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## Public Notice

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

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In reply refer to Public Notice No. 200500872      Issuance Date:  
November 21, 2005

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Stream: Garden Hollow      Closing Date:  
December 20, 2005

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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

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

**LOCATION:** The proposed project site is located near the town of Eskdale in the Cabin Creek District of Kanawha County, West Virginia as shown on the attached Drawing 1 titled "Location Map." The proposed project covers approximately 786 surface acres and would result in direct and indirect effects on Garden Hollow and unnamed tributaries of Cabin Creek. Garden Hollow flows into Cabin Creek, which ultimately flows into the Kanawha 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 16,355 linear feet (1.1 acres) of waters of the U.S. in conjunction with the construction, operation and reclamation of the Briar Mountain Surface Mine. The proposed operation would involve the construction of two valley fills (No. 1 and 2) and two associated sediment ponds (No. 2 and 3), removal of bituminous coal reserves underlying stream beds, and diversion of acid mine drainage. The construction of the proposed valley fills would result in the permanent discharge of dredged and fill material into 8,875 linear feet (0.58 acre) of intermittent streams and 600 linear feet (0.024) of ephemeral stream for a total permanent stream impact of 9,475 linear feet (0.604 acre) as detailed on the attached drawings titled "Phase I" and "Phase II." Valley Fills 1 and 2 would drain contributing watersheds of 241.35 acres and 220.65 acres respectively. The removal of bituminous coal reserves underlying stream beds and the associated construction of Sediment Pond 3 would permanently impact 6,583 linear feet (0.5193 acre) of unnamed tributaries of Cabin Creek. The construction of the proposed Sediment Pond 2 would result in the temporary discharge of dredged and fill material into 125 linear feet (0.0069 acre) of intermittent. Additionally, the previously constructed Sediment Pond 7 impacted 172 linear feet (0.0026 acre) of intermittent stream. Lastly, the applicant proposes to divert acid mine drainage from approximately 114 linear feet (0.0063 acre) of intermittent stream in the Unnamed Tributary No. 3 away from the proposed activities.

The proposed activity would result in disturbances to 786 acres of surface area, including 678.70 acres of mineral removal, to facilitate the recovery of nearly 9.9 million tons of coal reserves from the 6-Block, 5-Block, Clarion, Upper Belmont (Stockton), Belmont (Stockton), Lower Belmont (Stockton), Belmont Leader (Stockton Leader), Upper Coalburg, Coalburg, Upper Buffalo Creek, Buffalo Creek, Winifrede, Lower Winifrede, Chilton A Rider, Chilton A, Williamson, Lower Williamson, Upper Cedar Grove, Cedar Grove, Lower Cedar Grove, Upper No. 2 Gas, No. 2 Gas, Powellton, Lower Powellton, Eagle A, Eagle Rider, Eagle and Little Eagle seams. The proposed mineral removal operations would be conducted using multiple seam contour, point removal and auger and highwall mining methods and would generate nearly 165 million cubic yards of overburden material. Nearly 97 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 68 million cubic yards, would be placed in the proposed Valley Fills 1 and 2 (9.1 and 14.5 million tons respectively) and the mined through areas (~ 43 million tons). The applicant's Surface Mine Application (S-3020-05) 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 6 general phases over a period of 7.25 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 above referenced coal seams. Plans for the proposed Briar Mountain Surface 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 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 USACE. However, according to the Department of the Army application, the applicant in concert with the WV Division of Natural Resources, WVDEP and the Cabin Creek Watershed Association propose to develop a mitigation plan to restore, enhance and preserve stream segments within the Cabin 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 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. 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 USACE for review. Upon receipt of the survey, the USACE 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 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. 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.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)

# JMAC LEASING, INC.

RT. 3, BOX 579  
OLIVE HILL, KY 41164

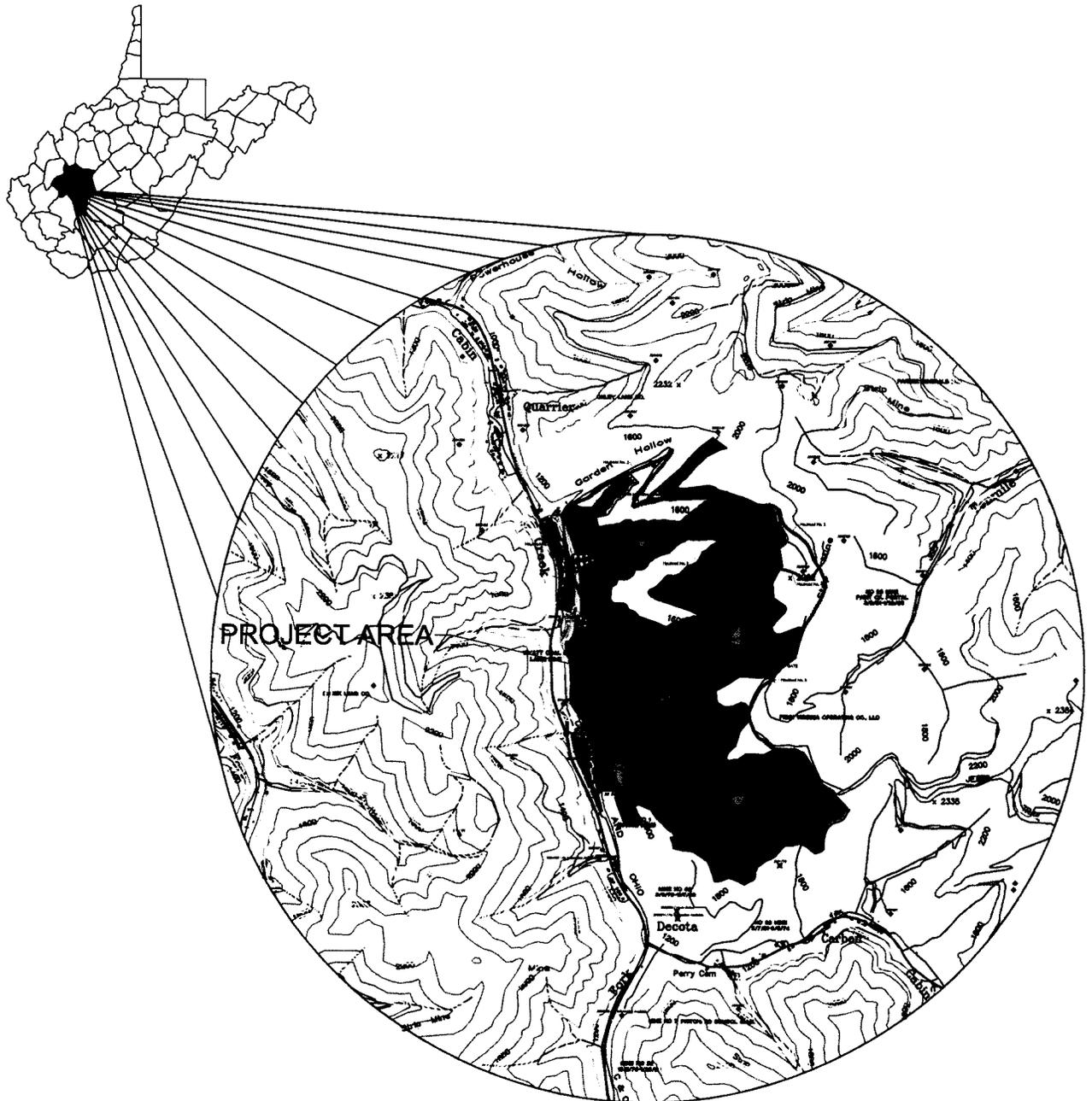
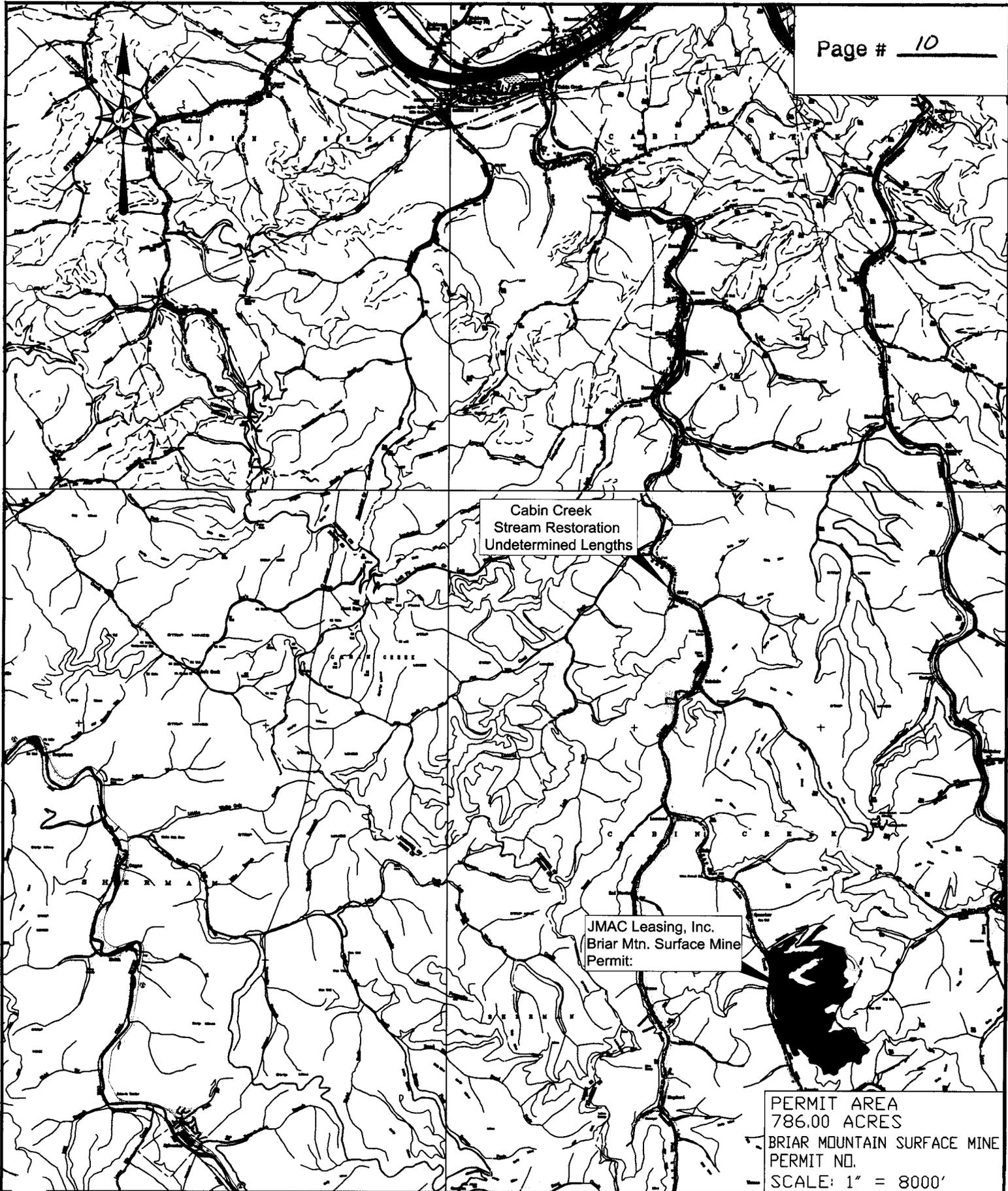


Figure 1 of 10

BRIAR MOUNTAIN SURFACE MINE  
Location Map



DATE: October, 2005	CAD BY: JLF
FILENAME: server\delta\04183	PROJECT: 04109



Cabin Creek  
Stream Restoration  
Undetermined Lengths

JMAC Leasing, Inc.  
Briar Mtn. Surface Mine  
Permit:

PERMIT AREA  
786.00 ACRES  
BRIAR MOUNTAIN SURFACE MINE  
PERMIT NO.  
SCALE: 1" = 8000'

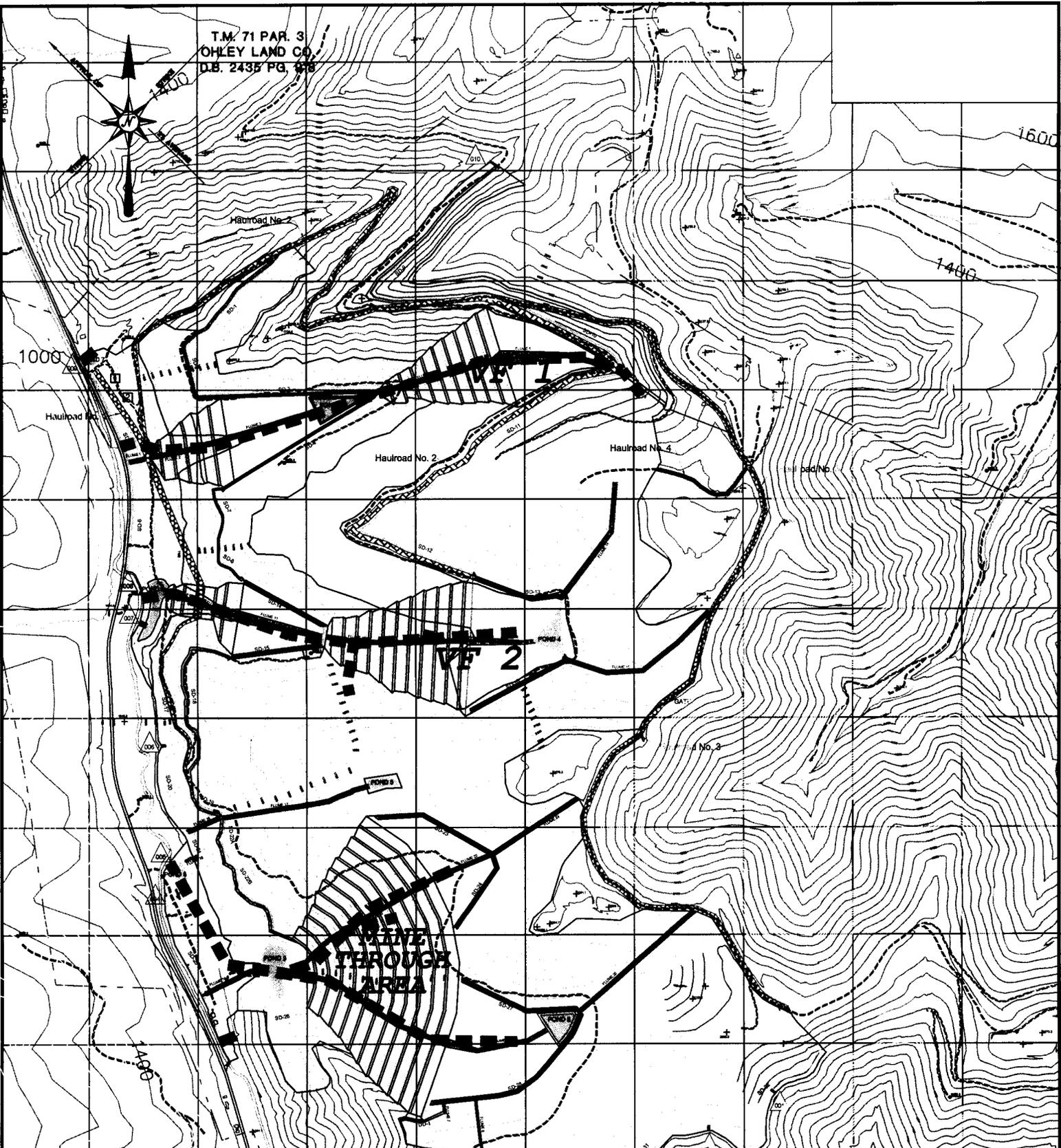
Figure 2 of 10

**JMAC LEASING, INC.**  
RT. 3, BOX 579  
OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE**  
**Spatial Relationship Map**



DATE:	October, 2005	CAD BY:	JLF
FILENAME:		PROJECT:	

T.M. 71 PAR. 3  
 OHLEY LAND CO.  
 D.B. 2435 PG. 68



**LEGEND**

■ ■ ■ ■ IMPACTED STREAM

NOTE: See Figure 9 of 10 for location of Cabin Creek stream restoration.

PERMIT AREA  
 786.00 ACRES  
 BRIAR MOUNTAIN SURFACE MINE  
 PERMIT NO.  
 SCALE: 1" = 1200'

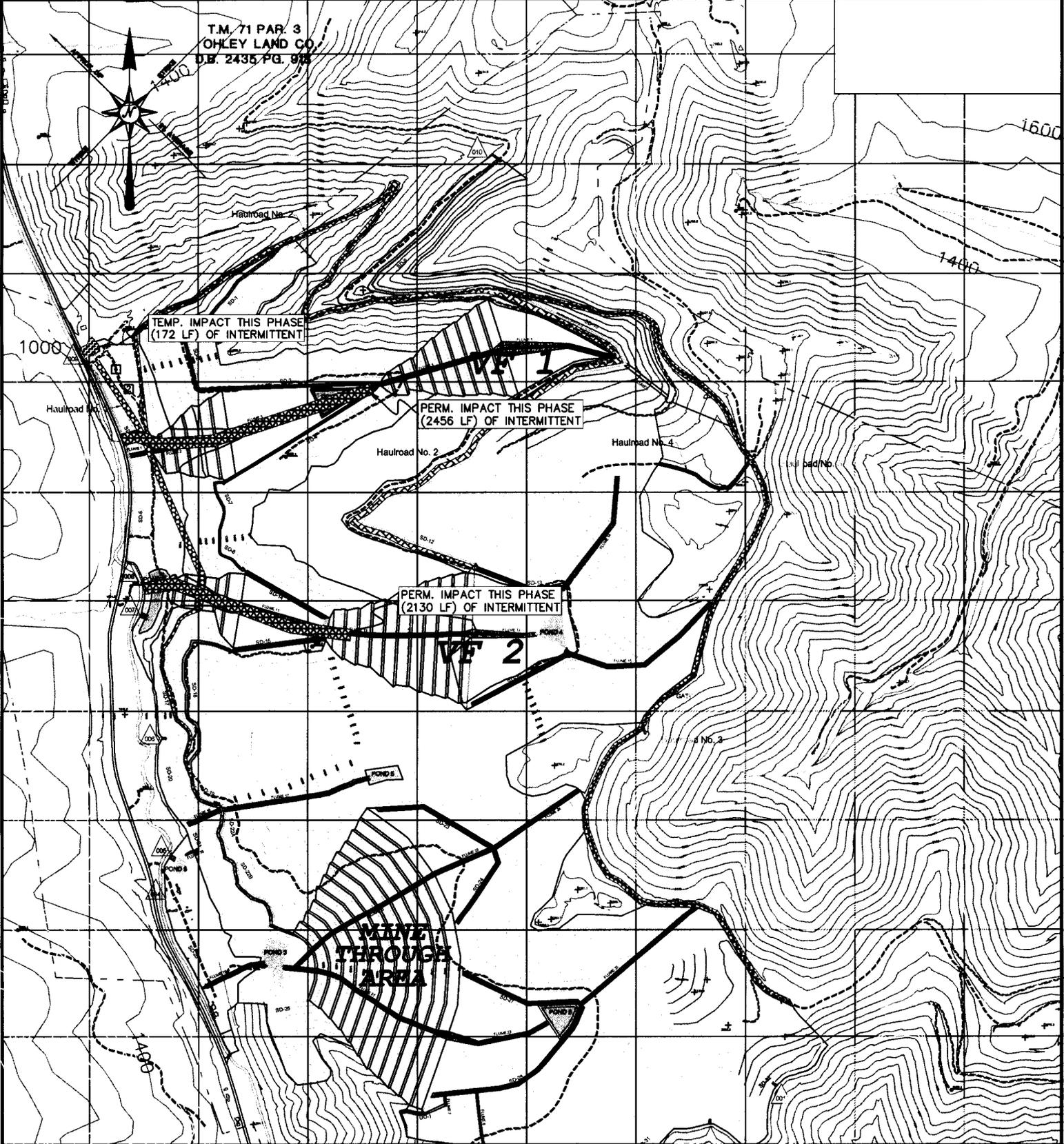
Figure 3 of 10

DATE: October, 2005	CAD BY: CJB
FILENAME:	PROJECT:

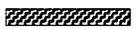
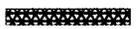
**JMAC LEASING, INC.**  
 RT. 3, BOX 579  
 OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE  
 IMPACTED STREAMS**



T.M. 71 PAR. 3  
OHLEY LAND CO.  
D.B. 2435 PG. 973



**LEGEND**

-  TEMPORARY IMPACT INTERMITTENT STREAMS (172')
-  PERMANENT IMPACT INTERMITTENT STREAMS (4586')

PERMIT AREA  
786.00 ACRES  
BRIAR MOUNTAIN SURFACE MINE  
PERMIT NO.  
SCALE: 1" = 1200'

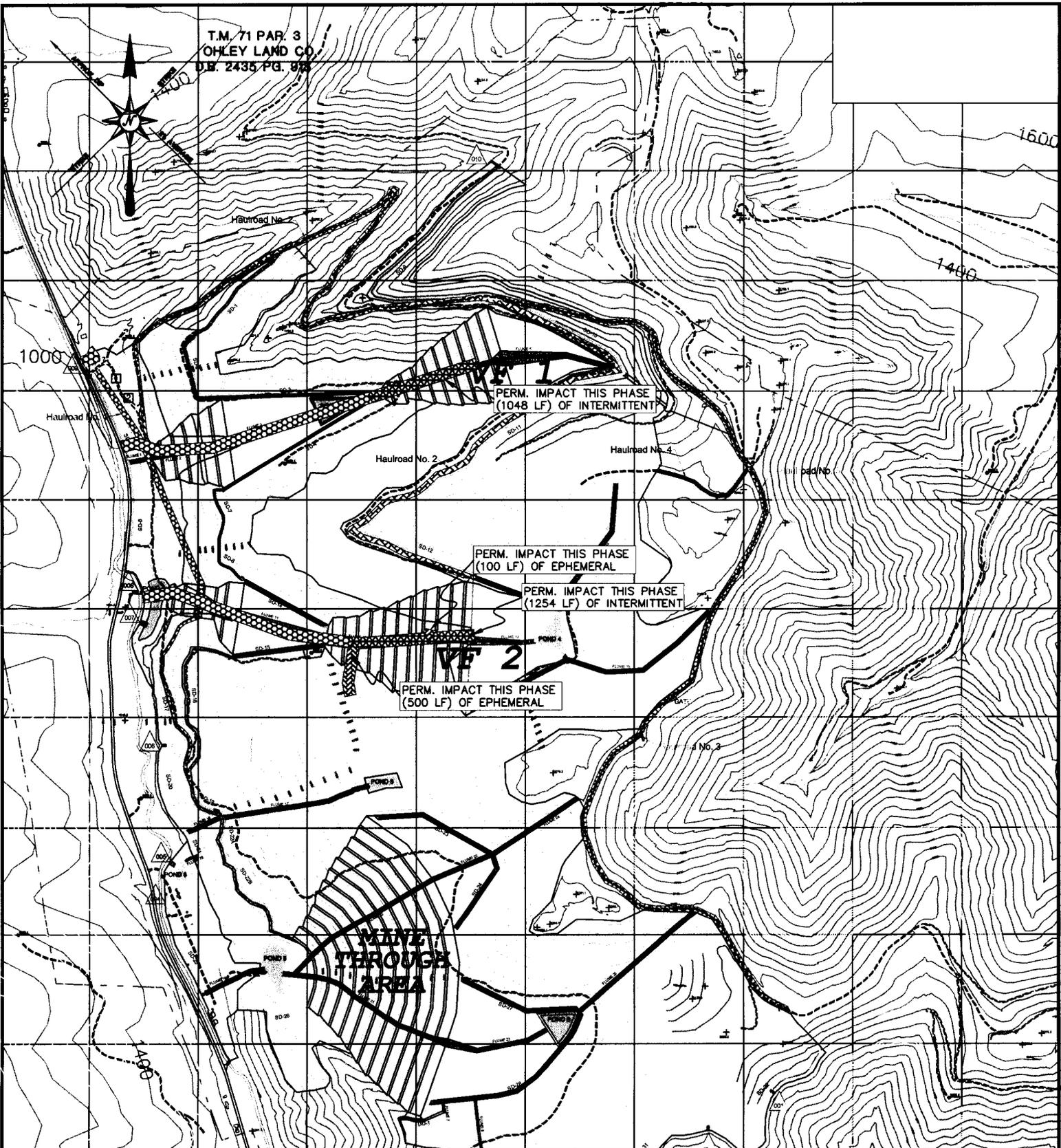
Figure 4 of 10

DATE: October, 2005  
FILENAME:  
CAD BY: CJB  
PROJECT:

**JMAC LEASING, INC.**  
RT. 3, BOX 579  
OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE  
PHASE I**



T.M. 71 PAR. 3  
 OHLEY LAND CO.  
 D.B. 2435 PG. 9/9



**LEGEND**

- PREVIOUSLY IMPACTED INTERMITTENT STREAMS
- PERMANENT IMPACT EPHEMERAL STREAMS (600')
- PERMANENT IMPACT INTERMITTENT STREAMS (2,302')

PERMIT AREA  
 786.00 ACRES  
 BRIAR MOUNTAIN SURFACE MINE  
 PERMIT NO.  
 SCALE: 1" = 1200'

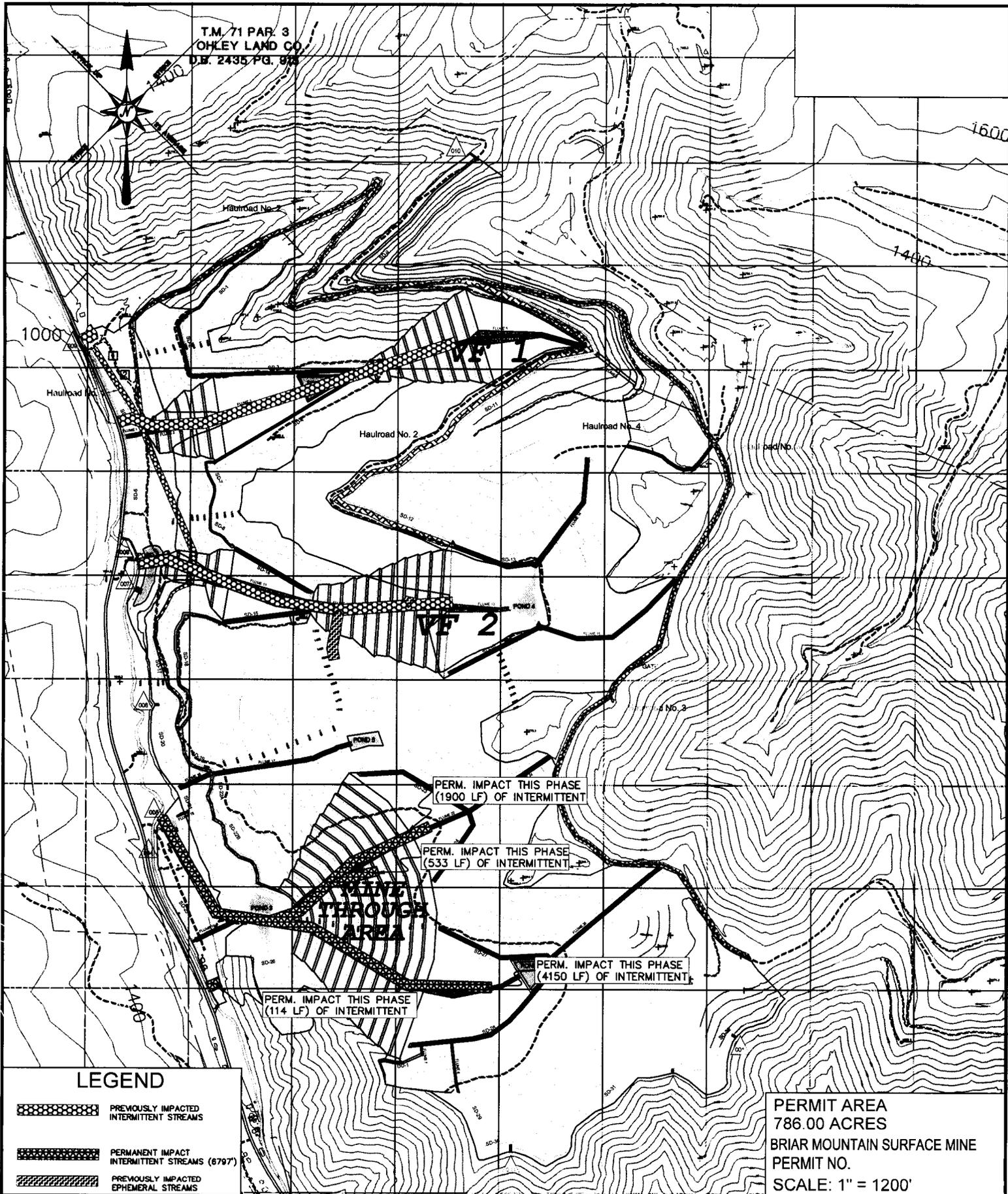
Figure 5 of 10

DATE: October, 2005    CAD BY: CJB  
 FILENAME:                PROJECT:

**JMAC LEASING, INC.**  
 RT. 3, BOX 579  
 OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE  
 PHASE II**



T.M. 71 PAR. 3  
 OHLEY LAND CO.  
 D.B. 2435 PG. 97



PERM. IMPACT THIS PHASE  
 (1900 LF) OF INTERMITTENT

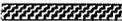
PERM. IMPACT THIS PHASE  
 (533 LF) OF INTERMITTENT

PERM. IMPACT THIS PHASE  
 (4150 LF) OF INTERMITTENT

PERM. IMPACT THIS PHASE  
 (114 LF) OF INTERMITTENT

RIAR MOUNTAIN  
 THROUGH  
 AREA

**LEGEND**

-  PREVIOUSLY IMPACTED INTERMITTENT STREAMS
-  PERMANENT IMPACT INTERMITTENT STREAMS (8797')
-  PREVIOUSLY IMPACTED EPHEMERAL STREAMS

PERMIT AREA  
 786.00 ACRES  
 BRIAR MOUNTAIN SURFACE MINE  
 PERMIT NO.  
 SCALE: 1" = 1200'

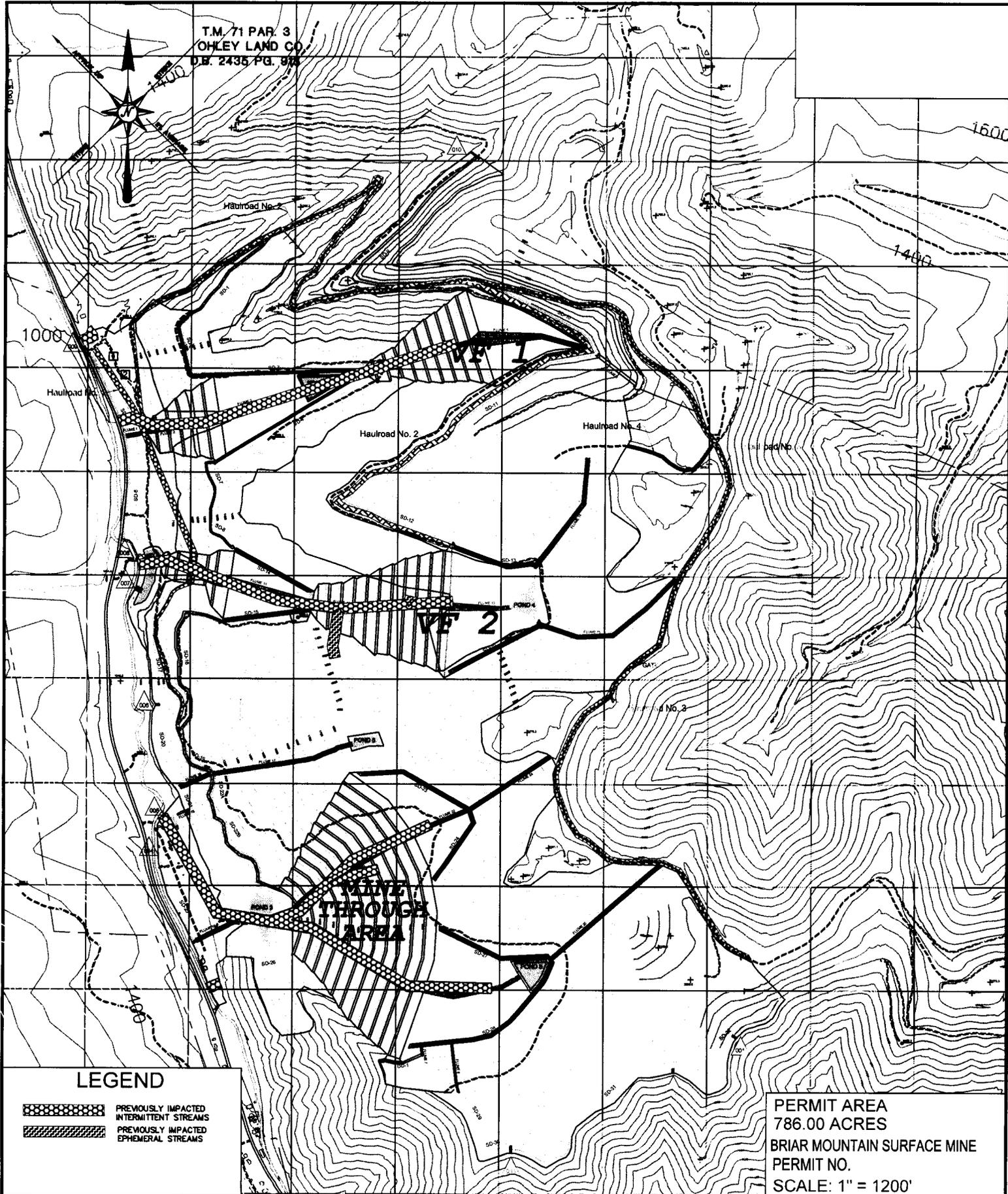
Figure 6 of 10

**JMAC LEASING, INC.**  
 RT. 3, BOX 579  
 OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE  
 PHASE III**

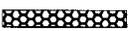


DATE: October, 2005	CAD BY: CJB
FILENAME:	PROJECT:

T.M. 71 PAR. 3  
 OHLEY LAND CO.  
 D.B. 2435 PG. 97



**LEGEND**

-  PREVIOUSLY IMPACTED INTERMITTENT STREAMS
-  PREVIOUSLY IMPACTED EPHEMERAL STREAMS

PERMIT AREA  
 786.00 ACRES  
 BRIAR MOUNTAIN SURFACE MINE  
 PERMIT NO.  
 SCALE: 1" = 1200'

Figure 7 of 10

**JMAC LEASING, INC.**

RT. 3, BOX 579  
 OLIVE HILL, KY 41164

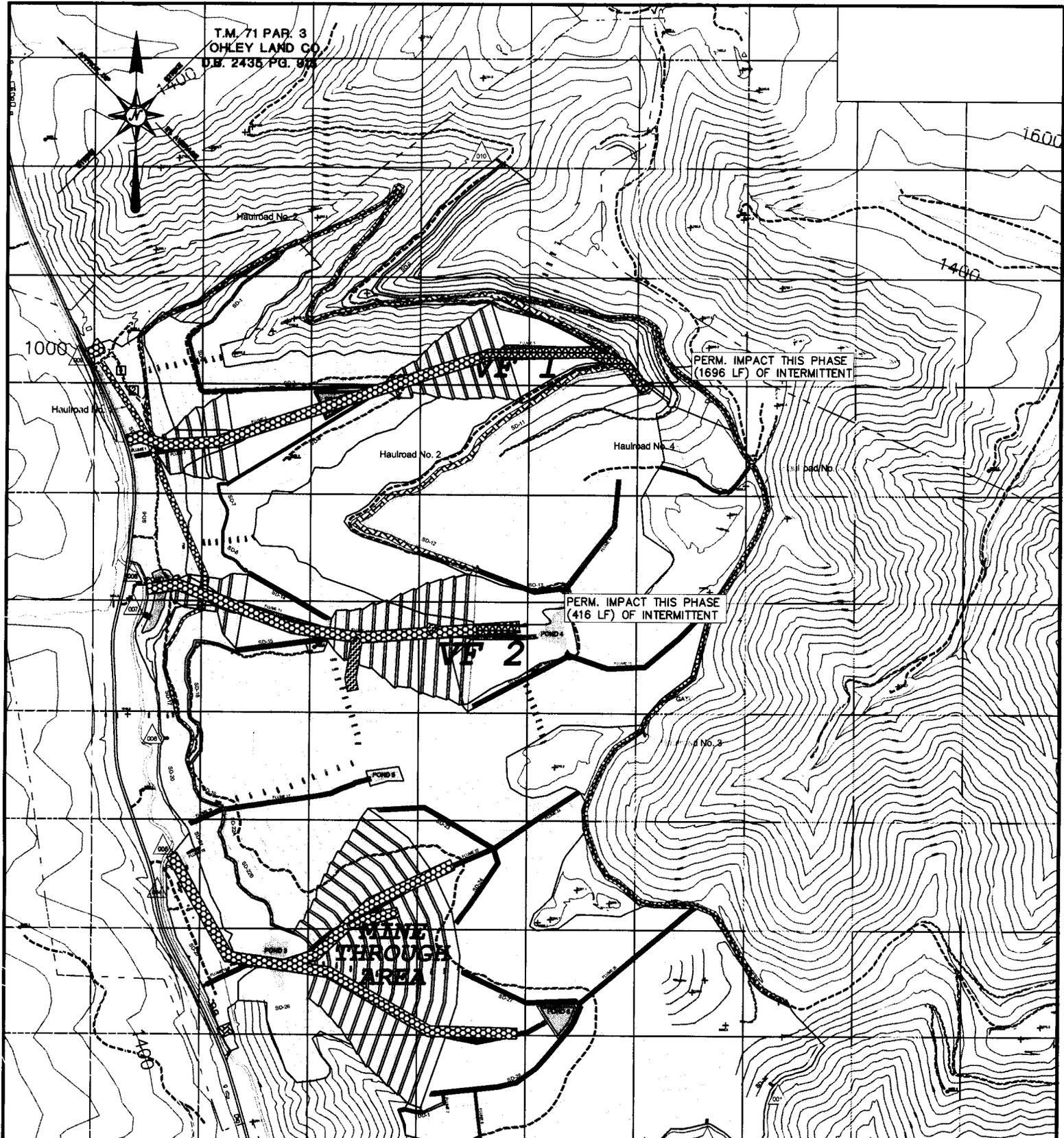
**BRIAR MOUNTAIN SURFACE MINE  
 PHASE IV**



TECHNICAL ASSOCIATES, INC.

DATE: October, 2005	CAD BY: CJB
FILENAME:	PROJECT:

T.M. 71 PAR. 3  
 OHLEY LAND CO.  
 D.B. 2435 PG. 978



**LEGEND**

-  PERMANENT IMPACT INTERMITTENT STREAM (2112')
-  PREVIOUSLY IMPACTED EPHEMERAL STREAM
-  PREVIOUSLY IMPACTED INTERMITTENT STREAM

PERMIT AREA  
 786.00 ACRES  
 BRIAR MOUNTAIN SURFACE MINE  
 PERMIT NO.  
 SCALE: 1" = 1200'

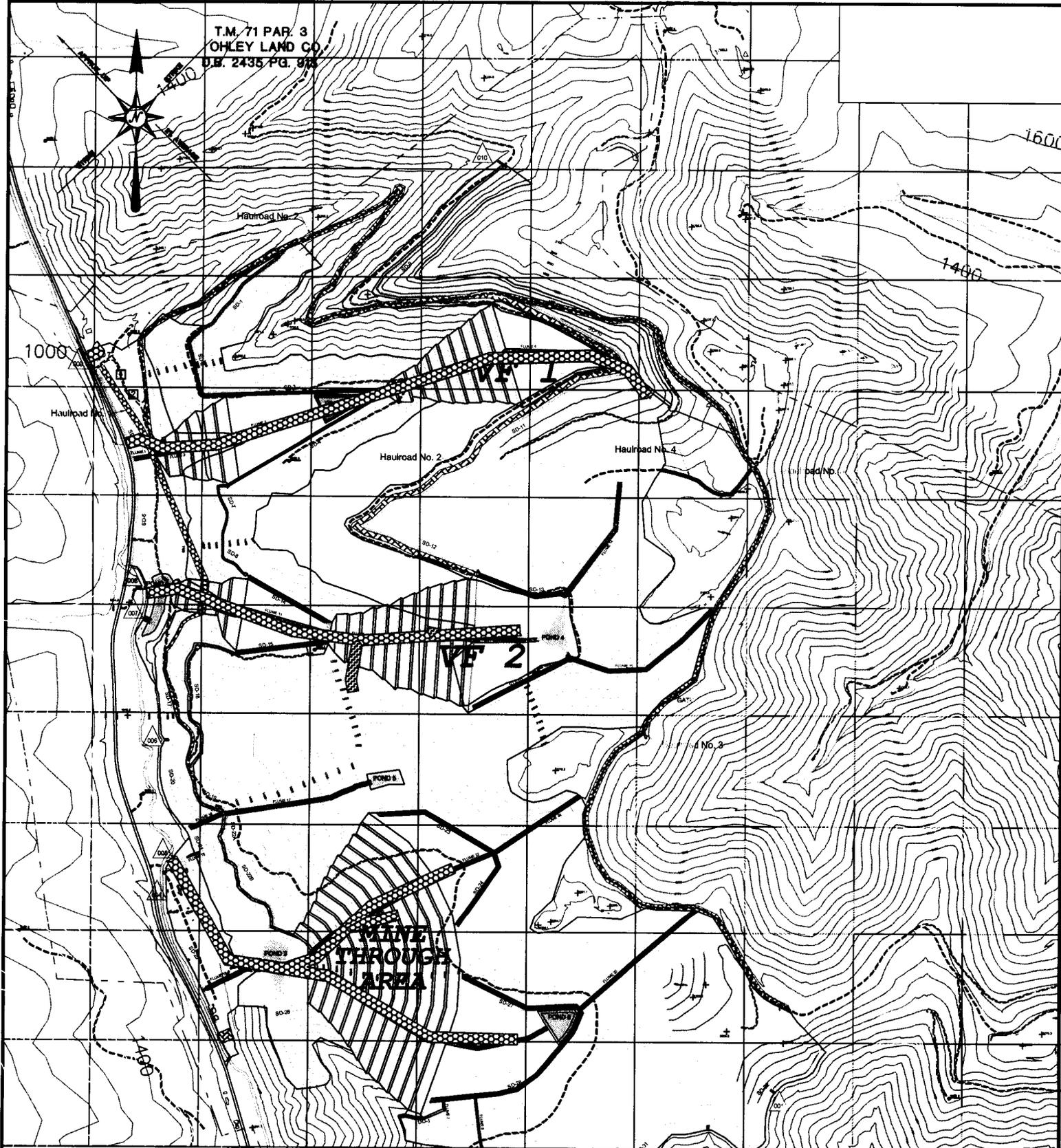
Figure 8 of 10

DATE: October, 2005	CAD BY: JLF
FILENAME:	PROJECT:

**JMAC LEASING, INC.**  
 RT. 3, BOX 579  
 OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE  
 PHASE V**



T.M. 71 PAR. 3  
OHLEY LAND CO.  
D.B. 2435 PG. 978



**LEGEND**

-  PREVIOUSLY IMPACTED EPHEMERAL STREAM
-  PREVIOUSLY IMPACTED INTERMITTENT STREAM

PERMIT AREA  
786.00 ACRES  
BRIAR MOUNTAIN SURFACE MINE  
PERMIT NO.  
SCALE: 1" = 1200'

Figure 9 of 10

DATE: October, 2005	CAD BY: JLF
FILENAME:	PROJECT:

**JMAC LEASING, INC.**  
RT. 3, BOX 579  
OLIVE HILL, KY 41164  
**BRIAR MOUNTAIN SURFACE MINE  
PHASE VI**

