



Public Notice

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

In reply refer to Public Notice No. 200500267

Issuance Date:

August 23, 2005

Stream: Beech Branch

Closing Date:

September 22, 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' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: JMAC Leasing, Inc.
Route 3 Box 579
Olive Hill, Kentucky 41164

LOCATION: The proposed project site is depicted on the Oceana, Lorado, Mallory and Amherstdale U.S. Geological Survey Quadrangles within the watersheds of Sugarcamp Branch and Beech Branch in the Oceana District of Wyoming County, West Virginia as shown on the attached Drawing 1 titled "Location Map." The proposed project covers approximately 322.27 surface acres and would result in direct and indirect effects on unnamed tributaries of Beech Branch and main Sugarcamp Branch. Beech Branch and Sugarcamp Branch flow into Huff Creek, which ultimately flows into the Guyandot River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into approximately 13,063 linear feet (1.41 acres) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Surface Mine No. 2. The proposed operation would involve the construction of four valley fills (No. 1 through 4) and four associated sediment ponds (No. 1 through 4) and one haulroad crossing. The construction of the proposed valley fills would result in the permanent discharge of dredged and fill material into 8,413 linear feet ephemeral streams and 2,840 linear feet of intermittent streams for a total permanent stream impact of 11,253 linear feet. Valley Fills 1, 2, 3 and 4 would drain contributing watersheds of 126.67 acres, 214.97 acres, 114.79 acres, and 163.76 acres respectively. Adverse effects on the aquatic environment associated with this proposed activity would be permanent in nature. The construction of the proposed sediment ponds would result in the temporary discharge of dredged and fill material into 730 linear feet of ephemeral streams and 1,080 linear feet of intermittent streams for a total temporary stream impact of 1,810 linear feet. Adverse effects on the aquatic environment associated with this proposed activity would be temporary in nature. The individual impacts to waters of the U.S. as a result of the proposed activities are below.

Proposed Activity	Stream Proposed for Disturbance	Permanent Impacts		Temporary Impacts	
		Ephemeral-E Intermittent-I Linear Feet	Acres	Ephemeral-E Intermittent-I Linear Feet	Acres
Valley Fill 1	2 nd Left Hollow of Beech Branch	1378 (E)	0.299 (E)		
Sediment Pond 1	2 nd Left Hollow of Beech Branch			530 (E)	0.1041(E)
Valley Fill 2	1 st Right Fork of 1 st Left Hollow of Beech Branch	880 (I) 2320(E)	0.0666 (I) 0.1885(E)		
Sediment Pond 2	1 st Right Fork of 1 st Left Hollow of Beech Branch			340 (I)	0.0257(I)
Valley Fill 3	1 st Left Fork of 1 st Left Hollow of Beech Creek	310 (I) 1600 (E)	0.0445 (I) 0.1620 (E)		
Sediment Pond 3	1 st Left Fork of 1 st Left Hollow of Beech Creek			340 (I)	0.0481 (I)
Valley Fill 4	Sugarcamp Branch	1650 (I) 3115 (E)	0.1706 (I) 0.1924(E)		
Sediment Pond 4	Sugarcamp Branch			300 (I) 200 (E)	0.0374 (I) 0.0438 (E)
Haulroad 1	Beech Branch			100 (I)	0.0247 (I)

The proposed activity would result in disturbances to 322.27 acres of surface area, including 71.56 acres of mineral removal, to facilitate the recovery of 2.1 million tons of coal reserves from the No. 8 Lower, No. 8 Upper, Upper Chilton A and riders, Upper Chilton B, and Chilton seams. The proposed mineral removal operations would be conducted using contour, auger and highwall mining methods and would generate nearly 33 million cubic yards of overburden material. Nearly 20 million tons of this material would be placed back upon the highwalls created by the mining process. The remaining excess overburden material, in the amount of nearly 13 million cubic yards, would be placed in the proposed valley fills. The applicant's Surface Mine Application (S-4001-04) is pending review with the West Virginia Department of Environmental Protection pursuant to the Surface Mining Control and Reclamation Act of 1977. The proposed project would be accomplished in 5 general phases over a period of 4.5 years. 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 recover bituminous coal reserves from the No. 8 Lower, No. 8 Upper, Upper Chilton A and riders, Upper Chilton B, and Chilton seams. Plans for the proposed Surface Mine No. 2 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 not submitted a compensatory mitigation plan (CMP) to compensate for the proposed permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. However, according to the Department of the Army application, the applicant in concert with the WV Division of Natural Resources, WVDEP and the Buffalo Creek Watershed Association propose to develop a mitigation plan to restore, enhance and preserve stream segments within the Buffalo Creek watershed.

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 proposed project area. According to the applicant, a mist net survey was completed by Apogee Environmental Consultants, LLC. However, this survey has not been provided to the Corps for review. Additionally, according to a letter dated May 26, 2005 from the U.S. Fish and Wildlife Service (USFWS), West Virginia Field Office, a winter habitat mine portal survey was completed on October 20 and 21, 2004 by Apogee Environmental Consultants, Inc. The survey efforts did not capture any federally listed endangered bats. The USFWS concluded no federally listed endangered and threatened species are expected to be impacted by the project. Upon receipt of the survey, the Corps will determine what effect, if any, the proposed project would have on the two federally listed endangered species. This public notice serves as a request to the USFWS 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 interests 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 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. If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.

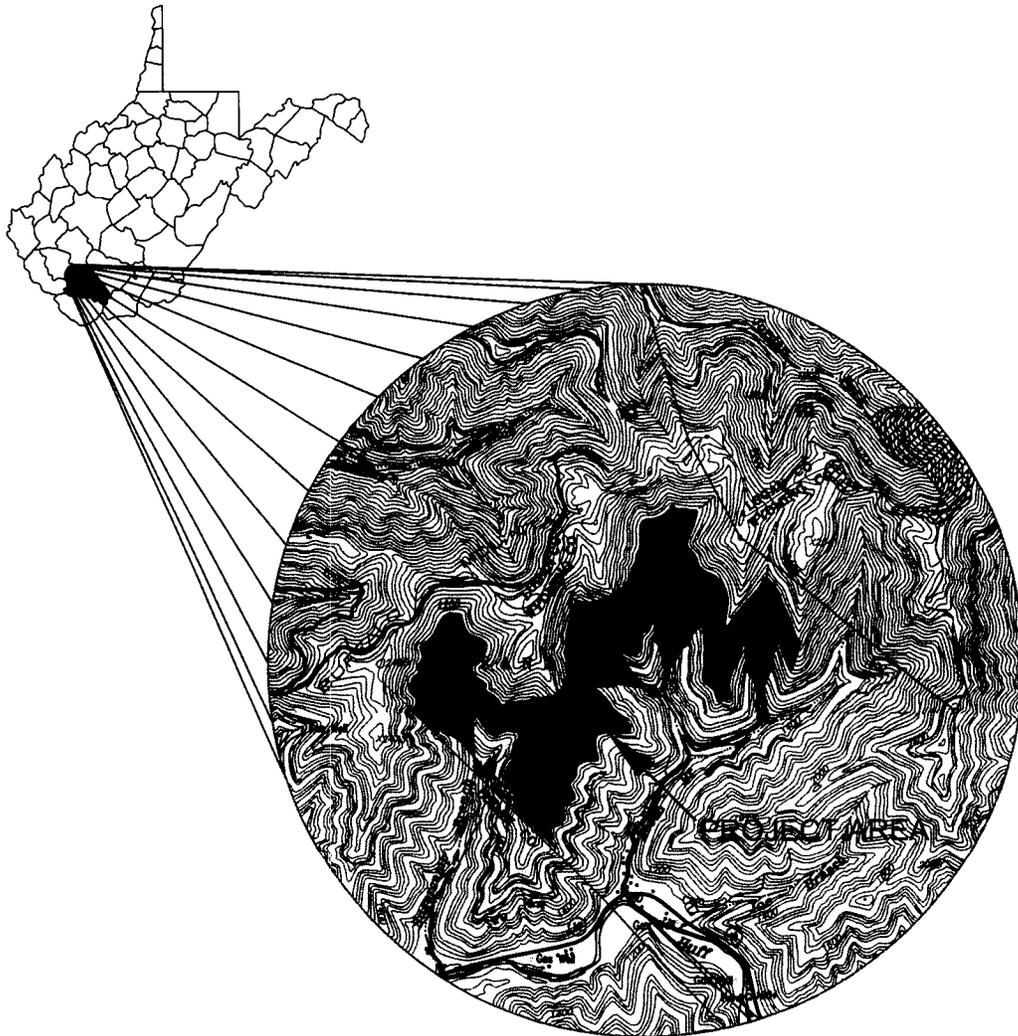
A handwritten signature in black ink, appearing to read "Ginger Mullins". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Ginger Mullins, Chief
Regulatory Branch

(W)

JMAC LEASING, INC.

RT. 3, BOX 579
OLIVE HILL, KY 41164



1 of 10

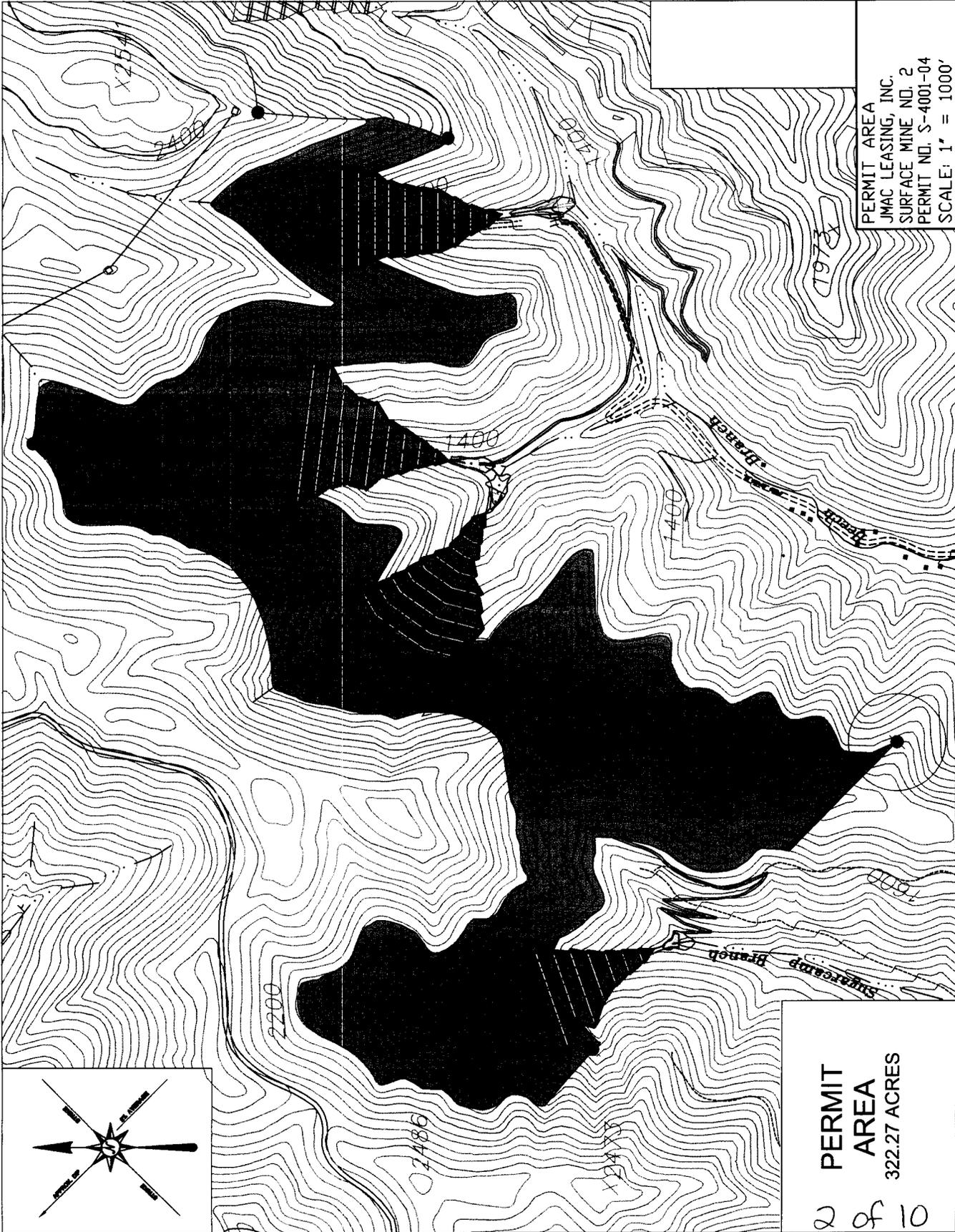
Figure 1 of 10

DATE: July, 2005	CAD BY: <i>B. Miles</i>
FILENAME:	PROJECT:

JMAC LEASING, INC.
RT. 3, BOX 579
OLIVE HILL, KY 41164
Surface Mine No. 2
Location Map

ARTICLE 3 PERMIT NO. 8-4001-04 NPDES PERMIT NO. WV1021192





PERMIT AREA
 JMAC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 1000'

PERMIT
 AREA
 322.27 ACRES
 2 of 10

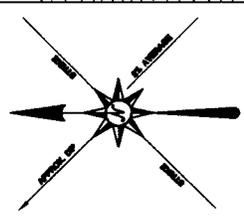


Figure 2 of 10

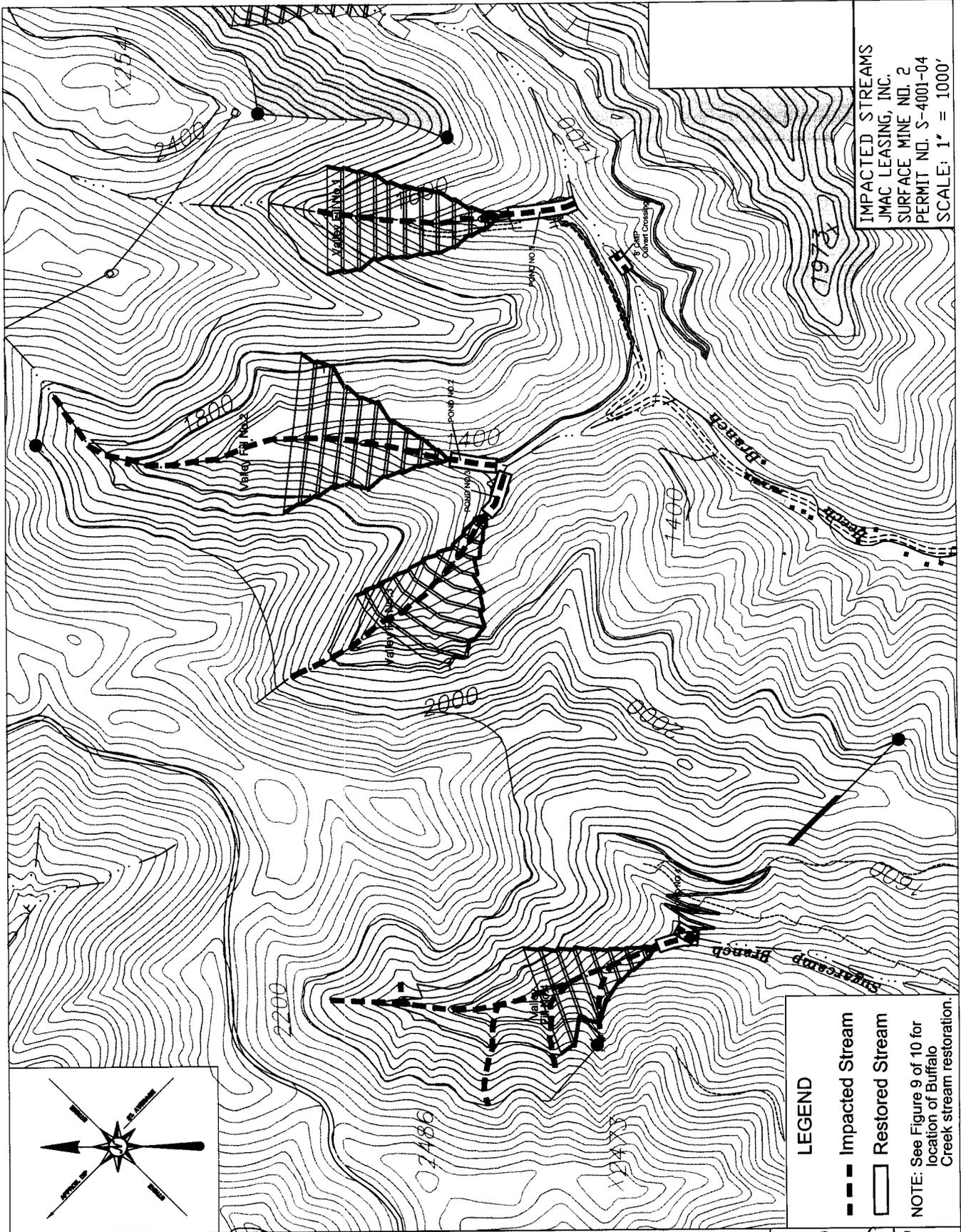
JMAC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Permit Area



TECHNICAL ASSOCIATES, INC.

DATE: July, 2005 CAD BY: *B. Miller*
 FILENAME: PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV1021192



IMPACTED STREAMS
 JMAC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 1000'

LEGEND
 - - - Impacted Stream
 _____ Restored Stream
 NOTE: See Figure 9 of 10 for location of Buffalo Creek stream restoration.

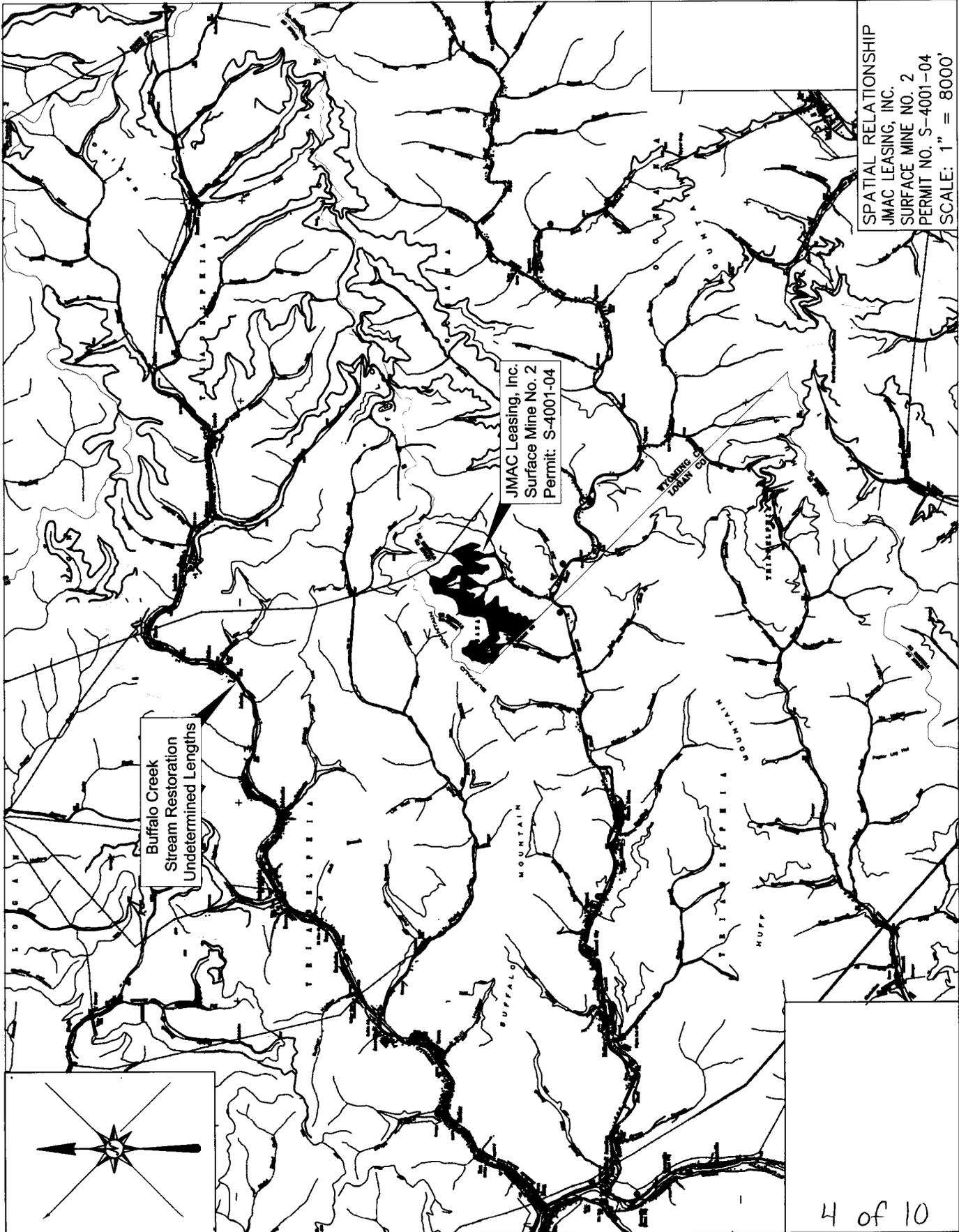
Figure 3 of 10

JMAC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Impacted Streams Map

3 of 10
HERITAGE
 TECHNICAL ASSOCIATES, INC.

DATE: July, 2005
 CAD BY: *B. Miller*
 FILENAME:
 PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV02182



SPATIAL RELATIONSHIP
 JMAC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 8000'

Buffalo Creek
 Stream Restoration
 Undetermined Lengths

JMAC Leasing, Inc.
 Surface Mine No. 2
 Permit: S-4001-04

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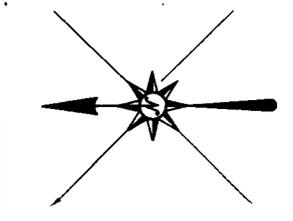


Figure 4 of 10

JMAC LEASING, INC.

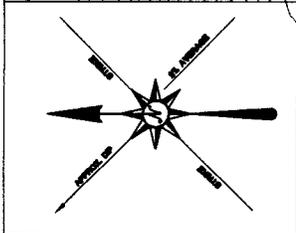
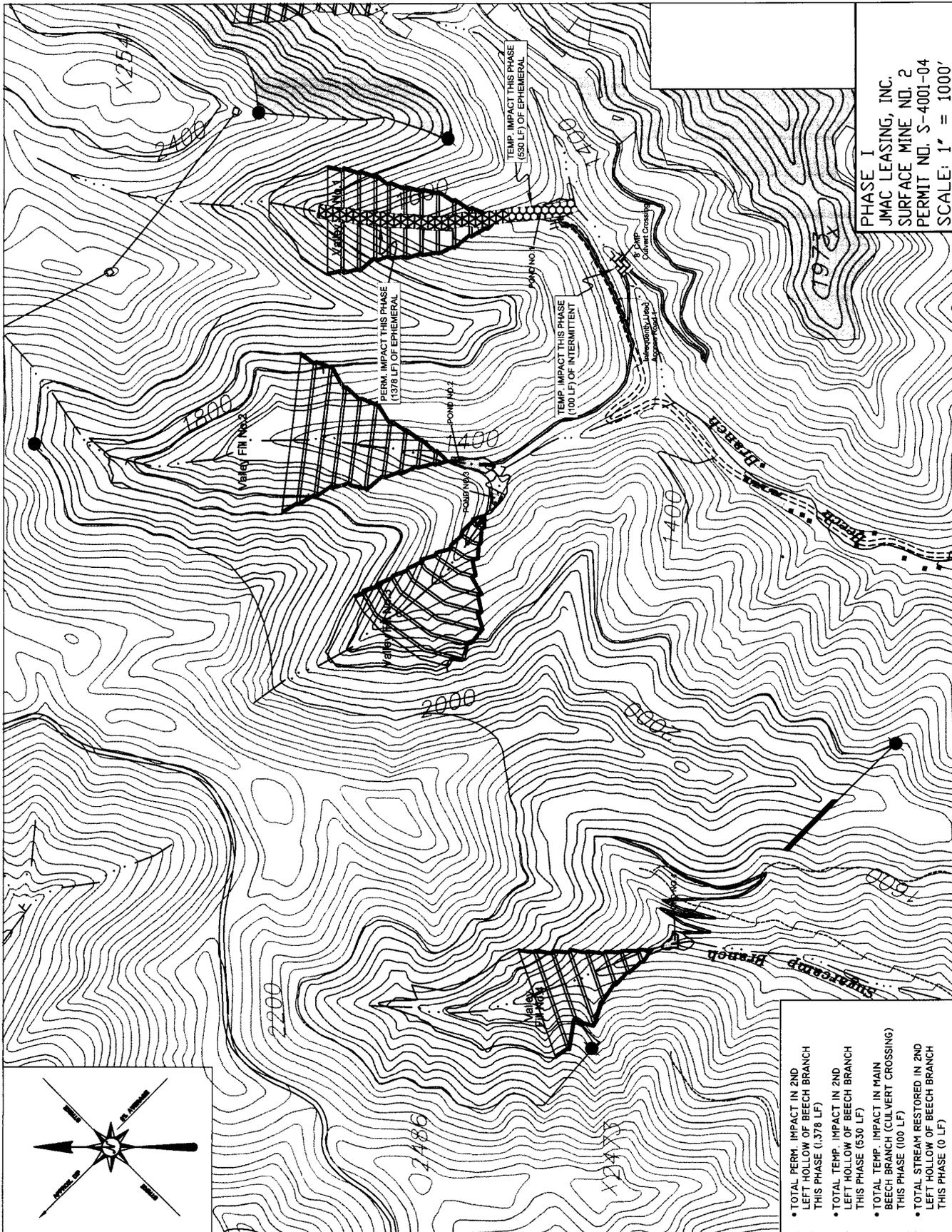
RT. 3, BOX 579
 OLICE HILL, KY 41164

**Surface Mine No. 2
 Spatial Relationship Map**

DATE: July, 2005
 CAD BY: *B. Miller*
 FILENAME:
 PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WY102192

HERITAGE
 TECHNICAL ASSOCIATES, INC.



- TOTAL PERM. IMPACT IN 2ND LEFT HOLLOW OF BEECH BRANCH THIS PHASE (1,378 LF)
- TOTAL TEMP. IMPACT IN 2ND LEFT HOLLOW OF BEECH BRANCH THIS PHASE (530 LF)
- TOTAL TEMP. IMPACT IN MAIN BEECH BRANCH (CULVERT CROSSING) THIS PHASE (100 LF)
- TOTAL STREAM RESTORED IN 2ND LEFT HOLLOW OF BEECH BRANCH THIS PHASE (0 LF)

Figure 5 of 10

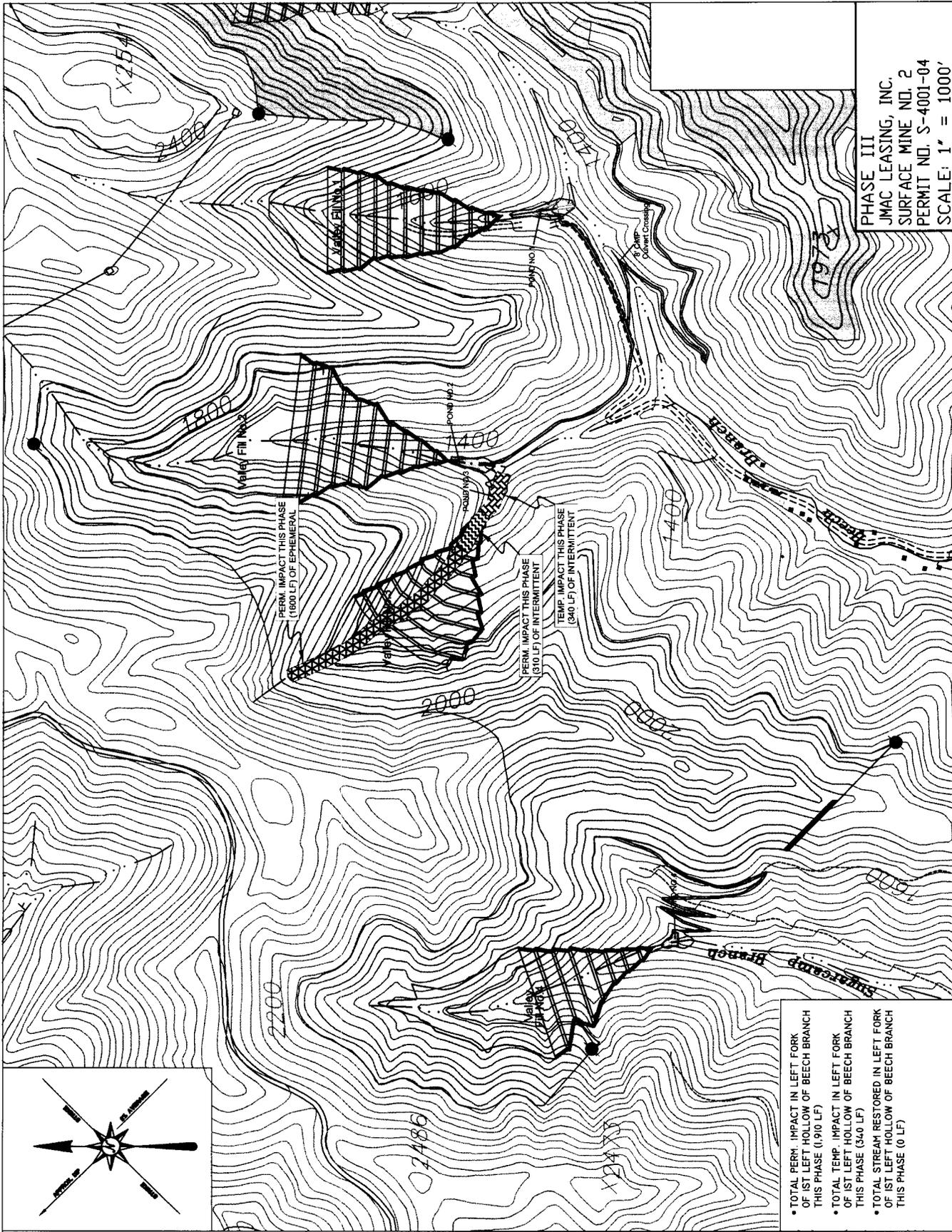
JMAC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Phase I

5 of 10

 TECHNICAL ASSOCIATES, INC.

DATE:	July, 2005	CAD BY:	<i>B. Miller</i>
FILENAME:		PROJECT:	

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV1021182



PHASE III
 JMAC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 1000'

- TOTAL PERM. IMPACT IN LEFT FORK OF 1ST LEFT HOLLOW OF BEECH BRANCH THIS PHASE (1,910 LF)
- TOTAL TEMP. IMPACT IN LEFT FORK OF 1ST LEFT HOLLOW OF BEECH BRANCH THIS PHASE (340 LF)
- TOTAL STREAM RESTORED IN LEFT FORK OF 1ST LEFT HOLLOW OF BEECH BRANCH THIS PHASE (0 LF)

Figure 7 of 10

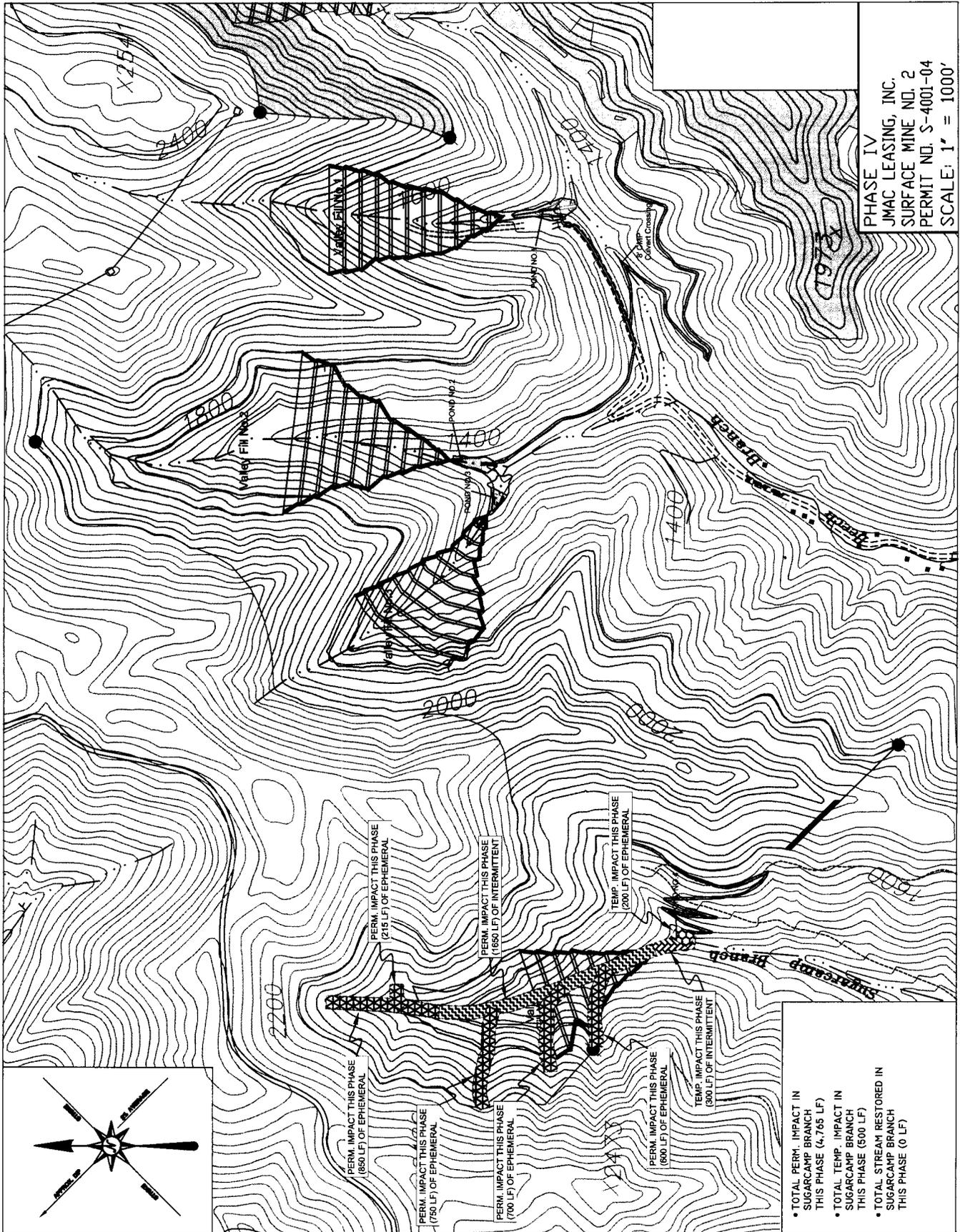
JMAC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Phase III

7 of 10
HERITAGE
 TECHNICAL ASSOCIATES, INC.

DATE: July, 2005 CAD BY: *B. Miller*
 FILENAME: PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV1021192

PHASE IV
 JMARC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 1000'



- TOTAL PERM. IMPACT IN SUGARCAMP BRANCH THIS PHASE (4,765 LF)
- TOTAL TEMP. IMPACT IN SUGARCAMP BRANCH THIS PHASE (500 LF)
- TOTAL STREAM RESTORED IN SUGARCAMP BRANCH THIS PHASE (0 LF)

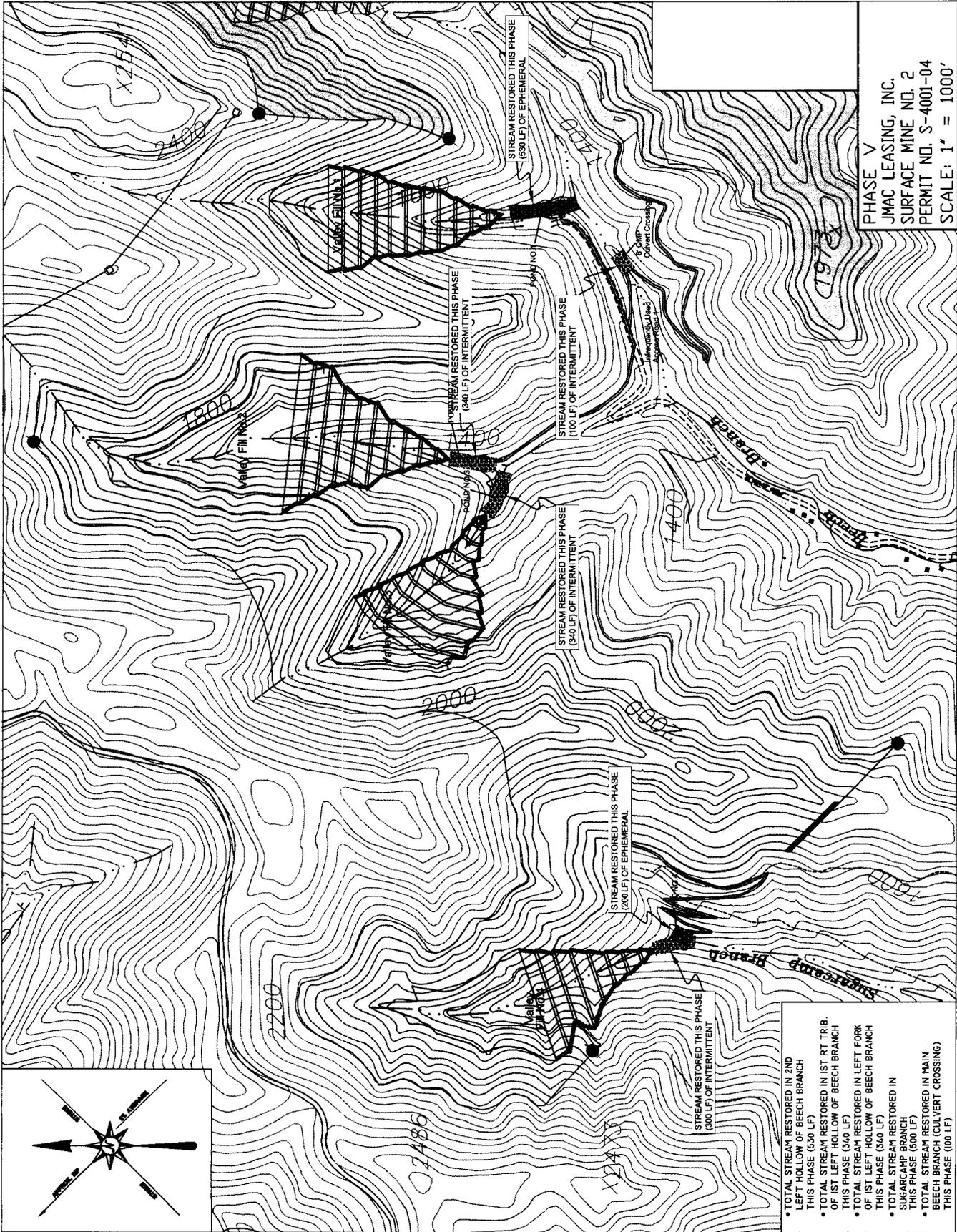
Figure 8 of 10

JMARC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Phase IV

DATE: July, 2005
 CAD BY: *B. Miller*
 FILENAME:
 PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV102192

8 of 10
HERITAGE
 TECHNICAL ASSOCIATES, INC.



PHASE V
 JMARC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 1000'

- TOTAL STREAM RESTORED IN 2ND LEFT HOLLOW OF BEECH BRANCH THIS PHASE (530 LF)
- TOTAL STREAM RESTORED IN 1ST RT TRIB. OF 1ST LEFT HOLLOW OF BEECH BRANCH THIS PHASE (340 LF)
- TOTAL STREAM RESTORED IN LEFT FORK OF 1ST LEFT HOLLOW OF BEECH BRANCH THIS PHASE (340 LF)
- TOTAL STREAM RESTORED IN SUGARCAMP BRANCH THIS PHASE (500 LF)
- TOTAL STREAM RESTORED IN MAIN BEECH BRANCH (CULVERT CROSSING) THIS PHASE (100 LF)

Figure 9 of 10

JMARC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Phase V

9 of 10
HERITAGE
 TECHNICAL ASSOCIATES, INC.

DATE: July, 2005
 CAD BY: *B. Miller*
 FILENAME:
 PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV1021192

MAP LEGEND

-  PERMANENT IMPACT EPHEMERAL
-  PERMANENT IMPACT INTERMITTENT
-  TEMPORARY IMPACT EPHEMERAL
-  TEMPORARY IMPACT INTERMITTENT
-  RESTORED STREAM EPHEMERAL
-  RESTORED STREAM INTERMITTENT
-  RESTORED STREAM PERENNIAL

PHASE	IMPACTED						RESTORED		
	EPHEMERAL		INTERMITTENT		PERENNIAL		EPH	INT	PER
	TEMP.	PERM.	TEMP.	PERM.	TEMP.	PERM.			
I	530	1378	100	0	0	0	0	0	0
II	0	2320	340	880	0	0	0	0	0
III	0	1600	340	310	0	0	0	0	0
IV	200	3115	300	1650	0	0	0	0	0
V	0	0	0	0	0	0	730	1080	0
TOTAL	730	8413	1080	2840	0	0	730	1080	SEE NOTE

NOTE: UNDETERMINED LENGTHS OF BUFFALO CREEK

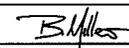
MAP KEY
 JMAC LEASING, INC.
 SURFACE MINE NO. 2
 PERMIT NO. S-4001-04
 SCALE: 1" = 1000'

Figure 10 of 10

JMAC LEASING, INC.
 RT. 3, BOX 579
 OLIVE HILL, KY 41164
Surface Mine No. 2
Map Key

10 of 10


TECHNICAL ASSOCIATES, INC.

DATE: July, 2005
 CAD BY: 
 FILENAME: PROJECT:

ARTICLE 3 PERMIT NO. S-4001-04 NPDES PERMIT NO. WV102192