

U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 199900305-2	Issuance Date:
	December 5, 2005
Stream: Laurel Run	Closing Date:
	January 4, 2006

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 (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Alex Energy, Inc.
P.O. Box 857
Summersville, West Virginia 26651

LOCATION: The proposed project would be located in Grant District of Nicholas County, West Virginia at Latitude 38°20'01" and Longitude 80°58'12" on the United States Geological Survey 7.5-minute Gilboa Quadrangle. The proposed project would result in disturbances to unnamed tributaries of/and Laurel Run and unnamed tributaries of/and Rader Fork and unnamed tributaries of Twentymile Creek. The streams on-site exhibit surface water connections to Twentymile Creek, which flows into the Gauley River, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 16,201 linear feet (1.783 acres) of waters of the U.S in conjunction with the construction, operation and reclamation of the Eastern Project Area of the Robinson North Surface Mine (Eastern Project Area) [Surface Mining Control and Reclamation Act (SMCRA) Permit S-3005-98]. The total water impacts at the Eastern Project Area amount to a total of intermittent and ephemeral impacts, of which 15,589 linear feet (1.69 acres) is permanent impacts and 612 linear feet (0.105 acre) is temporary impacts. The proposed Eastern Project Area permit area would result in a total surface disturbance of approximately 633.32 acres of land, of which 586.27 acres would consist of the mineral extraction areas, over a 5-year life of the mine. Based on sequential backfilling and concurrent reclamation of the mine areas, the applicant shall comply with the contemporaneous reclamation requirements of WVDEP Surface Mining Reclamation Regulations. The proposed project is anticipated to mine an average of approximately 2.8 million tons of bituminous coal annually via mountaintop removal mining methods with incidental contour, auger and highwall extraction for a period of approximately 5 years.

All overburden placement shall be placed on the regraded backfill to approximate original contour or on top of the existing off-site valley fills with the exception of the approximately 16.78 million cubic yards of overburden which would be placed in the proposed Valley Fill H. Construction of the proposed valley fill would result in the permanent placement of approximately 738 cubic yards of dredged and fill material into 1,455 linear feet of intermittent streams and 934 linear feet of ephemeral streams. The proposed valley fill would affect contributing watershed area of 155.01 acres. Additionally, the removal of bituminous coal reserves underlying stream beds would result in the discharged of dredged and fill material into 11,198 linear feet of intermittent stream segments and 2,002 linear feet of ephemeral stream segments of Laurel Run, Rader Fork and Twentymile Creek. Construction of the proposed drainage control structures would result in the temporary placement of approximately 69 cubic yards of dredged and fill material into 612 linear feet of intermittent stream. Table 1 and Table 2 attached to this public notice summarize the proposed activities and corresponding impacts.

According to the applicant, the purpose of the project is to recover the bituminous coal reserves from the Kittanning, 5 Block, Clarion, Stockton A, Stockton and Coalburg coal seams and all splits thereof. To accomplish this, the applicant proposes to construct, operate and reclaim the Eastern Project Area. Reserves from the project site would be sold on the market to satisfy a currently high demand for coal.

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. No permit will be issued until our review of the 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 permanent and temporary impacts to waters of the U.S. that are regulated by the USACE. The applicant propose to enhance a total of 10,000 linear feet (6.691 acres) of perennial segments of Twentymile Creek and Rader Fork, create 8,240 linear feet (1.543 acres) of intermittent stream within the permit area, and reestablish and restored 615 linear feet (0.111 acres) of temporarily impacted intermittent stream segments. Natural stream design techniques would be used in the design of the enhanced, restored and created stream channels. A 50-foot vegetative riparian zone, consisting of native herbaceous, shrub and tree species, would be established along the enhanced, restored and created channels.

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 Phase III Survey was completed for the proposed project. The applicant retained the services of GAI Consultants, Inc. (GAI) to complete a Phase III Survey. The Phase III Survey report, entitled "Phase III Archaeological Investigations of Skink Rockshelter (46Ni445), Nicholas County, West Virginia" was conducted by Dr. Douglas H. MacDonald of GAI. On July 16, 2004, SHPO concluded the data recovery methods employed had satisfactorily addressed the research potential and that no further consultation was necessary. 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. A Mist-net survey was completed within the proposed project area during June 2005. No Indiana bats were captured during the survey efforts. The USFWS concurred with survey results in a letter dated September 21, 2005. Additionally, the proposed project area was investigated for the presence of open, abandoned portals or other features that could provide summer and winter habitat for the Virginia big-eared bat or hibernaculum for the Indiana bat. No portals or other features were identified within the proposed project area that provide habitat for these endangered bats. The USACE has determined the proposed project is not likely to adversely affect threatened or endangered species or their critical habitat. The survey will remain valid until May 15, 2008. Section 7 requirements under the Endangered Species Act (ESA) have been fulfilled. 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 ESA 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. 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, 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

(W)

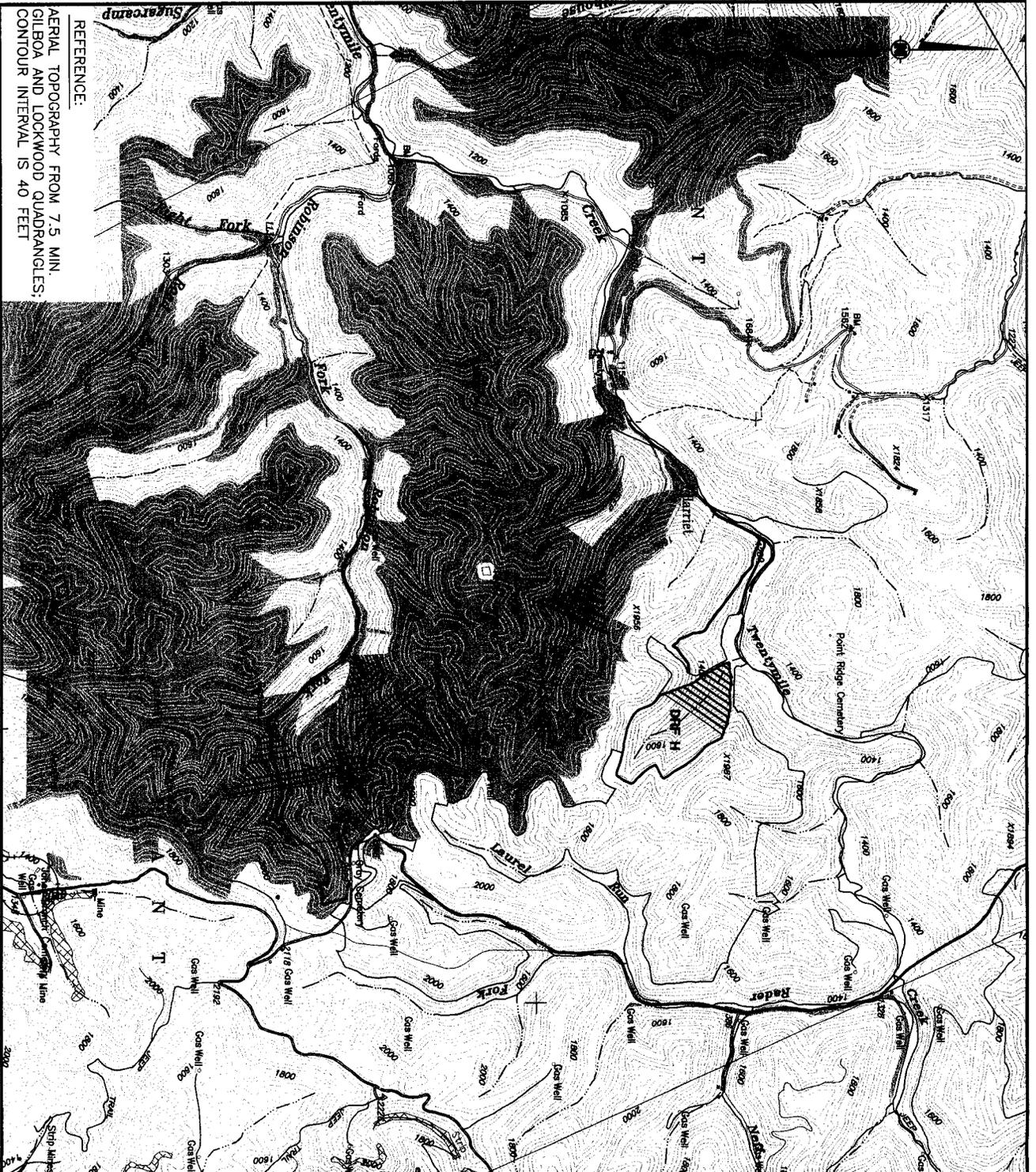
Table 1

**Eastern Project Area
Summary of Permanent and Temporary Impacts to Jurisdictional Waters**

Structure	Permanent (Fill H Area)				Permanent (Mine Through Areas)				Temporary	
	Intermittent		Ephemeral		Intermittent		Ephemeral		Intermittent	
	Feet	Acres	Feet	Acres	Feet	Acres	Feet	Acres	Feet	Acres
Channel A (Mine Through)					1500	0.144	50	0.002		
Channel B (Mine Through)					830	0.066	85	0.003		
Channel C (Mine Through)					429	0.048	151	0.004		
Channel E (Mine Through)					562	0.015	38	0.001		
Channel F (Mine Through)					220	0.013	475	0.021		
Channel G (Mine Through)					600	0.048	500	0.020		
Channel L (Mine Through)					0	0	89	0.002		
Channel M (Mine Through)					50	0.002	0	0		
Channel O (Mine Through)					285	0.019	315	0.012		
Channel P (Mine Through)					2125	0.206	45	0.001		
Channel Q (Mine Through)					1135	0.071	21	0.001		
Channel R (Mine Through)					595	0.024	75	0.001		
Main Channel Fill H					2867	0.592	158	0.012	278	0.072
Left Unnamed Tributary of Fill H	858	0.109					0			
Unnamed Tributary Of Twentymile Creek (UT-1)	357	0.069	17	0.003			0		334	0.033
Braids of Main Channel Fill H	240	0.020	917	0.159						
TOTAL	1455	0.198	934	0.162	11198	1.248	2002	0.08	612	0.105

Table 2
Eastern Project Area
Volume of Material To Be Discharged into Waters of the U. S.

Structure	Volume of Fill Material (yds ³)
Channel A	57.30
Channel B	16.12
Channel C	10.42
Channel E	3.23
Channel F	6.73
Channel G	15.35
Channel L	0.94
Channel M	1.24
Channel O	4.94
Channel P	39.53
Channel Q	20.58
Channel R	7.67
Main Channel Fill H	804.04
Left Unnamed Tributary of Fill H	0.80
Unnamed Tributary of Twenty Mile Creek (UT-1)	0.96
Braids of Main Channel Fill H	0.96
TOTAL	990.81



REFERENCE:
 AERIAL TOPOGRAPHY FROM 7.5 MIN.
 GILBOA AND LOCKWOOD QUADRANGLES;
 CONTOUR INTERVAL IS 40 FEET

LEGEND

- EASTERN PROJECT AREA
- EXISTING PERMITTED AREA

SCALE



REV.	DATE	DESCRIPTION	P.L.

DESIGNER: W. J. BENTLEY, INC. (540) 286-4441
 ENGINEERS • CONSTRUCTORS • SCIENTISTS
 RALEIGH, NC (919) 881-2547

Alliance Consulting, Inc.

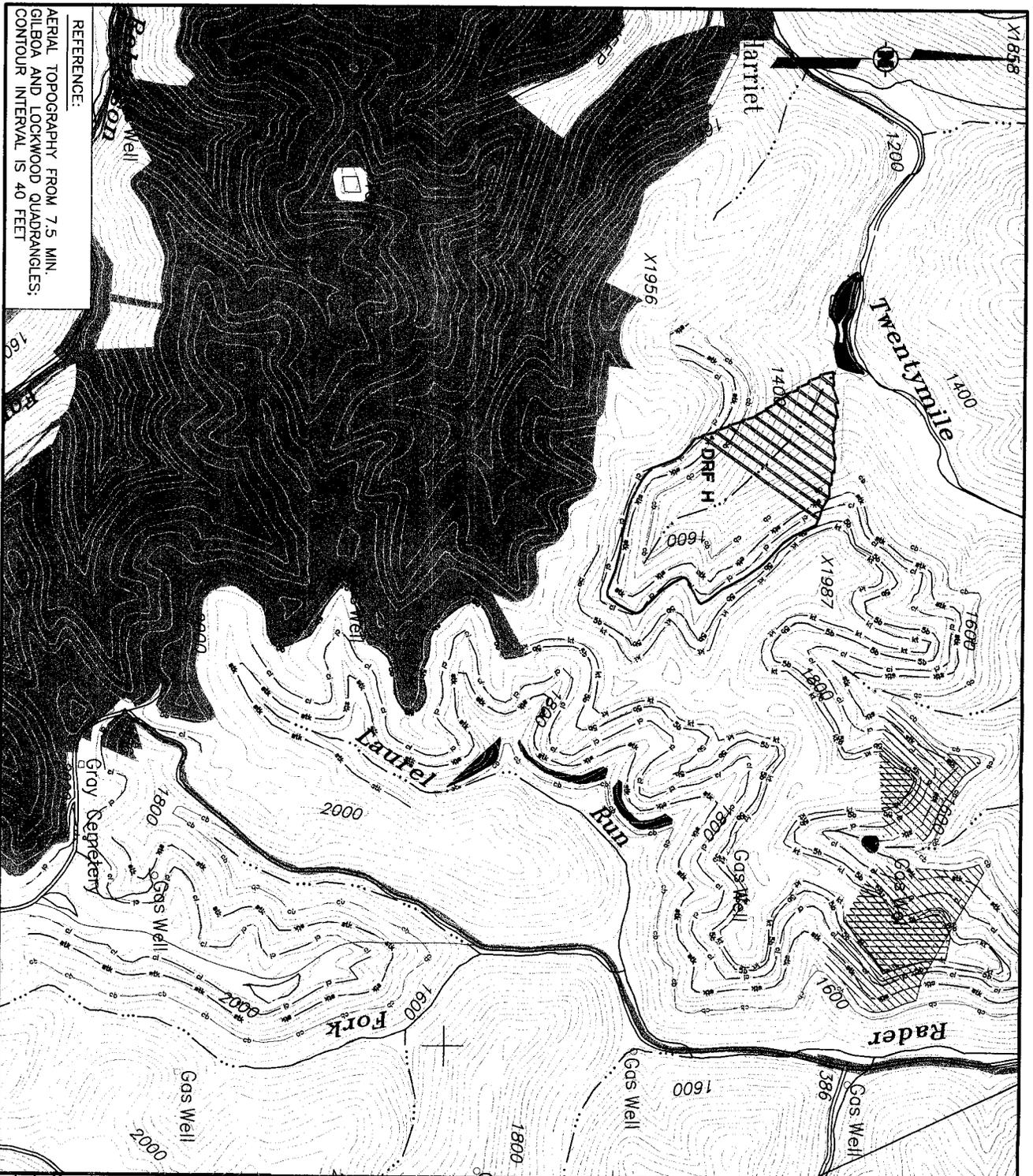
Engineers • Constructors • Scientists

EASTERN PROJECT AREA LOCATION MAP

For
ROBINSON NORTH SURFACE MINE (EASTERN PROJECT AREA)
 GRANT DISTRICT - NICHOLS COUNTY, W.V.

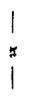
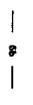
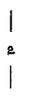
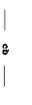
Prepared For
ALEX ENERGY, INC.
 SUMMERSVILLE, NICHOLS COUNTY, WEST VIRGINIA

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REFERENCE:
AERIAL TOPOGRAPHY FROM 7.5 MIN.
GILBOA AND LOCKWOOD QUADRANGLES;
CONTOUR INTERVAL IS 40 FEET

LEGEND

-  COMBINATION MOUNTANTOP AND CONTOUR MINING AREA
-  EXISTING PERMITTED AREA
-  COALBURG HIGHWALL MINING
-  5 BLOCK HIGHWALL MINING
-  KITTANNING
-  5 BLOCK
-  CLARION
-  STOCKTON
-  COALBURG

REFER TO THE "MINE DEVELOPMENT/SUBSIDENCE SURVEY MAP (5 BLOCK SEAM)" (DRAWING NO. B02-210-M14) AND "MINE DEVELOPMENT/SUBSIDENCE SURVEY MAP (COALBURG SEAM)" (DRAWING NO. B02-210-M15), PREPARED BY ALLIANCE CONSULTING, INC. AND INCLUDED IN PERMIT AMENDMENT NO. 2 FOR SMGRA PERMIT NO. S-3005-98 FOR OTHER PERTINENT INFORMATION.



REV.	DATE	DESCRIPTION	P.L.

BEAVER, WV

Alliance Consulting, Inc.
 Engineers • Constructors • Scientists

EASTERN PROJECT AREA MINING METHOD MAP
 For
ROBINSON NORTH SURFACE LANE (EASTERN PROJECT AREA)
 GRANT DISTRICT-NICHOLS COUNTY, WV.
 Prepared For

ALEX ENERGY, INC.
 SUMMERSVILLE, NICHOLS COUNTY, WEST VIRGINIA

CAD BY	JSC	05/17/05	PROJECT NO.	
CHECKED BY	GMB	05/18/05	PROJECT NO.	B02-210-765
APPROVED BY	GMB	05/18/05	DRAWING NO.	B02-210-898