



Public Notice

U S Army USACE
of Engineers
Huntington District

In reply refer to Public Notice No. 200500301

Issuance Date: April 1, 2005

Stream: Unnamed Tributary Pointlick Fork

Closing Date: May 2, 2005

Please address all comments and inquiries to:

U.S. Army USACE 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 (USACE) 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 USACE Regulatory Program.

SECTION 10: The USACE 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 USACE 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 USACE request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Catenary Coal Company
5914 Cabin Creek Road
Eskdale, West Virginia 25075

LOCATION: The proposed project would be located at Latitude 38°17'54" and Longitude 81°27'35" on the Quick U.S. Geological Survey 7.5-Minute Quadrangle approximately 1.8 miles southeast of Blount, in the Malden District of Kanawha County, West Virginia. The proposed project would result in disturbances to Pointlick Fork and an unnamed tributary to Pointlick Fork. Pointlick Fork flows into Campbells Creek, which ultimately flows into the Kanawha River, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and/or fill material into approximately 1,843 linear feet (0.389 acre) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Campbells Creek No. 7 Winifrede Deep Mine [Surface Mining Control and Reclamation Act (SMCRA) Permit U-3006-04]. The Surface Mine Application for this proposed project was submitted to the West Virginia Department of Environmental Protection on November 5, 2004 and is currently under review. Impacts to waters of the U.S. would involve the construction of a temporary overburden storage fill, a drainage control structure (Pond No. 1) and a temporary stream crossing. Development of this proposed deep mine would entail cut and fill operations to facilitate the construction of a portal face-up and associated facilities, coal storage area, supply yards, conveyor facilities, substations and power poles/lines, drainage control structures and roads. Development of the proposed deep mine would affect 13.45 acres of surface area to recover nearly 3.9 million tons of bituminous coal from the Winifrede seam. Mineral extraction would be accomplished using the underground mining techniques (i.e. Room and Pillar methods).

Access to the site would require 2,300 feet of new access/haulroad construction, including one stream crossing in Pointlick Fork. The construction of this proposed stream crossing would result in impacts to 100 linear feet (0.02 acre) of intermittent stream (Pointlick Fork). Material excavated from the mine portals development and additional cut material along the sides of the hollow, required for road and conveyor right-of-way construction would be used to develop the temporary overburden storage fill. The construction of the proposed temporary storage fill would result in the discharge of dredged and/or fill material into approximately 1,435 linear feet (0.285 acre) of intermittent stream (unnamed tributary of Pointlick Fork). The temporary overburden storage fill would provide the working space need for safe and efficient coal handling facilities, environmental controls, access roads and supply areas for a proposed deep mine. The proposed operation would utilize existing infrastructure for ultimate coal processing and transportation. Portal excavation would require the removal of approximately 2.82 acres of coal, which would be extracted during facility development and transported to the existing P-574 preparation plant and marketed immediately. Additionally, approximately 308 linear feet (0.072 acre) of intermittent stream (unnamed tributary of Pointlick Fork) would be temporarily impacted by the construction of the proposed drainage control structure. Adverse impacts associated with the proposed project would be temporary in nature.

This proposed deep mine would be accomplished in four phases over an 8-year life of mine (LOM). According to the applicant, the purpose of the project is to recover the bituminous coal reserves from the Winifrede seam. Through construction and operation of the proposed Campbells Creek No. 7 Winifrede Deep Mine, the applicant seeks to recover nearly 3.9 million tons of coal from the above mentioned coal seam over the LOM. Reserves from the project site would be sold on the market to satisfy a high demand for coal. Plans for the proposed Campbells Creek No. 7 Winifrede Deep Mine 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 overall project purpose. The applicant has submitted the required alternative analysis. No permit will be issued until our review of the submitted alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. To compensate for impacts to waters of the U.S, the stream segments temporarily impacted by the proposed construction activities 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. Additionally, the applicant proposes to enhance approximately 200 linear feet of Pointlick Fork upstream of the proposed project area through the establishment of a riparian buffer zone to increase coarse organic matter. Habitat and morphological stability structures would be installed in accordance with natural stream design techniques and concepts.

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.

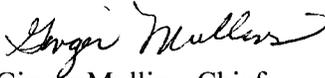
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. The United States Fish and Wildlife Service, West Virginia Field Office (USFWS) has stated if a total of less than 17 acres of Indiana bat summer habitat would be removed as a result of a proposed project, tree removal can occur at any season of the year. However, if 17 acres or more would be disturbed, the USFWS has recommended one of two options to avoid incidental take of the Indiana bat. The proposed project would affect 13.45 acres of surface area. The applicant surveyed the proposed project to determine the presence of old abandoned mine portals or cave-like structures that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The survey found no old abandoned mine portals or cave-like structures within the proposed project area. The USFWS has reviewed this proposed project and concluded in a letter dated November 23, 2004 that no federally listed endangered or threatened species would be expected to be impacted by the proposed project. 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 USACE, and other pertinent laws, regulations, and

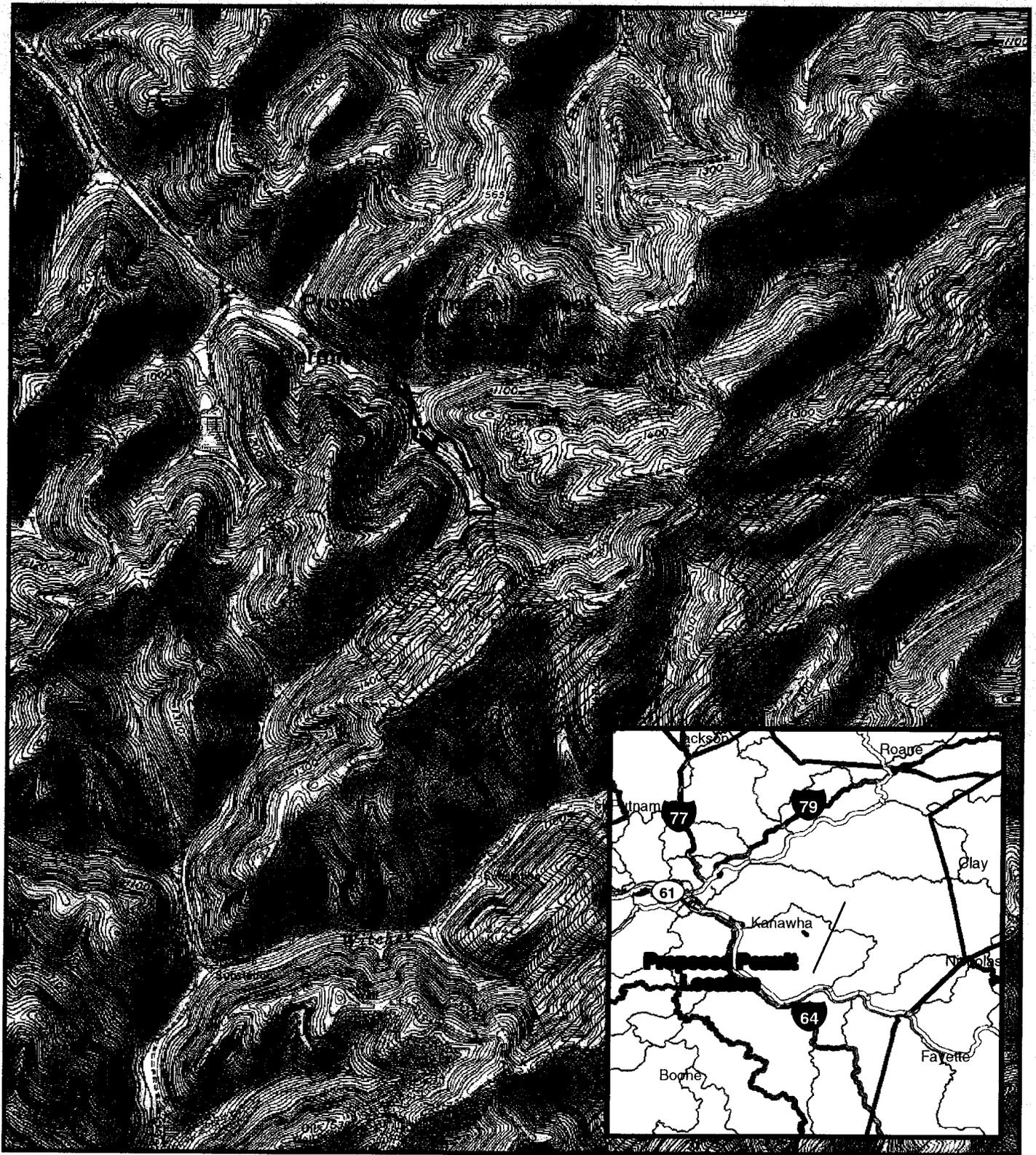
executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based 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 USACE 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 USACE 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. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE 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 become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.


Ginger Mullins, Chief
Regulatory Branch

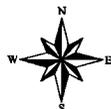
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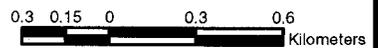
**EXHIBIT 2 - Campbells Creek No. 7 Winifrede Deep Mine
Permit No. U-3006-04 Proposed Permit Area**

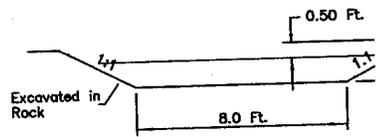
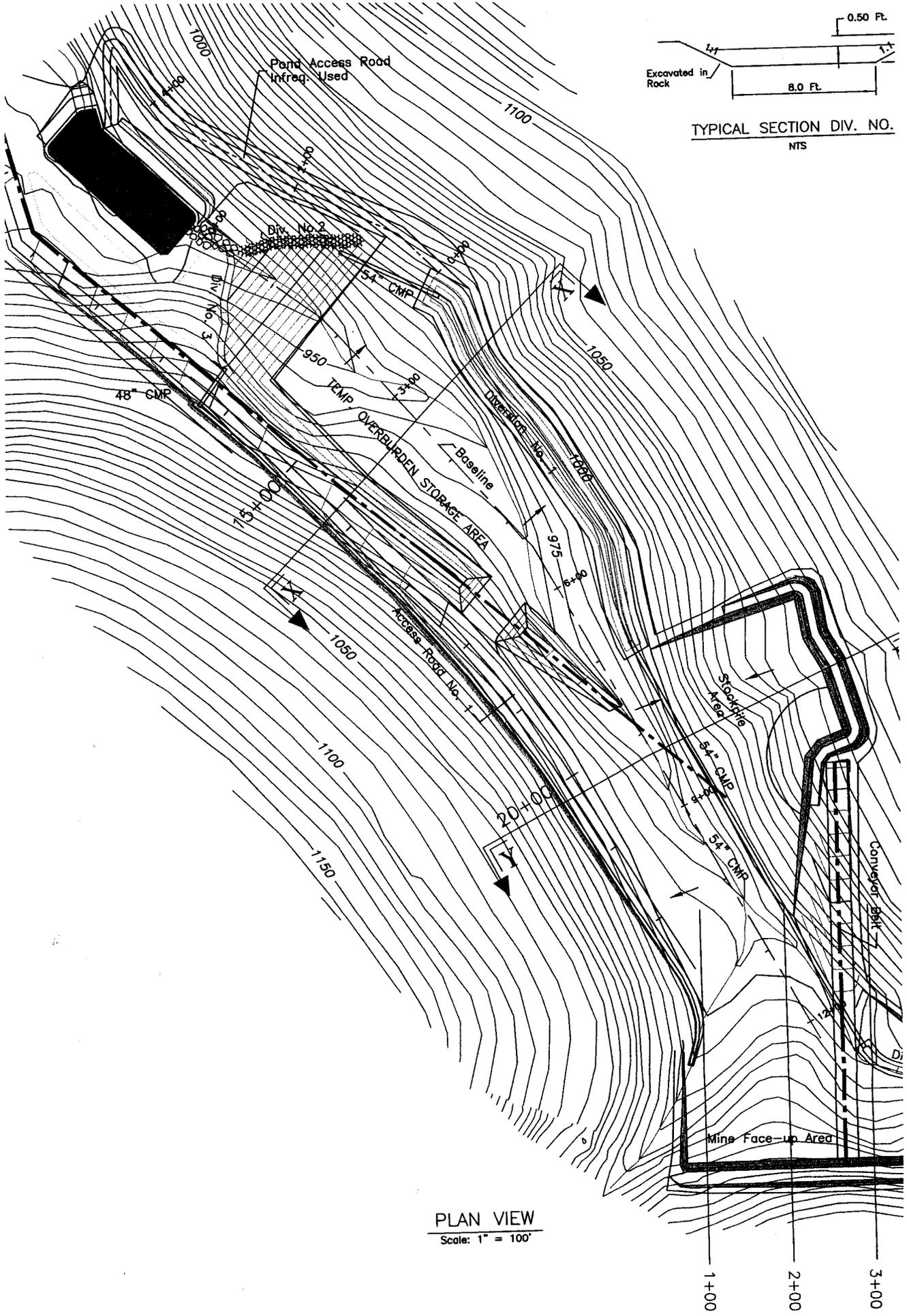


Catenary Coal Company
Campbells Creek Complex
5914 Cabin Creek
Eskdale, WV 25075



 Proposed Permit Boundary





TYPICAL SECTION DIV. NO.
NTS

PLAN VIEW
Scale: 1" = 100'