



Public Notice

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

In reply refer to Public Notice No.

200500360

Issuance Date:

October 4, 2005

Stream:

Miller Creek

Closing Date:

November 3, 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 (CWA). This notice also 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: Consol of Kentucky, Inc.
1800 Washington Road
Pittsburgh, Pennsylvania 15241

LOCATION: The project site is located at Latitude 37° 45' 05" Longitude 82° 18' 34" on the south side of Miller Creek Road, approximately 4,000 feet southeast of its intersection with WV Route 119, near Nolan, in Mingo County, West Virginia. The limits of the project site are depicted on the **Sheet 1 of 4**.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into waters of the United States (U. S.), in conjunction with the construction operation and reclamation of the Alma Seam Deep Mine. The purpose of the proposed project is to recover bituminous coal from the Alma coal seam. The applicant proposes to disturb approximately 9.2 surface acres in conjunction with the proposed construction of a deep mine face-up, mine yard, and drainage structures, as depicted in the attached drawings **Sheets 2-4 of 4**. Construction of the proposed project would result in the discharge of approximately 2,197 cubic yards of dredged and/or fill material into an approximately 1.38 acres of waters of the U.S., including approximately 1.36 acres of long-term temporary adverse impacts to forested riparian wetlands and approximately 510 linear feet (0.02 acre) of long-term temporary adverse impacts to an unnamed intermittent tributary of Miller Creek. Miller Creek is a tributary of the Tug Fork, a navigable water of the U. S. Adverse impacts to waters of the U.S. would remain in place for approximately 21 years, which is the anticipated life of mine. The applicant has estimated that the proposed project would result in the recovery of approximately 30 million tons bituminous coal. The West Virginia Department of Environmental Protection (WVDEP) is currently reviewing the Article 3 Permit application for this project (number pending) pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

MITIGATION PLAN: To compensate for adverse impacts to waters of the U. S. associated with the proposed project the applicant proposes to restore all waters of the U.S. proposed to be adversely impacted as a result of this project. Currently the applicant is preparing a mitigation plan that would involve the construction of wetlands and other aquatic resources in an area along Miller Creek located adjacent to the project site. These mitigation activities would be undertaken in an effort to provide compensatory mitigation for temporal impacts associated with work in waters of the U.S. that is proposed to remain in place for a period of approximately 21 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 WVDEP.

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 will serve as coordination with the West Virginia Division of Culture and History (WVDCH) regarding the project and its potential effects to known historical, architectural, or archeological sites listed in or eligible for inclusion in the NRHP.

ENDANGERED/THREATENED SPECIES REVIEW: The U.S. Fish and Wildlife Service's latest published version of endangered and threatened species has been reviewed to determine if any endangered or threatened species may occur in the project area. The proposed project would

be located in a county where the endangered Indiana bat (*Myotis sodalis*) is known to occur. This public notice serves as a request to the U.S. Fish and Wildlife Service to provide any additional information the agency may have on the extent to which the proposed project would affect any listed or proposed to be listed endangered or threatened species, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers, 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. 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.

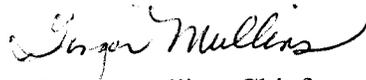
The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether 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. 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 public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the District Engineer may be based. For accuracy and completeness of the 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 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.

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 Ms. Jennifer Walker, 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 that 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 Ms. Jennifer Walker of the South Regulatory Section at 304-399-6956.

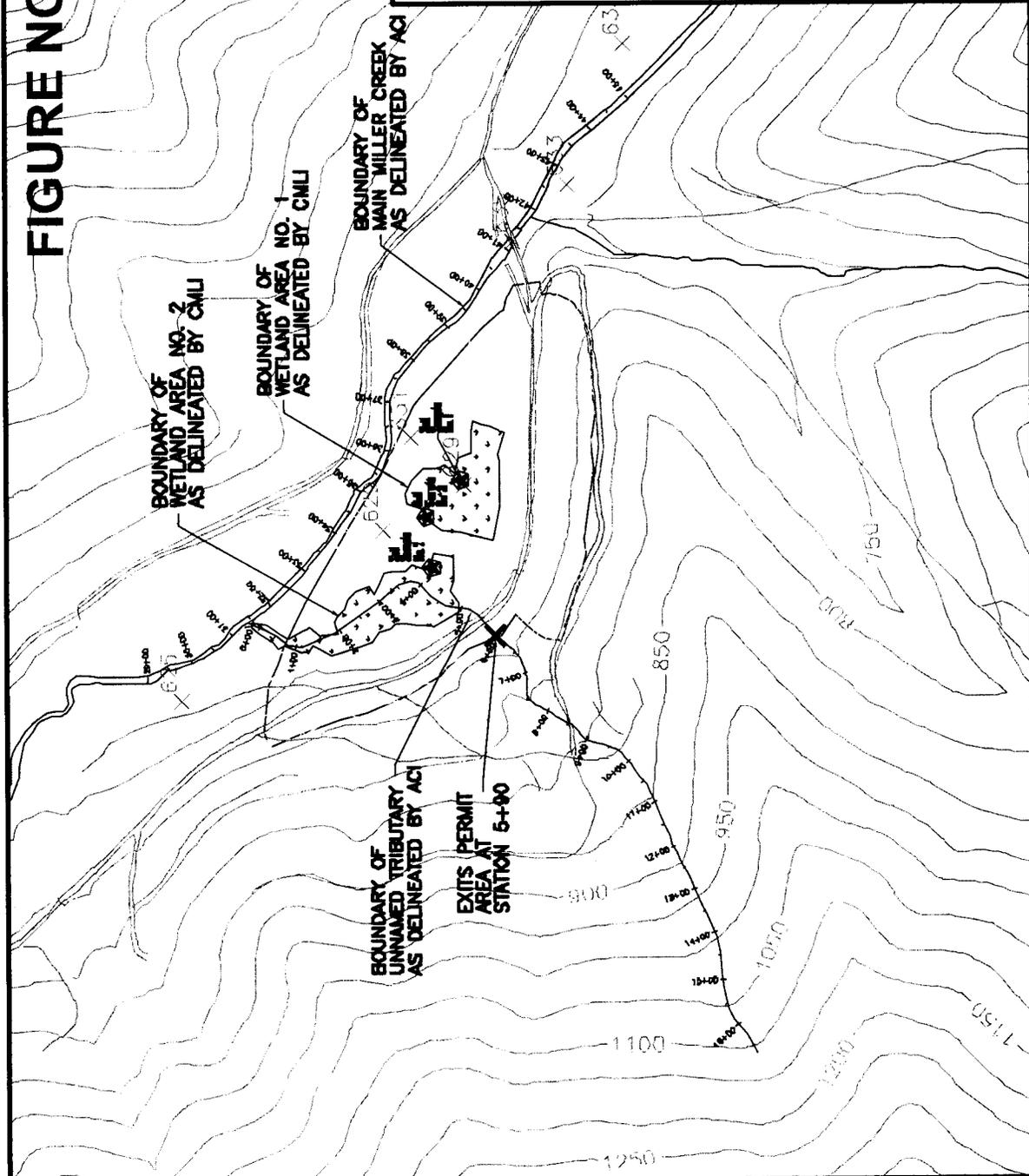


Ginger Mullins, Chief
Regulatory Branch

(W)

FIGURE NO. 2

WETLAND ACRES DISTURBED	
NO. 1	0.63
NO. 2	0.73



LEGEND

- PERMIT AREA
- SOIL SAMPLE LOCATION
- JURISDICTIONAL WATER AREA
- EPHEMERAL/INTERMITTENT POINT

NOTES:

- 1) MAIN MILLER CREEK ADJACENT TO THE PROJECT AREA WAS PREVIOUSLY VERIFIED BY THE CORPS OF ENGINEERS ON SEPT. 21, 2004.
- 2) WETLAND AREA NO. 2 HAS A TOTAL ACREAGE OF 0.77.

SCALE



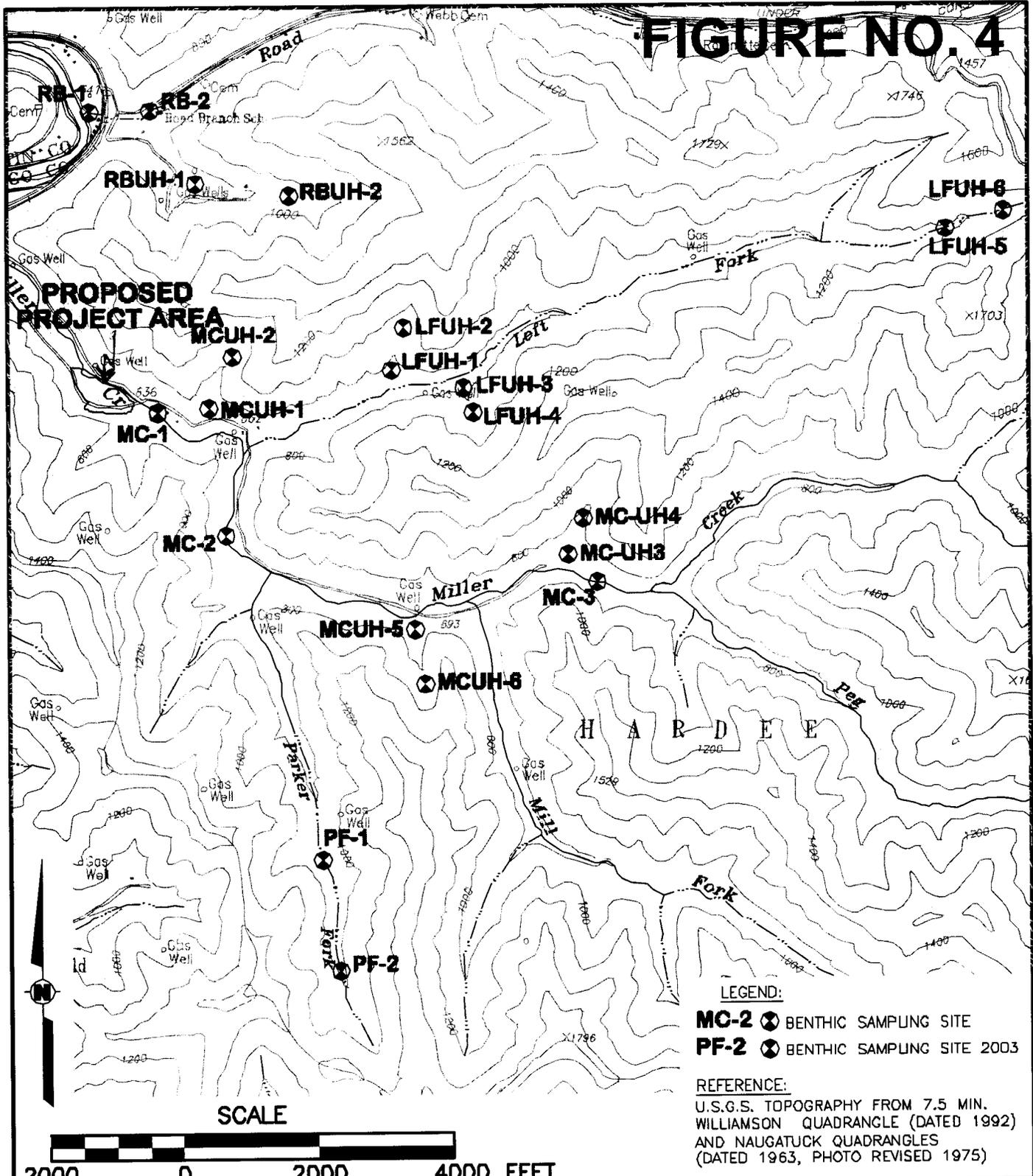
REV.	DATE	DESCRIPTION	P.L.
01/07/05		ISSUES AS PER WAJULFA COMMENTS	
05/05/05		REVISED PERMIT AREA	

Alliance Consulting, Inc.
 Engineers - Constructors - Scientists
 1000 WASHINGTON ROAD, PITTSBURGH, PA 15241

SMA NO. _____ NPDES NO. _____
JURISDICTIONAL DETERMINATION MAP
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA
 Prepared For
 CONSOL OF KENTUCKY, INC.
 1600 WASHINGTON ROAD, PITTSBURGH, PA 15241

CAD BY	TLG	05/02/05	PROJECT NO.	804-424-176	FIGURE NO.
CHECKED BY					
APPROVED BY					DRAWING NO. 804-424-A1

FIGURE NO. 4



LEGEND:

- MC-2** ⊗ BENTHIC SAMPLING SITE
- PF-2** ⊗ BENTHIC SAMPLING SITE 2003

REFERENCE:

U.S.G.S. TOPOGRAPHY FROM 7.5 MIN. WILLIAMSON QUADRANGLE (DATED 1992) AND NAUGATUCK QUADRANGLES (DATED 1963, PHOTO REVISED 1975)

Alliance Consulting, Inc.
Engineers
Constructors
Scientists

BECKLEY, WV (304) 255-0491
 RALEIGH, NC (919) 881-2287

BENTHIC SAMPLING SITE MAP
 NPDES EXHIBIT I-VI-A
 ALMA DEEP MINE
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA
 PREPARED FOR
 CONSOL OF KENTUCKY, INC.
 1800 WASHINGTON ROAD
 PITTSBURGH, PA 15241

DRAWN BY	DSM	05/09/05
CHECKED BY		
APPROVED BY		
DRAWING NUMBER	FIGURE NUMBER	
B04-424-A8		