC.
RIGHT FORK SURFACE MINE
 PERMIT No. S-3007-02
 NPDES NO. WV1019601
HOLLOW FILL NO. 3, POND 3A and 3B
 Appendix A, Map 3 *48fy*