

Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No.

Issuance Date: December 28, 2004

200401485

Stream: Ellis Creek

Closing Date: January 28, 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: Marfork Coal Company, Inc.
P.O. Box 457
Whitesville, West Virginia 25209

LOCATION: The proposed project is located on the Whitesville USGS quadrangle at latitude 37° 53'47" and longitude 81° 30'41" in Ellis Creek, near Stickney, Raleigh County, West Virginia, as depicted on the attached **Exhibit A**. The location of the proposed culvert fill is depicted on **Exhibits B and C**. Ellis Creek flows into Marsh Fork, a tributary of Coal River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place a culvert and associated fill material into waters of the U.S. in conjunction with their amended Surface Mine Control & Reclamation Act (SMCRA) deep mine permit # U-3002-99, in order to establish two deep mine portals and ancillary facilities within the Cedar Grove coal seam. The construction of the proposed deep mine facility would result in the discharge of fill material into approximately 1,554 linear feet or 0.48 acre of perennial stream. As shown on Exhibit D, the proposed culvert, 7 feet diameter and 1,554 linear feet long, would be placed within the existing stream, and earthen material placed above it to the coal seam elevation. A sediment control pond would be established above the fill material at its lower end. The fill material would remain for approximately 8 to 10 years.

The applicant has submitted a Surface Mine Application (SMA) to the West Virginia Department of Environmental Protection (WVDEP) to amend its approved mining permit U-3002-99 to allow construction of the above mentioned mining activities. The applicant's SMA is currently under review by the WVDEP to determine compliance with SMCRA regulations. The proposed project area would have a total of 23.3 acres of surface disturbance. Details regarding the mining operation can be found in the applicant's SMA on file at the WVDEP.

According to the applicant, the purpose of the project is site development for the construction of two deep mine portals in order to recover the Cedar Grove coal seam located within the proposed project area.

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. The applicant has submitted an alternatives analysis. 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: A conceptual compensatory mitigation plan (CMP) has been submitted to compensate for impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. The stated goal of the CMP is to provide an aquatic environment equal to or better than what currently exists. To compensate for these temporary impacts to waters of the U.S., the applicant proposes to mitigate on-site through in-kind restoration of aquatic resources. Upon site reclamation, the stream segment temporarily impacted by site development would be restored to its approximate pre-disturbance conditions based on pre-disturbance cross sections. The stream would be lined with Miramat 2400 (or equivalent) erosion control matting. Rip-rap would be placed on the outside bank of curves. The stream bed would be sloped to one side to provide a low flow channel. Log/pole structures would be placed across the stream, with boulders placed in the stream, in order to re-establish pools, riffles and aquatic habitat. A 50-foot vegetated riparian zone would be established along each side of the mitigation channel, as shown in **Exhibits E and F**.

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 SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This project is located within the known or historic range of the endangered Indiana bat (*Myotis sodalis*), Bald eagle (*Haliaeetus leucocephalus*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. Two options are available to the applicant in order to address Indiana bat concerns. 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. If this option is chosen, the applicant must provide the United States Fish and Wildlife Service (Service) with their survey plan for review and approval prior to conducting the survey. 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 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. Additionally, abandoned mine portals could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The applicant must survey the project area for old, abandoned mine portals. If portals appear to have suitable bat habitat characteristics, a Phase I Portal Survey must be prepared for each portal by a qualified mammalogist.

Based on the above, the Corps of Engineers cannot make a determination regarding the effect the proposed project could potentially have on the aforementioned endangered species. This public notice serves as a request to the 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 Richard Berkes, 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, please call Richard Berkes of the South Regulatory Section at 304-399-5710.

for *Yeresa D. Spagna*
Ginger Mullins, Chief
Regulatory Branch

(W)

PERMIT LIMITS 23.32 ACRES



VICINITY MAP

USGS 7.5 MIN. SERIES

WHITESVILLE AND

DOROTHY QUADRANGLES

MARFORK COAL COMPANY, INC.

APPLICATION FOR I.P.

MARSH FORK DISTRICT

RALEIGH COUNTY, W. VA.

SCALE: 1" = 2000' DATE: OCTOBER, 2000



EXISTING DISTURBED AREA

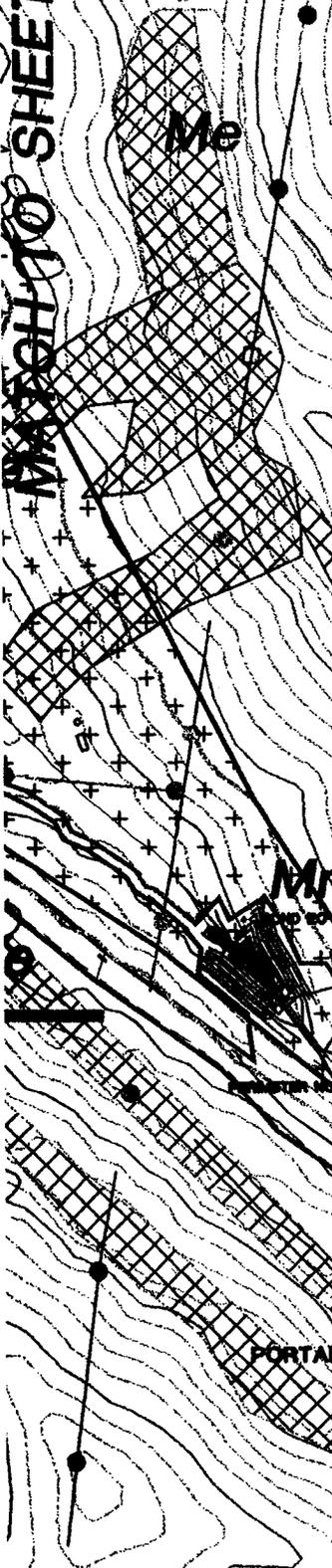
PERMITTED TO BE DISTURBED O-3017-9

U-3002-99 AMENDMENT AREA

90819

MATCH TO SHEET 1

MARFORK



2400

SHEET 2 OF 2
 MARFORK COAL COMPANY, INC.
 1" = 500'

2600

Mines

Me

2000

EXHIBIT B

PRE-MINING STREAM MEASUREMENTS

REGRADED STREAM CHANNEL

LAT. 37-53'-47"

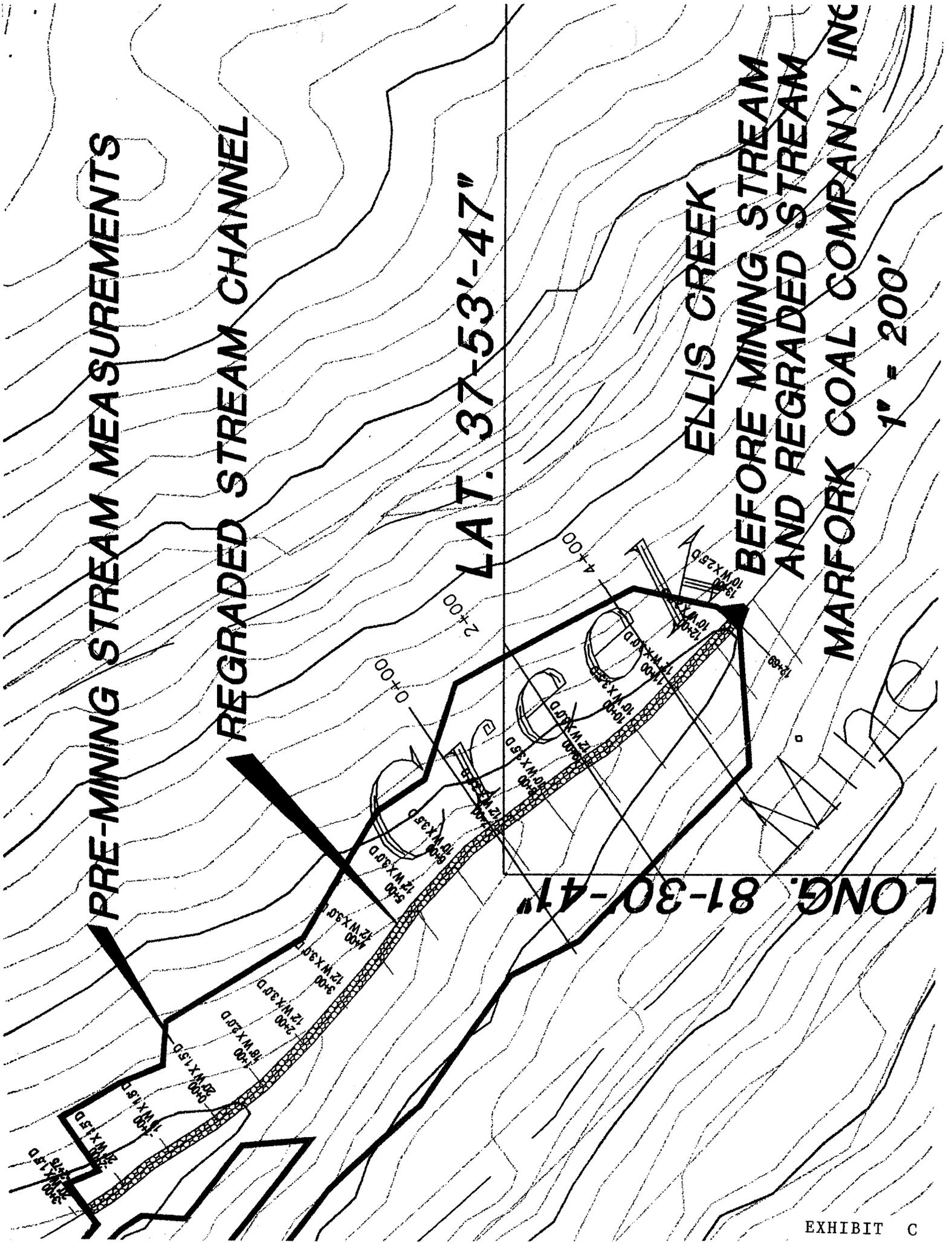
LONG. 81-30'-47"

ELLIS CREEK

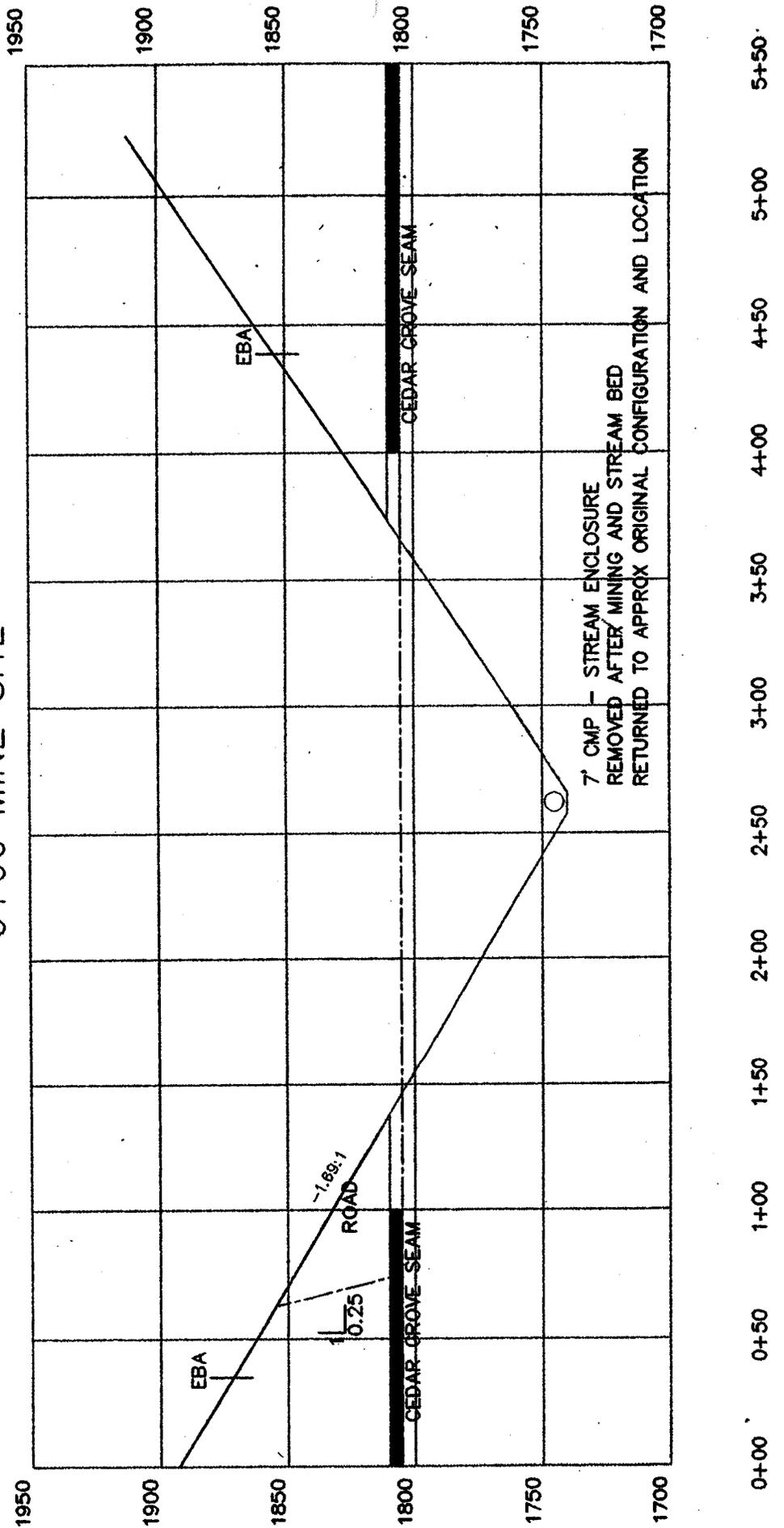
**BEFORE MINING STREAM
AND REGRADED STREAM**

MARFORK COAL COMPANY, INC

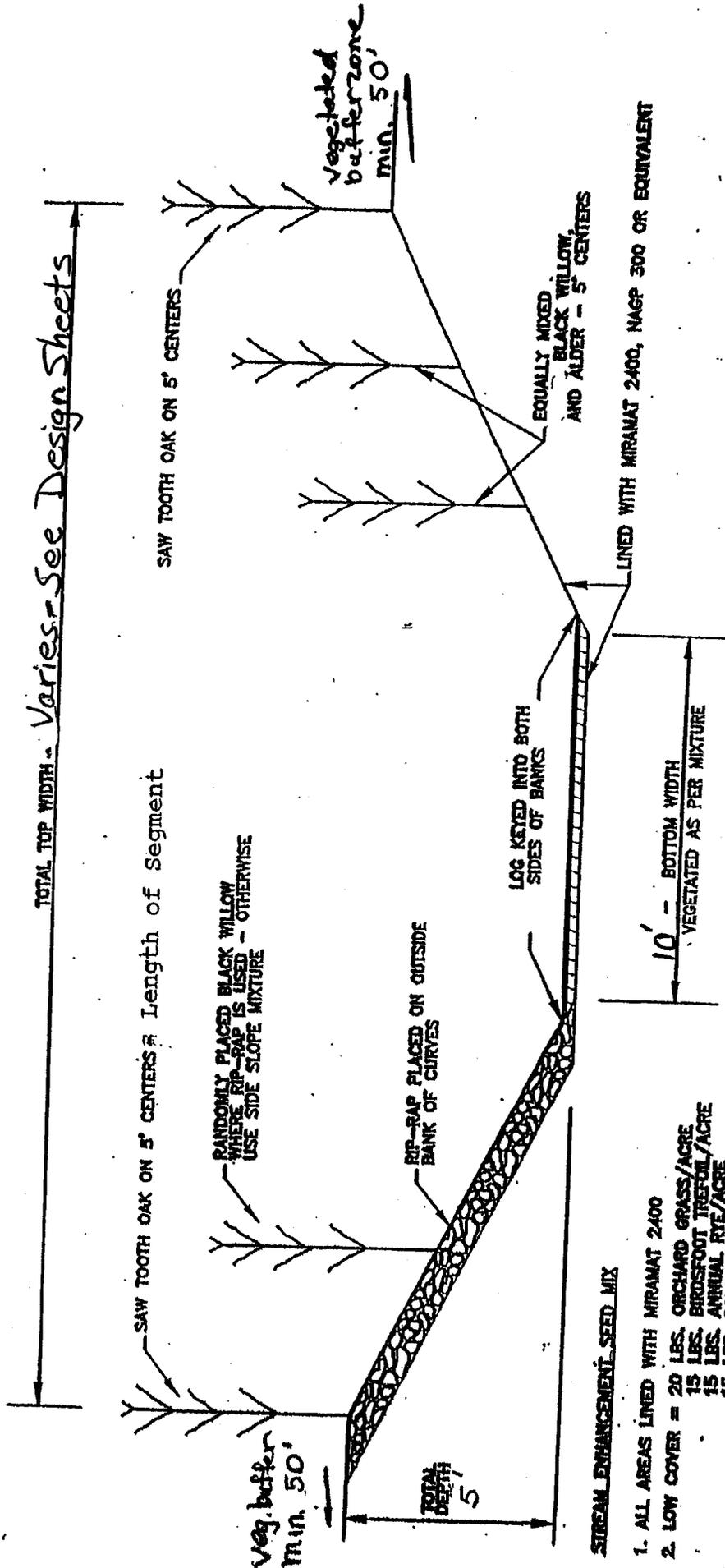
1" = 200'



0+00 MINE SITE



Regraded Stream.



STREAM ENHANCEMENT SEED MIX

1. ALL AREAS LINED WITH MIRAMAT 2400
2. LOW COVER = 20 LBS. ORCHARD GRASS/ACRE
15 LBS. BIRDFOOT TREFLOIL/ACRE
15 LBS. ANNUAL RYE/ACRE
15 LBS. FOXTAIL MILLET/ACRE

3. TREE MIX - SIDE SLOPES = 5' CENTERS - EQUALLY MIXED BLACK WILLOW, ALDER, AND

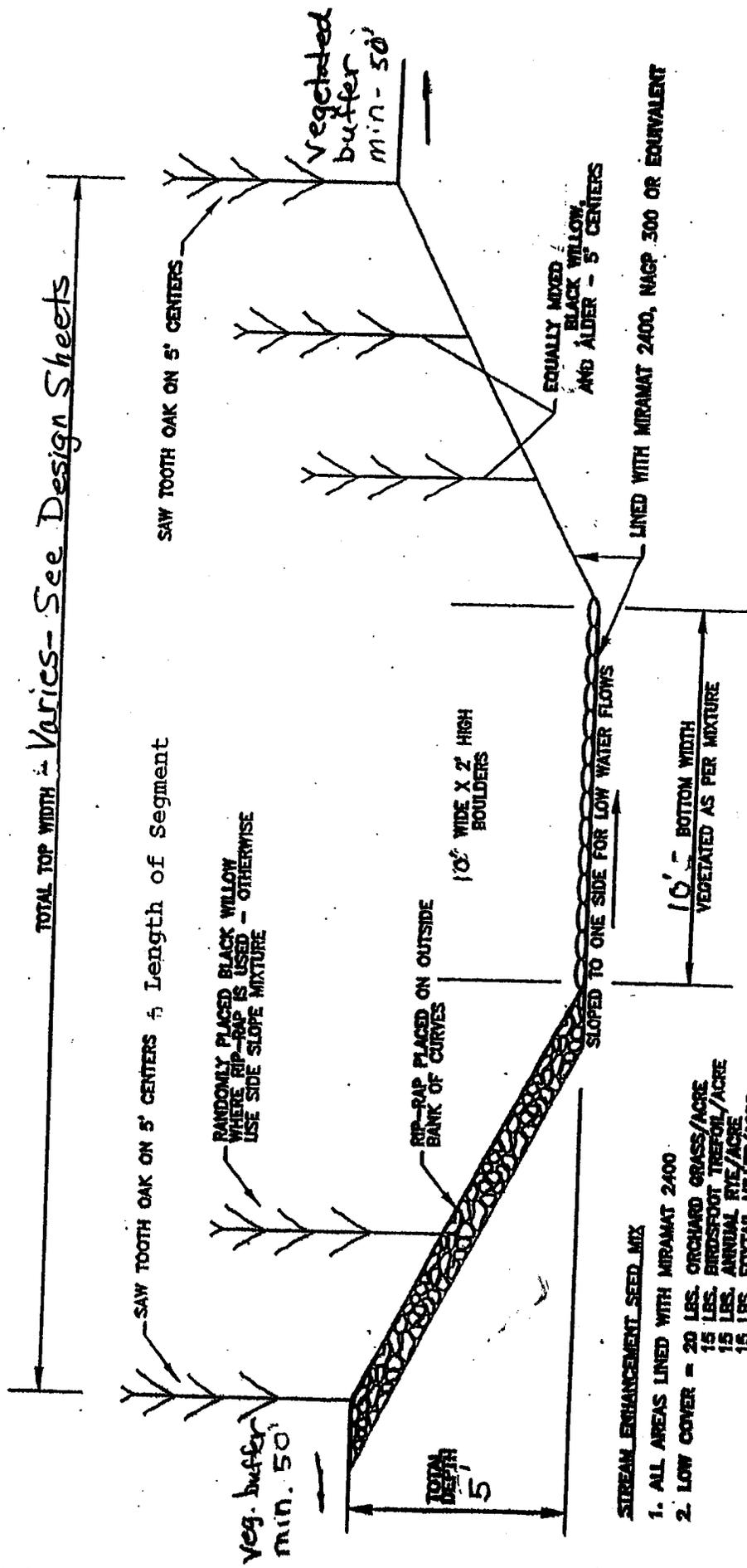
4. TOP OF CHANNEL - LINED WITH SAWTOOTH OAK AT 5' INTERVALS

FERTILIZER = 600 LBS./ACRE/10-20-10
MULCH = MIRAMAT 2400 SERVES AS MULCHING BLANKET

Buffer zone planted with native trees on 10' x 10' centers equally mixed poplar, river birch, and yellow birch.

TYPICAL CROSS-SECTION No.2
STREAM ENHANCEMENT
N.H.S.S.

Regraded Stream



STREAM ENHANCEMENT SEED MIX

1. ALL AREAS LINED WITH MIRAMAT 2400
2. LOW COVER = 20 LBS. ORCHARD GRASS/ACRE
15 LBS. BIRDFOOT TREFOIL/ACRE
15 LBS. ANNUAL RYE/ACRE
15 LBS. FOXTAIL MILLET/ACRE
3. TREE MIX - SIDE SLOPES = 5' CENTERS -
EQUALLY MIXED BLACK WILLOW, ALDER, AND
OAK AT 5' INTERVALS
4. TOP OF CHANNEL - LINED WITH SAWTOOTH
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