



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

# Public Notice

In reply refer to Public Notice No.  
**200100206-2**

Issuance Date:  
**January 24, 2005**

Stream:

Closing Date:

**U/T Whitman Creek**

**February 24, 2005**

**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.  
P.O. Box 1100  
Holden, West Virginia 25625-1100

**LOCATION:** The proposed project would be located 3.2 miles southwest of Holden in unnamed tributaries of Whitman Creek, which is a tributary to Cooperas Mine Fork, Island Creek, and the Guyandotte River. The project would lie within Logan County, West Virginia (latitude 37° 46' 40" and longitude 82° 05' 50"). **Drawing No. 1** depicts the location and configuration of the proposed project.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to place dredged and fill material into waters of the U.S. in conjunction with the proposed construction, operation and reclamation of the Whitman Creek Surface Mine. As a part of this project the applicant proposes to construct five hollow fills (No.s 1, 2, 3, 4 and 5) and three sediment ponds (No.s 1, 5 and 6). A previous NWP authorization (200100206-1), dated April 6, 2004, permitted the construction of two hollow fills (No.s 1 and 2) and a sediment pond (No. 1). The application indicates commencement of construction on these two fills began in June 2004. The applicant is pursuing an Individual Permit (IP) to cover all five hollow fills and three sediment ponds. The proposed project would adversely impact approximately 8,538 linear feet (or 0.92-acre) of waters of the United States, including permanent impacts to 5,773 linear feet (or 0.61-acre) of intermittent stream and 934 linear feet (or 0.05-acre) of ephemeral stream, and temporary impacts to 1,831 linear feet (or 0.26-acre) of intermittent stream. The watersheds proposed to be impacted, measured from the toe of the proposed hollow fills, range from 46.36 to 101.70 acres. The purpose of the project is to mine bituminous coal. Drawings depicting each hollow fill and associated sediment pond may be referenced on the attached **Drawing No.s 2, 3 and 4**. The proposed construction would be accomplished in four phases (as depicted on the attached **Drawing No.s 5, 6, 7 and 8**).

Survey data conducted by R.E.I. Consultants, Inc., dated July 11, 2002, on Whitman Creek and unnamed tributaries of Whitman Creek involved sampling for physical and chemical water quality, benthic macroinvertebrates, fish, and habitat data. The survey involved sampling at eight individual sample sites (as depicted on **Drawing No. 9**). The results of the data collected indicates the following conclusions: physical and chemical water quality and fisheries habitat was considered good at most stations, the overall water quality and habitat was very desirable, extremely healthy macroinvertebrate communities were present, and fisheries communities are dominantly comprised of tolerant individuals that is likely due to a low-flow regime. The rapid bioassessment habitat scores within the hollow fill footprints ranged from 31 to 149. No fishes were collected from sample sites located within the proposed hollow fills.

The WVDEP has authorized the proposed mining operation by Article 3 Permit No. S-0005-80, dated January 14, 1980, pursuant to the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Also, an associated Amendment No. 1 for Article 3 Permit No. S-0005-80 was issued on December 17, 2003. An Article 11 National Pollutant Discharge Elimination System (NPDES) Permit No. WV1005111 was issued by the WVDEP on January 1, 1989.

**MITIGATION PLAN:** The applicant has submitted a Compensatory Mitigation Plan (CMP) to compensate for the temporary and permanent adverse impacts to waters of the U. S. The CMP includes mitigation in the form of 13,999 linear feet (or 4.12 acres) of intermittent stream creation and 1,831 linear feet (or 0.26-acre) of intermittent stream restoration. The compensatory mitigation takes into account deductions for temporal losses and unobtainable perpetuity. All compensatory mitigation would be designed in accordance with natural stream design techniques. Riparian buffer zones extending 25 feet from each stream bank would be re-established with native vegetation. The applicant proposes monitoring of completed mitigation sites for a minimum of five years.

**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.

The West Virginia Division of Culture and History (WVDCH) is requested to advise this office, pursuant to Section 106 of the National Historic Preservation Act, of any potential effects to historic properties that may result from the proposed permitting action. It should be acknowledged previous correspondence, dated June 30, 2000 (FR No. 00-919-LG), received from the WVDCH under the SMCRA permit process did not indicate any 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. In light of this project being re-distributed through the public notice process for purposes of Section 404, it is requested the WVDCH advise this office of their present determination.

**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. The proposed project lies within the distribution range of the Indiana Bat (*Myotis sodalis*), as indicated in general correspondence received by this office from the Elkins, West Virginia Field Office. 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).

**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,

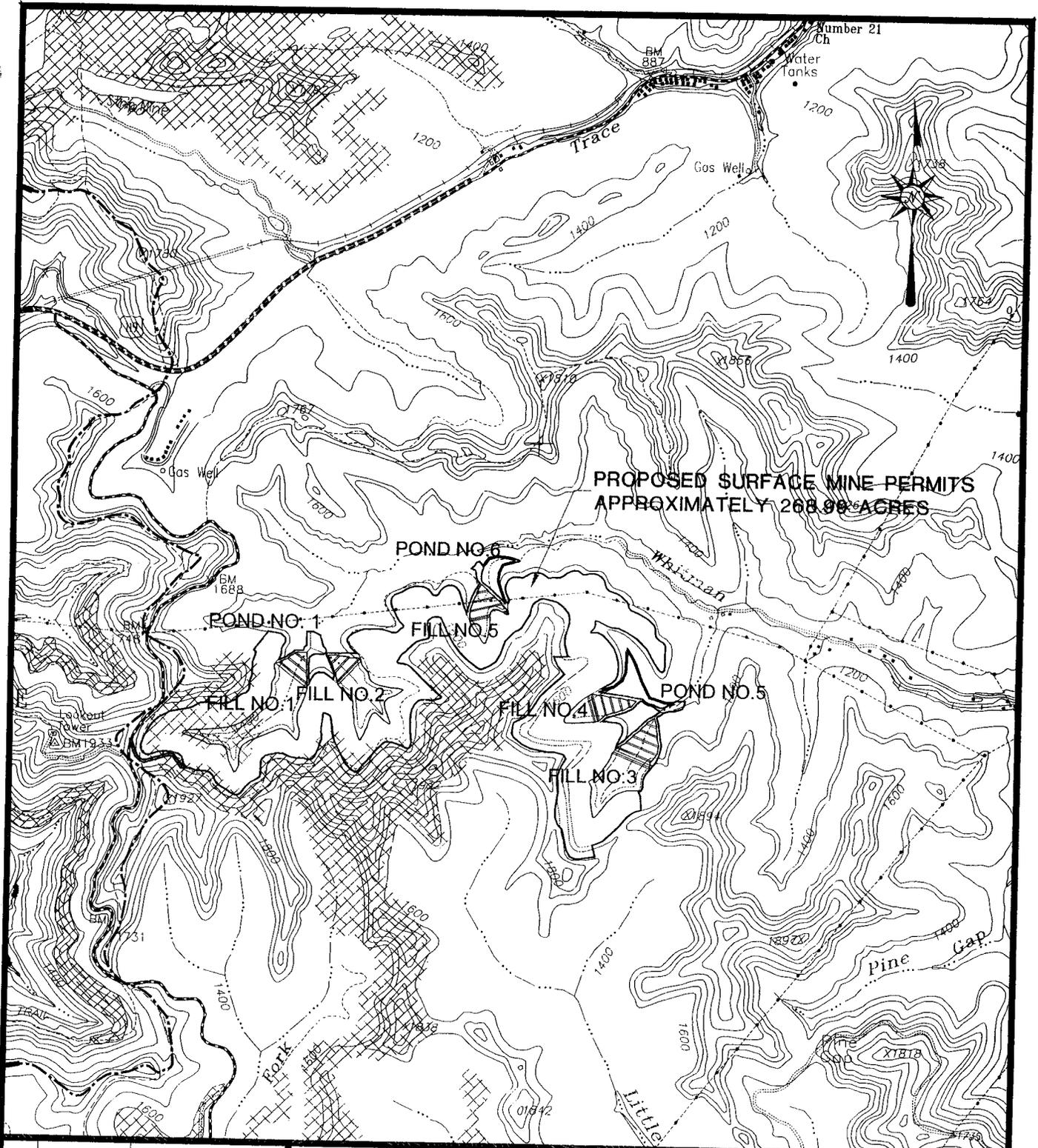
and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall 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 Mr. Michael Hatten, Regulatory Specialist, 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, Mr. Hatten may be reached at 304-399-5710.



Ginger Mullins, Chief  
Regulatory Branch

(W)



PROPOSED SURFACE MINE PERMITS  
APPROXIMATELY 268.99 ACRES

No.	Date	Revision
1	08/25/04	Original
2		
3		
4		
5		

File Name: 2000_Loc_S-5-80_IP.dwg	
Date: 08/25/04	Contour Interval: 40'
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County: LOGAN	

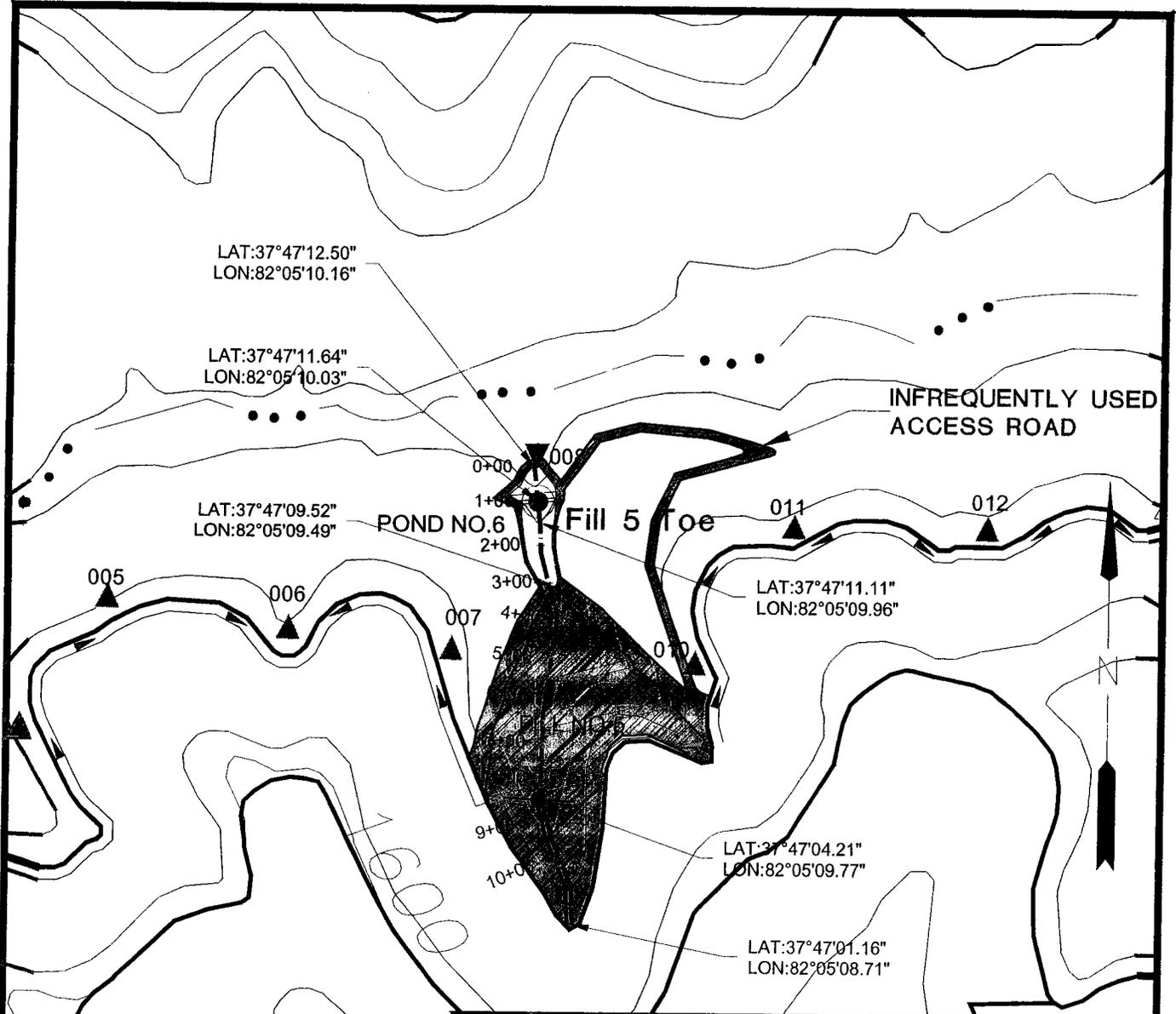
# ALEX ENERGY, INC.

## WHITMAN CREEK STRIP

PERMIT No. 5-80 AMENDMENT NO.1  
NPDES NO. WV1005111 MODIFICATION NO. 2

**Location** 200100206-2-U/T Whitman Creek  
Alex Energy's Whitman Crk. Strip  
Article 3 Permit No. S-5-80

*Drawing No. 1 of 9*



LAT:37°47'12.50"  
LON:82°05'10.16"

LAT:37°47'11.64"  
LON:82°05'10.03"

LAT:37°47'09.52"  
LON:82°05'09.49"

LAT:37°47'11.11"  
LON:82°05'09.96"

LAT:37°47'04.21"  
LON:82°05'09.77"

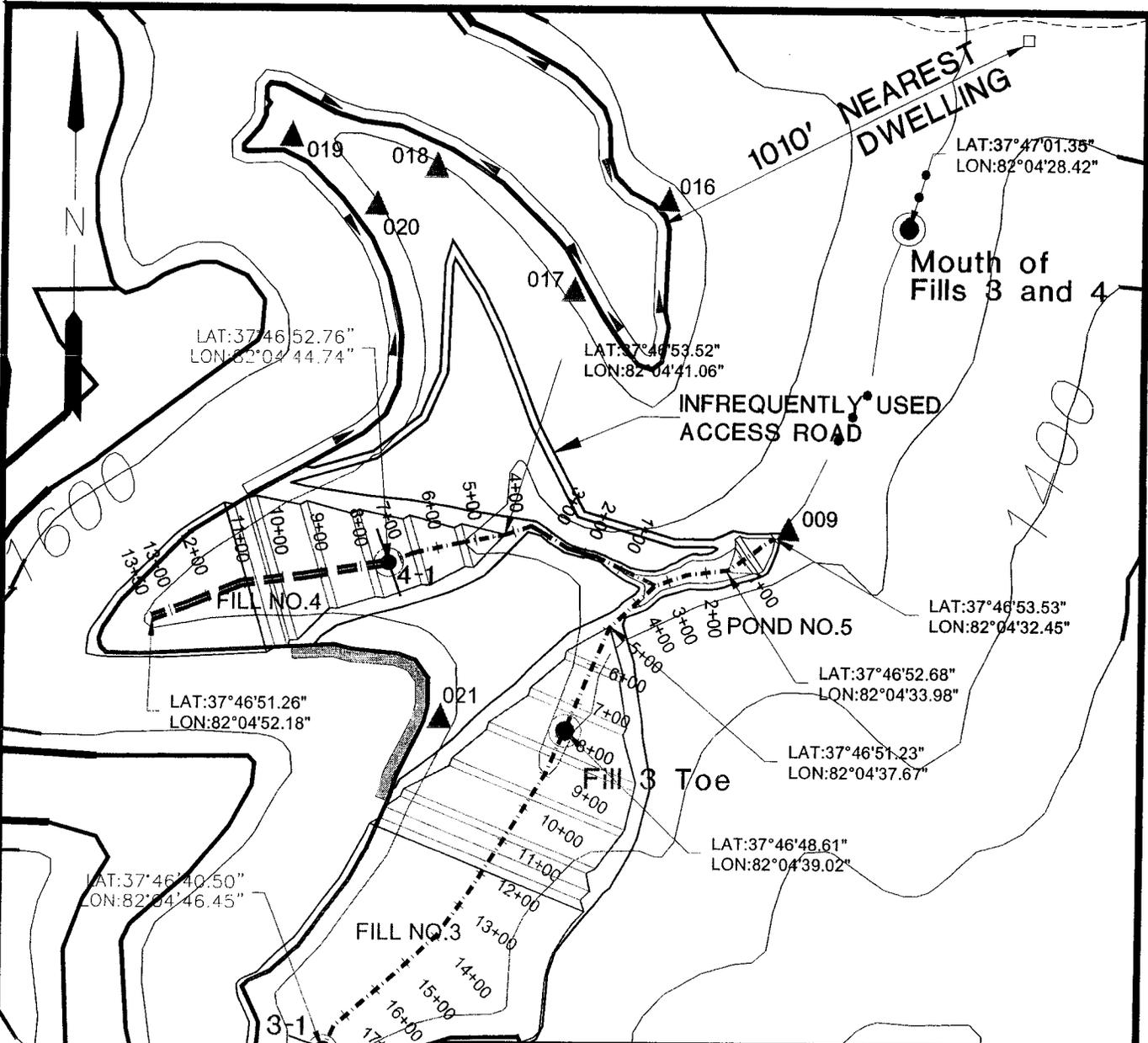
LAT:37°47'01.16"  
LON:82°05'08.71"

- - - - - INTERMITTENT/PERENNIAL STREAM  
 = = = = = EPHEMERAL STREAM  
 5-1  
 ● STREAM STUDY SITE / EPHEMERAL POINT  
 ● BENTHIC STUDY SITE  
 ▲ NPDES DISCHARGE MONITORING POINT  
 ▲ 001  
 ● Fill 3 Toe

No.	Date	Revision
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2	11/10/04	Revised
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Date: 09/29/04	Contour Interval: 40'
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Quad: HOLDEN	
County: LOGAN	

**ALEX ENERGY, INC.**  
**WHITMAN CREEK STRIP**  
 PERMIT No. 5-80 AMENDMENT NO.1  
 NPDES NO. WV1005111 MODIFICATION NO. 2  
**HOLLOW FILL NO. 5, POND 6**



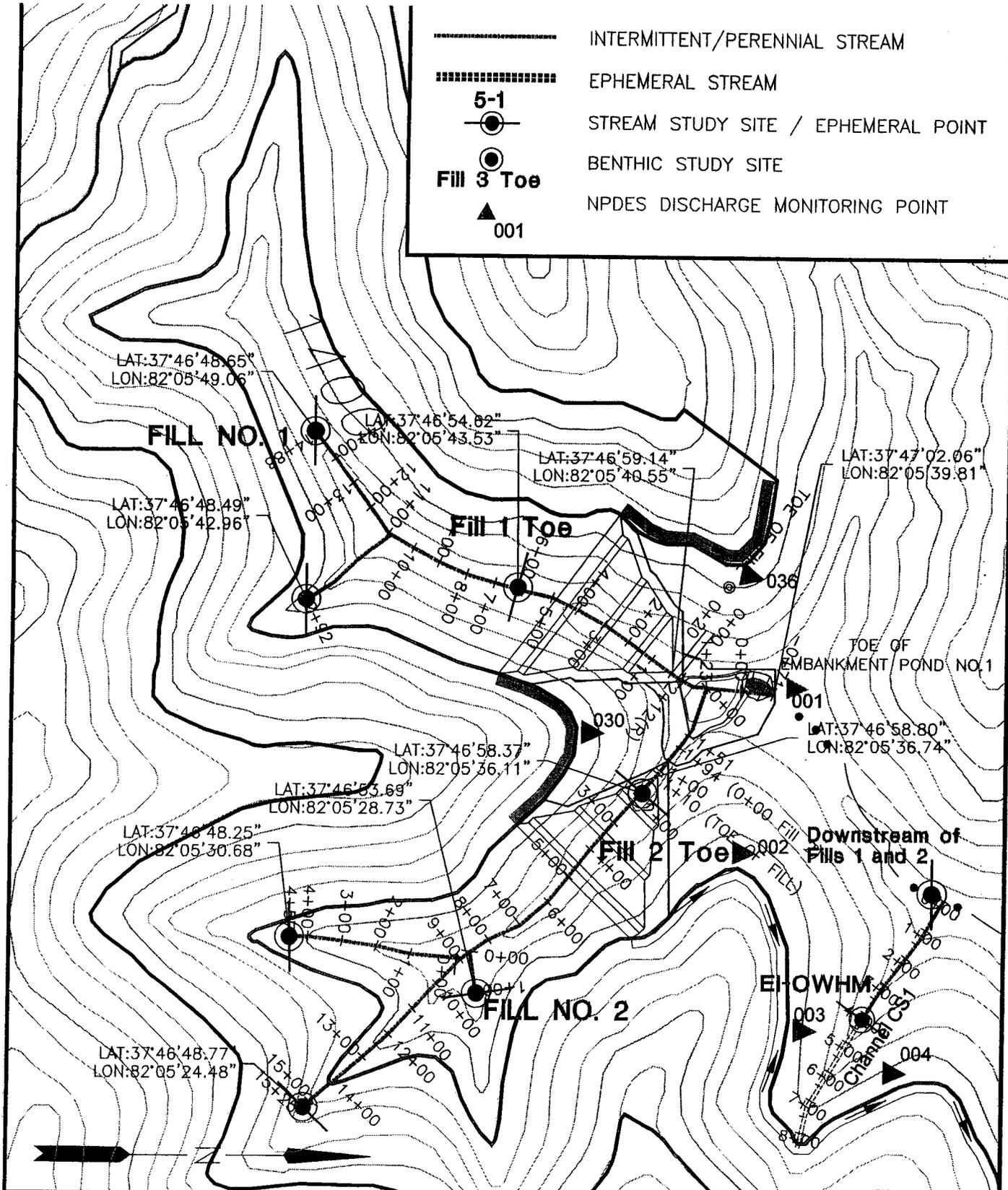
- INTERMITTENT/PERENNIAL STREAM
- EPHEMERAL STREAM
- 5-1  
STREAM STUDY SITE / EPHEMERAL POINT
- BENTHIC STUDY SITE
- Fill 3 Toe  
NPDES DISCHARGE MONITORING POINT

No.	Date	Revision
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Quad: HOLDEN	
County: LOGAN	

**ALEX ENERGY, INC.**  
**WHITMAN CREEK STRIP**  
 PERMIT No. 5-80 AMENDMENT NO.1  
 NPDES NO. WV1005111 MODIFICATION NO. 2  
**HOLLOW FILLS NO. 3 AND 4, POND 5**

- INTERMITTENT/PERENNIAL STREAM
- ..... EPHEMERAL STREAM
- 5-1  
● STREAM STUDY SITE / EPHEMERAL POINT
- BENTHIC STUDY SITE
- ▲ NPDES DISCHARGE MONITORING POINT
- 001



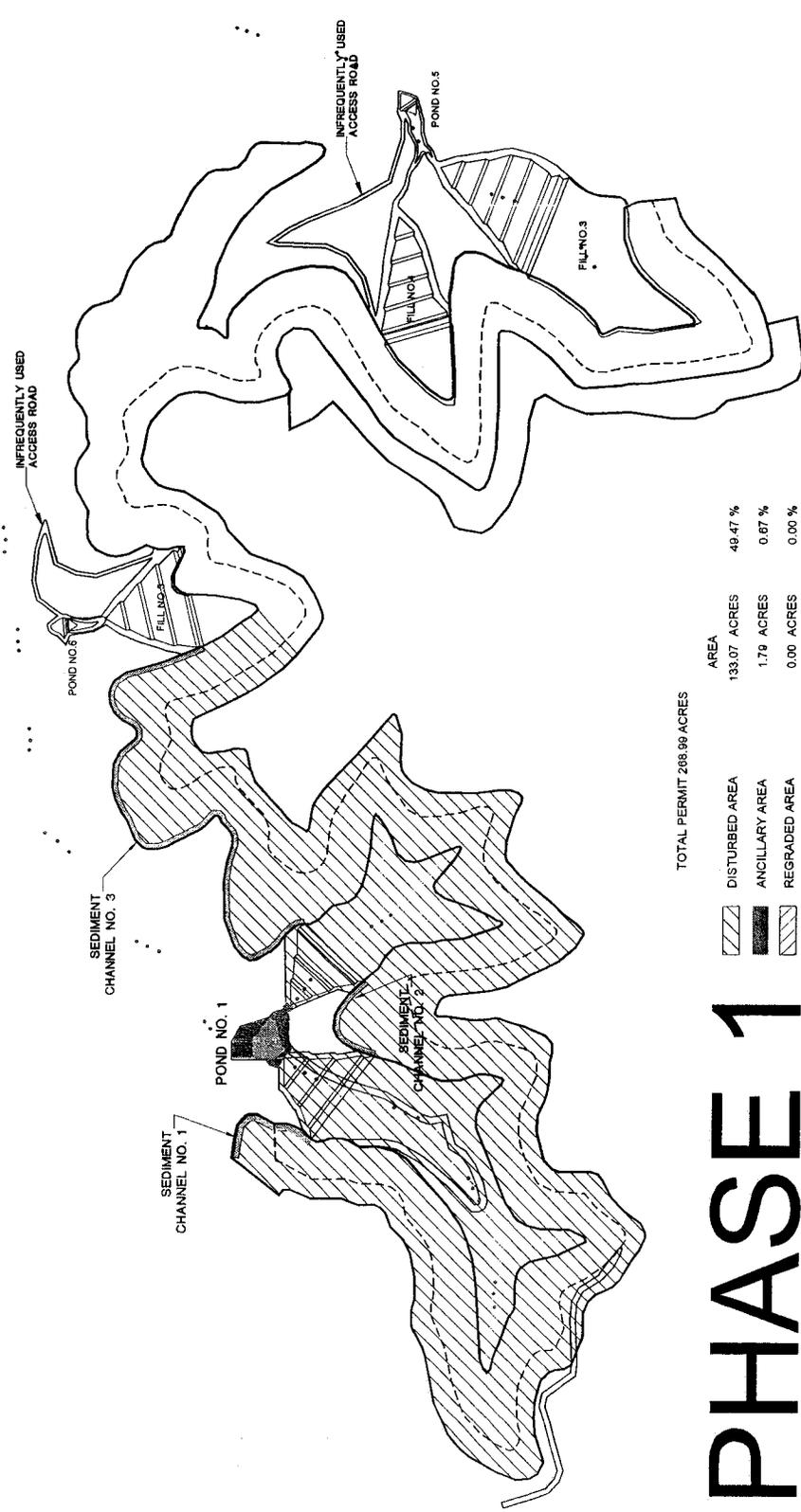
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4			Quad: HOLDEN
5			County: LOGAN

**ALEX ENERGY, INC.**  
**WHITMAN CREEK STRIP**

PERMIT No. 5-80 AMENDMENT NO.1  
 NPDES NO. WV1005111 MODIFICATION NO. 2

**HOLLOW FILL NO 5 POND 6**

200100206-2-U/T Whitman Creek  
 Alex Energy's Whitman Crk. Strip  
 Article 3 Permit No. S-5-80



TOTAL PERMIT 288.99 ACRES

AREA	ACRES	PERCENT
DISTURBED AREA	133.07	46.47 %
ANCILLARY AREA	1.79	0.67 %
REGRADED AREA	0.00	0.00 %
PONDS (SEDIMENT CONTROL)	N/A	
UNDISTURBED AREA	134.13	46.86 %
TOTAL PERMIT AREA	288.99	

# PHASE 1

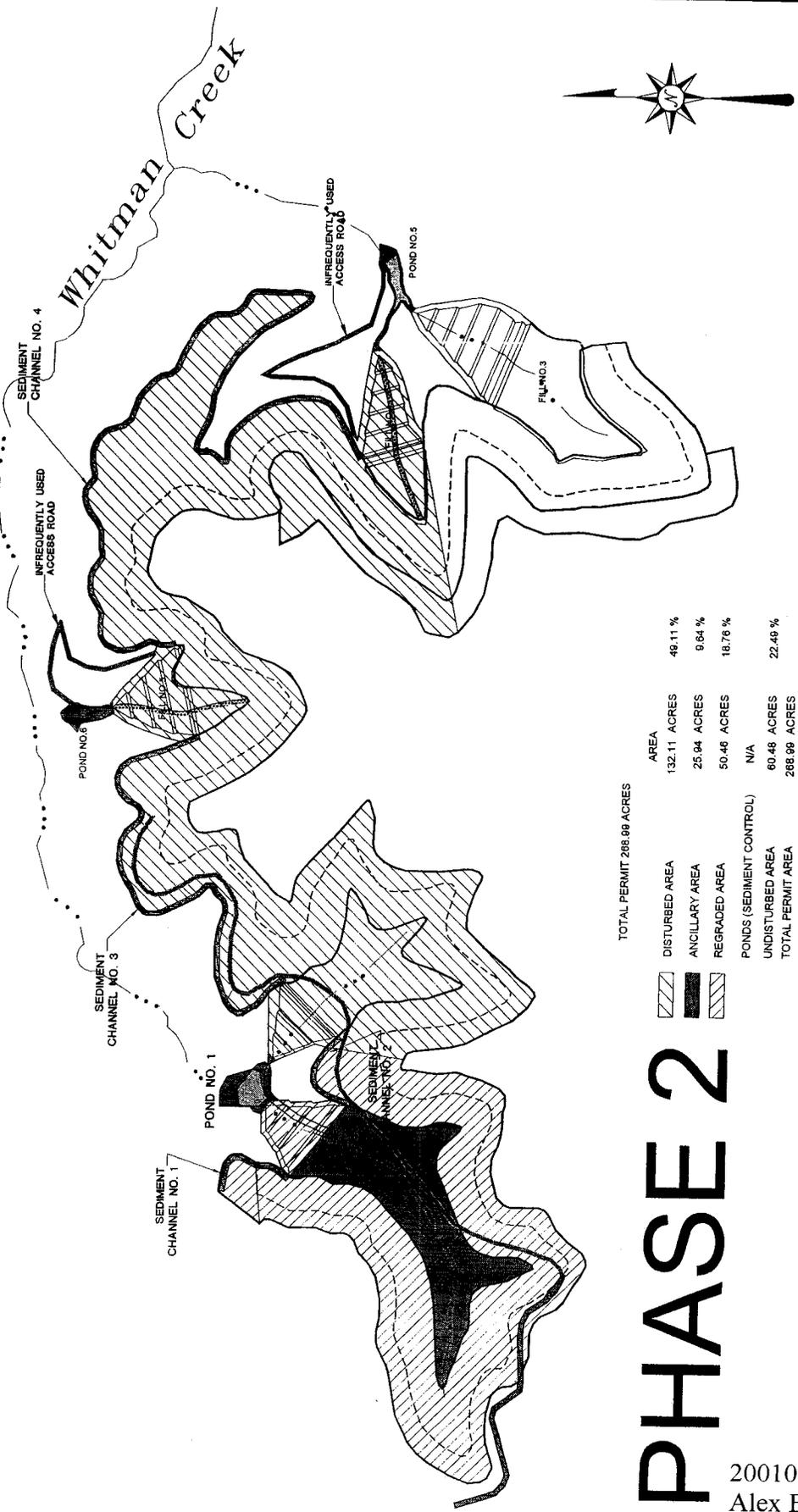
No.	Date	Revision
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Date:	11/09/04
Scale:	1"=1000'
Contour Interval:	N/A
Sheet No.:	1 of 1
Quad:	HOLDEN
County:	LOGAN

**ALEX ENERGY, INC.**  
**WHITMAN CREEK STRIP**  
 PERMIT No. 5-80 AMENDMENT NO.1  
 NPDES NO. WV1005111 MODIFICATION NO. 2

**MINING AND RECLAMATION PHASE I**

Exhibit 1



TOTAL PERMIT 288.99 ACRES

AREA	AREA	PERCENT
DISTURBED AREA	132.11 ACRES	49.11 %
ANCILLARY AREA	25.94 ACRES	9.04 %
REGRADED AREA	50.46 ACRES	18.76 %
PONDS (SEDIMENT CONTROL)	N/A	
UNDISTURBED AREA	60.48 ACRES	22.49 %
TOTAL PERMIT AREA	288.99 ACRES	

# PHASE 2

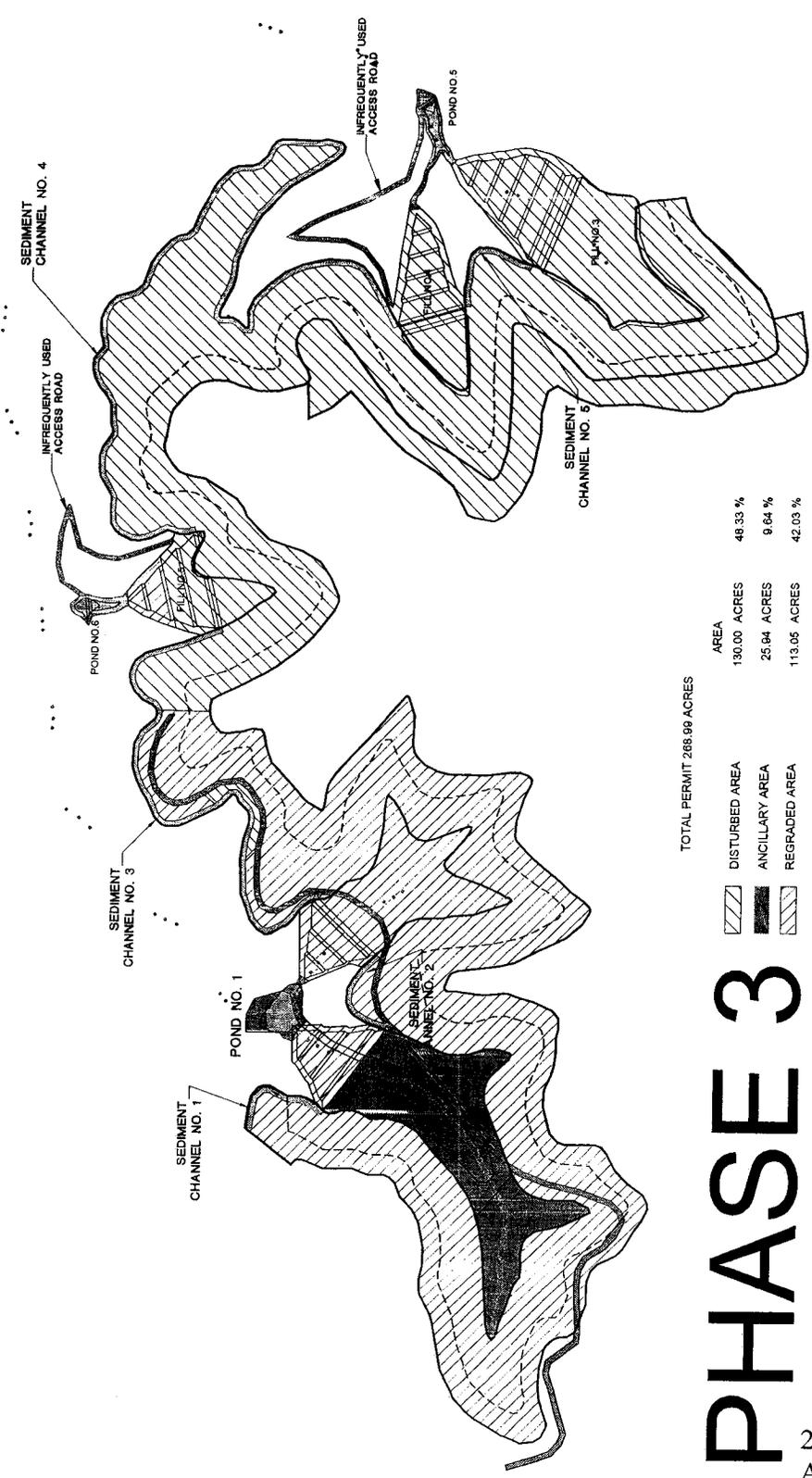
**ALEX ENERGY, INC.**  
**WHITMAN CREEK STRIP**  
 PERMIT NO. 5-80 AMENDMENT NO.1  
 NPDES NO. WV1005111 MODIFICATION NO. 2

**MINING AND RECLAMATION PHASE 2**  
 Exhibit 2

No.	Date	Revision
1	11/09/04	Original
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Date:	11/09/04
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Sheet No.:	1 of 1
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County:	LOGAN



TOTAL PERMIT 268.99 ACRES

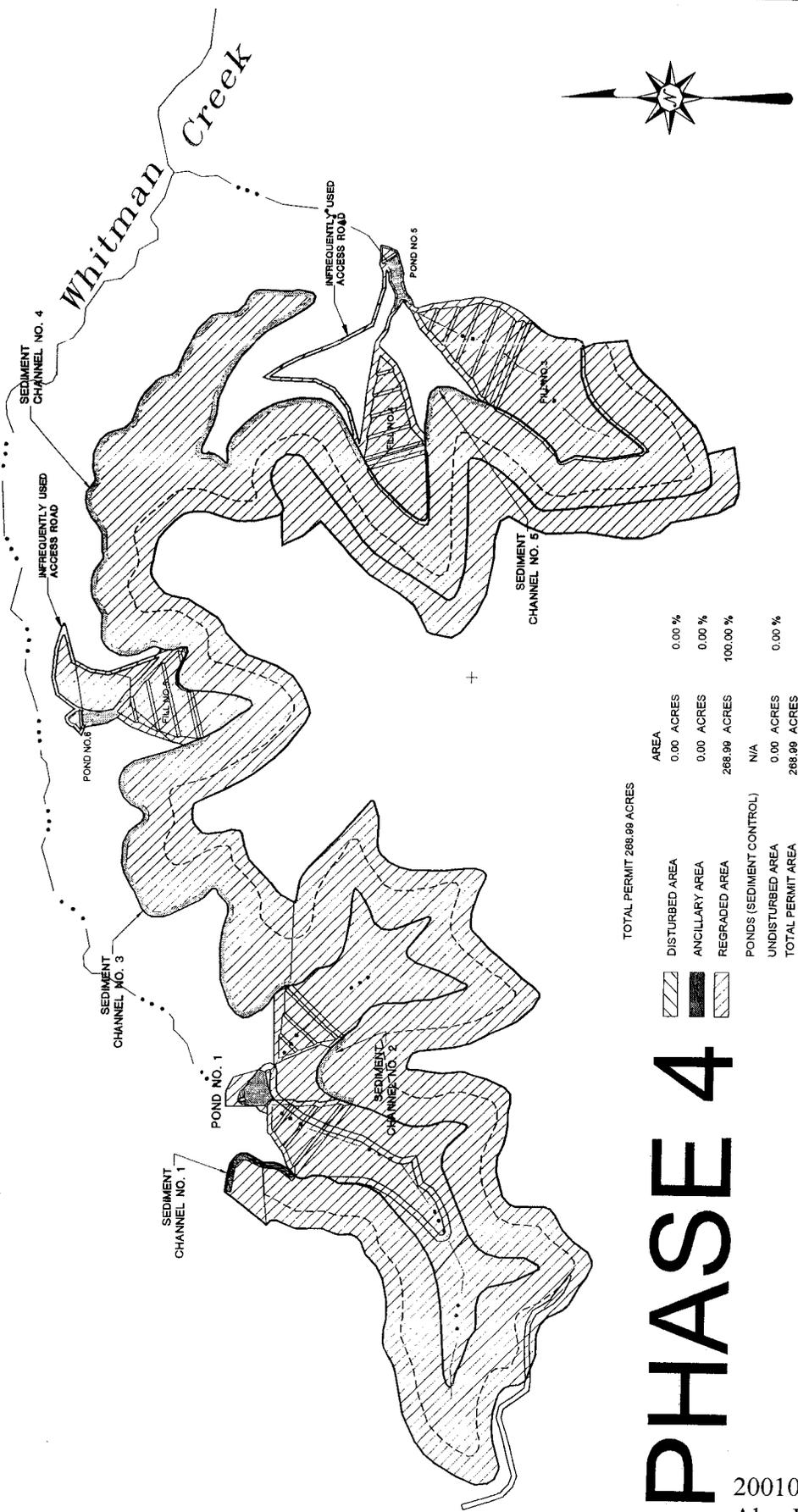
AREA	ACRES	PERCENT
DISTURBED AREA	130.00	48.33 %
ANCILLARY AREA	25.84	9.64 %
REGRADED AREA	113.05	42.03 %
PONDS (SEDIMENT CONTROL)	N/A	
UNDISTURBED AREA	0.00	0.00 %
TOTAL PERMIT AREA	268.99	

No.	Date	Revision
1	11/09/04	Original
2		
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File Name:	1000_S-5-80_Phase.dwg
Date:	11/09/04
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County:	LOGAN

200100206-2-U/T Whitman Creek  
 Alex Energy's Whitman Crk. Strip  
 Article 3 Permit No. S-5-80  
 Drawing No. 7 of 9



TOTAL PERMIT 268.89 ACRES

AREA	ACRES	PERCENT
DISTURBED AREA	0.00	0.00 %
ANCILLARY AREA	0.00	0.00 %
REGRADED AREA	268.89	100.00 %
PONDS (SEDIMENT CONTROL)	N/A	
UNDISTURBED AREA	0.00	0.00 %
TOTAL PERMIT AREA	268.89	

**ALEX ENERGY, INC.**  
**WHITMAN CREEK STRIP**  
 PERMIT NO. 5-80 AMENDMENT NO.1  
 NPDES NO. WV1005111 MODIFICATION NO. 2

**MINING AND RECLAMATION PHASE 4**  
 Exhibit 4

No.	Date	Revision
1	11/09/04	Original
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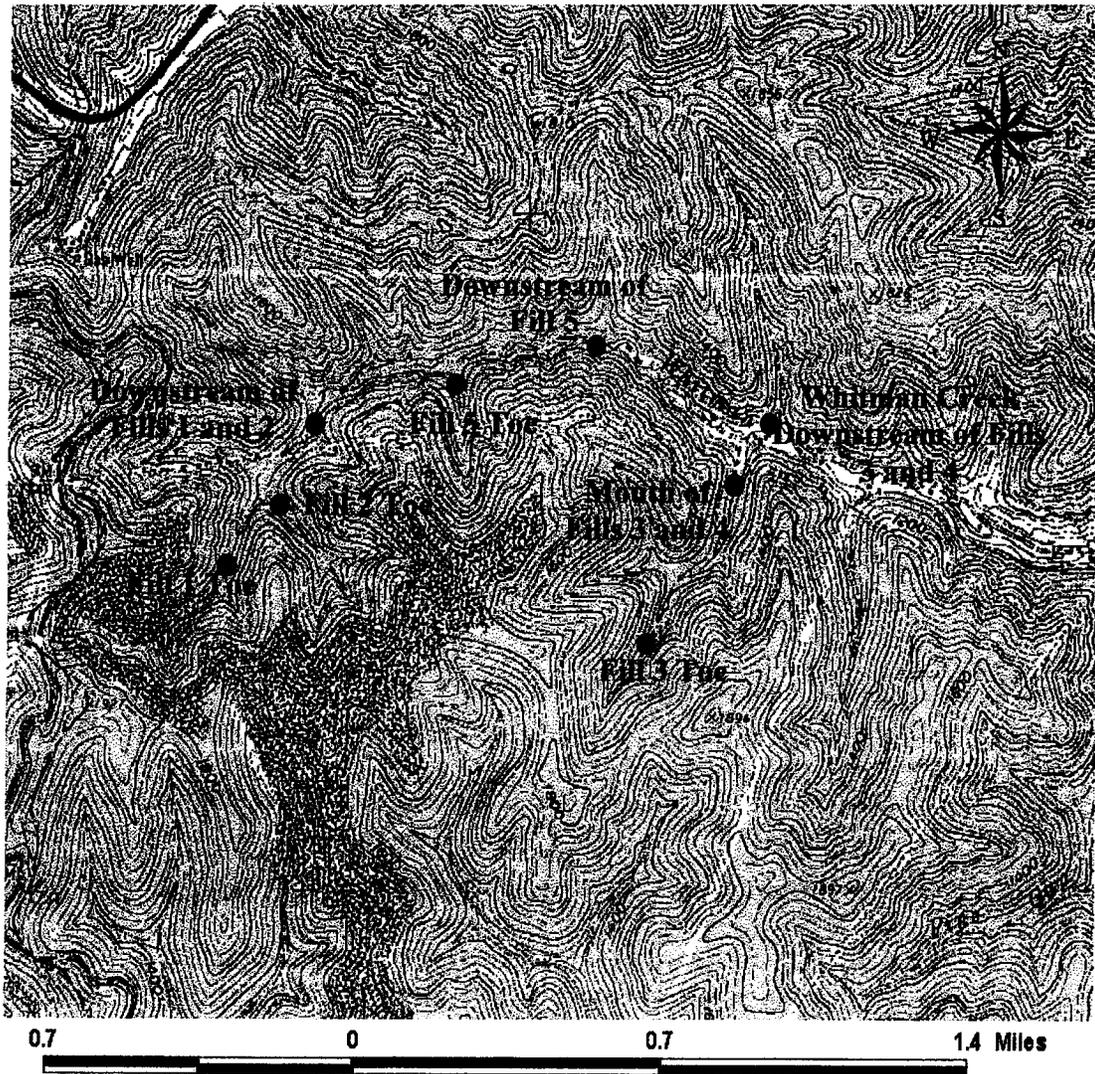


FIGURE 1. Approximate location of stations associated with Valley Fills 1 - 5 on Whitman Creek. Alex Energy Inc., March 2000.