



# Public Notice

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

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In reply refer to Public Notice No. 200100451-2      Issue Date: March 10, 2006

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Stream: **Roach Branch and unnamed tributaries, Closing Date: April 9, 2006  
and unnamed tributaries of the West Fork of Pond Fork**

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Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-FS Public Notice No. 200101451-2

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 (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 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 (U.S.), 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 of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Independence Coal Company, Inc.  
HC 78, Box 1800  
Madison, West Virginia 25130

**LOCATION:** The proposed project would be located in Roach Branch and unnamed tributaries thereof, and unnamed tributaries of West Fork, near Marnie, in Boone County, West Virginia (latitude 37° 57' 03" and longitude 81° 39' 52"). Roach Branch and West Fork are tributaries to Pond Fork, a tributary to the Little Coal River. The Little Coal River is a tributary to the Coal River, a navigable (Section 10) water of the U.S. Drawing No. 1 depicts the location of the proposed project.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant proposes to place fill material into 6,994 linear feet (1.35 acre) of waters of the U.S. in conjunction with construction, operation and reclamation of the Falcon Surface Mine. Details regarding of impacts to waters of the U.S. are included in the following table:

### Falcon Surface Mine Impacts

MINING ACTIVITY	STREAM LOCATION	PERMANENT STREAM IMPACTS			TEMPORARY STREAM IMPACTS		
		Linear Feet	Acres	STREAM CLASSIFICATION (E, I OR P)*	Linear Feet	Acres	STREAM CLASSIFICATION (E, I OR P)
Valley Fill 1	Roach Branch of West Fork	373	0.0642	I - 272 (0.0384 Ac.) E - 101 (0.0258 Ac.)	--	--	--
Valley Fill 1	Right Fork of Roach Branch of West Fork	275	0.0110	I - 174 (0.0034 Ac.) E - 101 (0.0076 Ac.)	--	--	--
Pond 1	Roach Branch of West Fork	--	--	--	481	0.0798	I
Valley Fill 2	1 <sup>st</sup> L UT of Roach Branch of West Fork	2387	0.3520	I- 2334 (0.3477 Ac.) E - 53 (0.0043 Ac.)	--	--	--
Pond 2	1 <sup>st</sup> L UT of Roach Branch of West Fork	--	--	--	428	0.0760	I
Valley Fill 3	2 <sup>nd</sup> R UT of West Fork	1200	0.3565	I - 960 (0.3275 Ac.) E - 240 (0.0290 Ac.)	--	--	--
Pond 3	2 <sup>nd</sup> R UT of West Fork	--	--	--	300	0.0846	I
Valley Fill 4	Elevation of Existing Fill	--	--	--	--	--	--
Valley Fill 5	1 <sup>st</sup> R UT of West Fork	1400	0.2779	I - 867 (0.2136 Ac.) E - 533 (0.0643 Ac.)	--	--	--
Pond 5	1 <sup>st</sup> R UT of West Fork	--	--	-	150	0.0473	I

\* E - ephemeral, I - intermittent, P - perennial

The purpose of the project is to extract approximately 7.6 million tons of coal through highwall and/or contour mining the 6 Block, 5 Block, Upper Clarion, Lower Clarion, Stockton (Rider, Upper, Lower), Coalburg and Winifrede (Rider, Upper, Lower) seams during an approximate 5-year mine life. A site plan is presented in Drawing 2. Proposed fill sites are provided in Drawings 3-7 and proposed ponds are depicted in Drawings 8-11.

The applicant's consultant, Michael Baker Jr., Inc. performed habitat assessment surveys at 13 locations for the proposed project. R.E.I. Consultants evaluated benthic macroinvertebrate information using a version of the Environmental Protection Agency's Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers. Macroinvertebrate populations found in Roach Branch, West Fork and unnamed tributaries thereof were fairly healthy and contained a

wide variety of taxa and individuals. Except for low flows in some unnamed tributaries all physical water quality parameters were within desirable ranges except pH. The most limiting factors were pH, alkalinity, hardness and TDS. Larger stream stations contained the best habitat, streams with lower flows exhibited limited habitat for several taxa of aquatic insects. The West Virginia Department of Environmental Protection (WVDEP) Cumulative Hydrological Impact Assessment (CHIA) indicates there are no anticipated impacts or changes to the surface water flows or ground water resources which would result in adverse changes to hydrologic balance as a result of the proposed project.

In accordance with the U. S. Environmental Protection Agency's "Rapid Bioassessment Protocols For Use in Streams and Wadeable Rivers" Compliance Monitoring Labs, Inc performed a habitat assessment of the streams. The habitat assessment scores range from 78 to 105 which classified the streams as marginal. The Surface Water Runoff Analysis (SWROA) indicates the "during mining" and "after mining" conditions from peak discharges would be equal or lower than the "before mining" condition based upon a 25 year/24 hour storm event.

**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. The applicant has submitted an alternatives analysis, which is currently under review.

**MITIGATION PLAN:** The applicant proposes future submission of a Compensatory Mitigation Plan (CMP) which should include the applicant's proposal to compensate for impacts to waters of the U.S. regulated by Corps of Engineers.

**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. Cultural Resource Analysts, Inc. prepared a Phase One Archaeological Survey in February, 2000 for the proposed project area. In a letter dated July 24, 2000 the WVDCH concurred that no known historical, architectural or archaeological sites listed on or eligible for inclusion in the National Register of Historic Places would be affected by the proposed project.

This public notice serves as coordination with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) has any new information concerning potential effects to historic properties that may result from the proposed permitting action, we request the WVDCH provide information to this office pursuant to Section 106 of the National Historic Preservation Act.

**ENDANGERED/THREATENED SPECIES REVIEW:** This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, we request the Service provide any additional information pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

Biological Monitoring Inc. performed a Bat Mist Netting Survey on August 13 and 14, 2004 for the proposed project area. The survey indicated there were no federally listed endangered bat species captured within the proposed project area and there were no deep mine portals or caves within the proposed project area.

**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.

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. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. 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.

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 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.

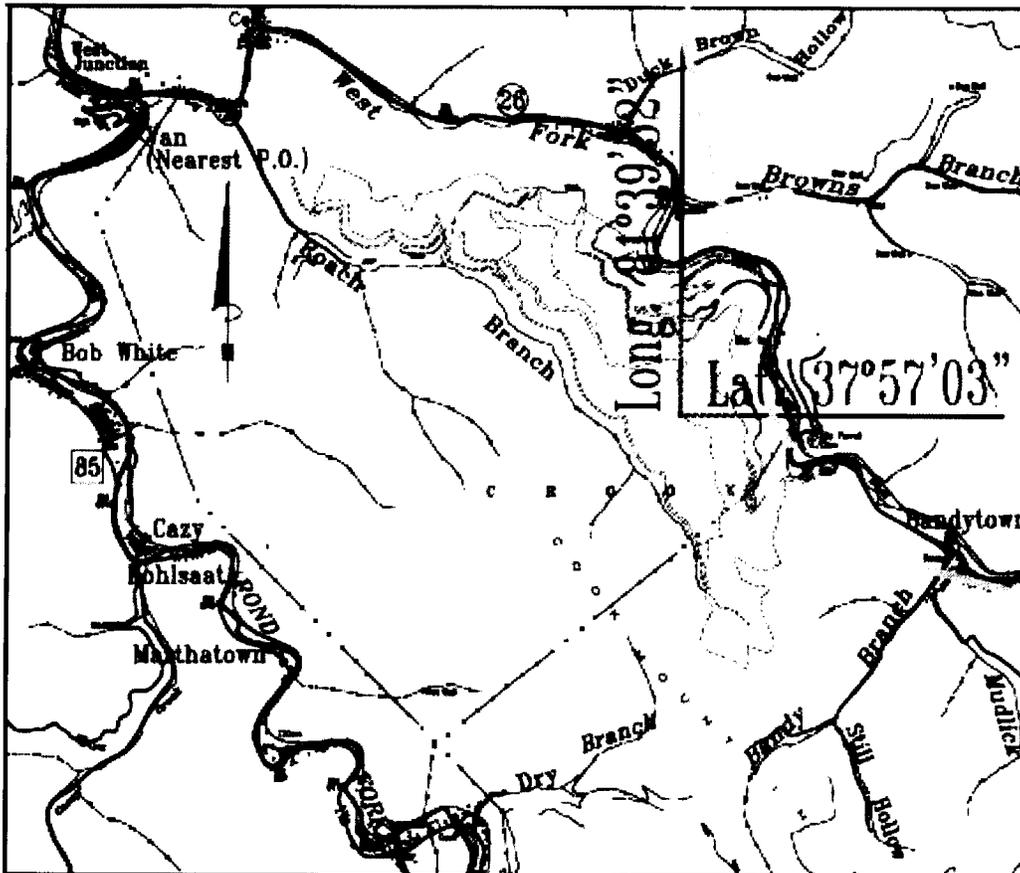
Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U. S. Army Corps of Engineers  
ATTN: CEORH-OR-FS Public Notice No. **200101451-2**  
502 Eighth Street  
Huntington, West Virginia 25701-2070

If you have any questions concerning this public notice, please call Richard Hemann of the South Regulatory Section at 304-399-5710.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)



## LOCATION MAP

SMA No. \_\_\_\_\_

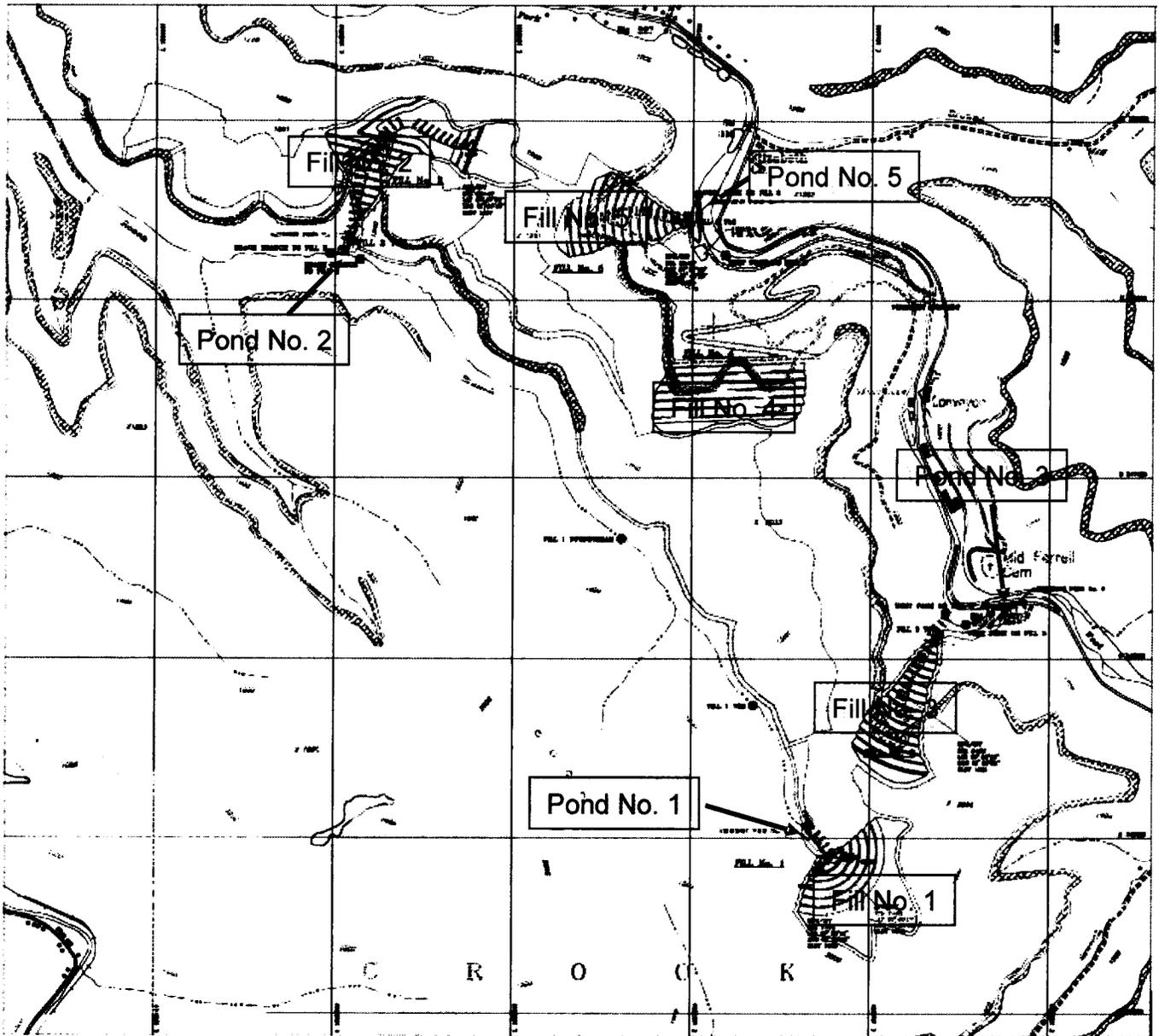
WHARTON 7.5' QUAD      SCALE: 1" = 1 MILE

NEAREST POST OFFICE: VAN, WV

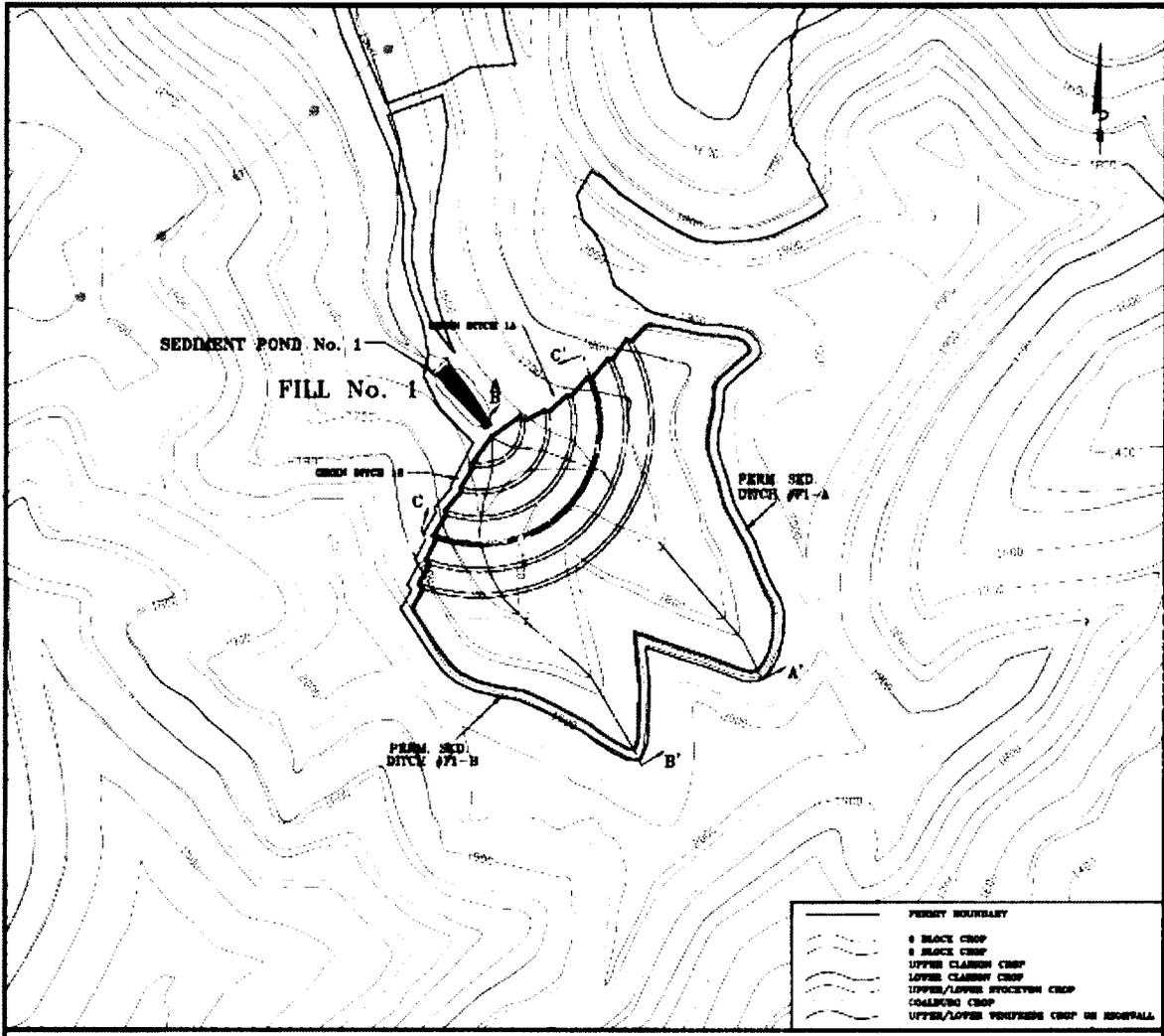
CROOK DISTRICT, BOONE COUNTY, WV

RECEIVING STREAMS: ROACH BRANCH OF WESTFORK,  
WESTFORK OF POND FORK OF LITTLE COAL RIVER OF  
COAL RIVER OF KANAWHA RIVER

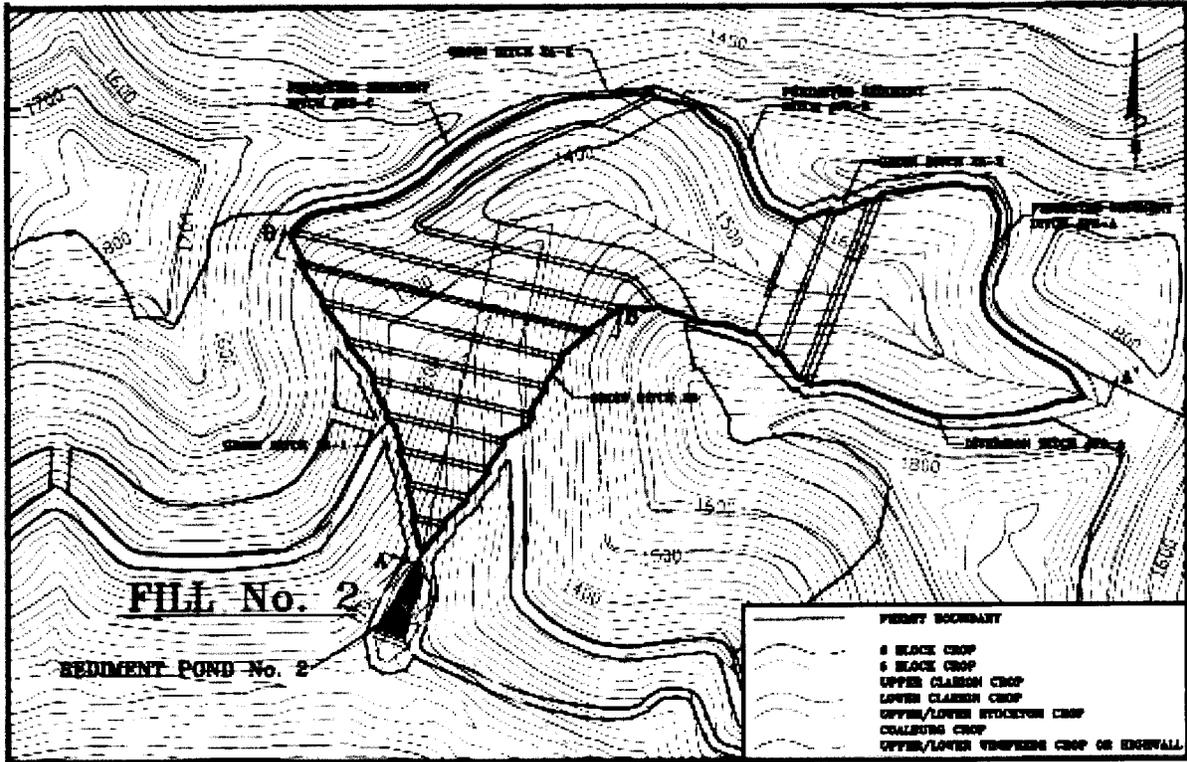
Independence Coal Company  
Falcon Surface Mine – 200100451-2  
Drawing 1 of 11  
Location Map



Independence Coal Company  
Falcon Surface Mine – 200100451-2  
Drawing 2 of 11  
Site Plan



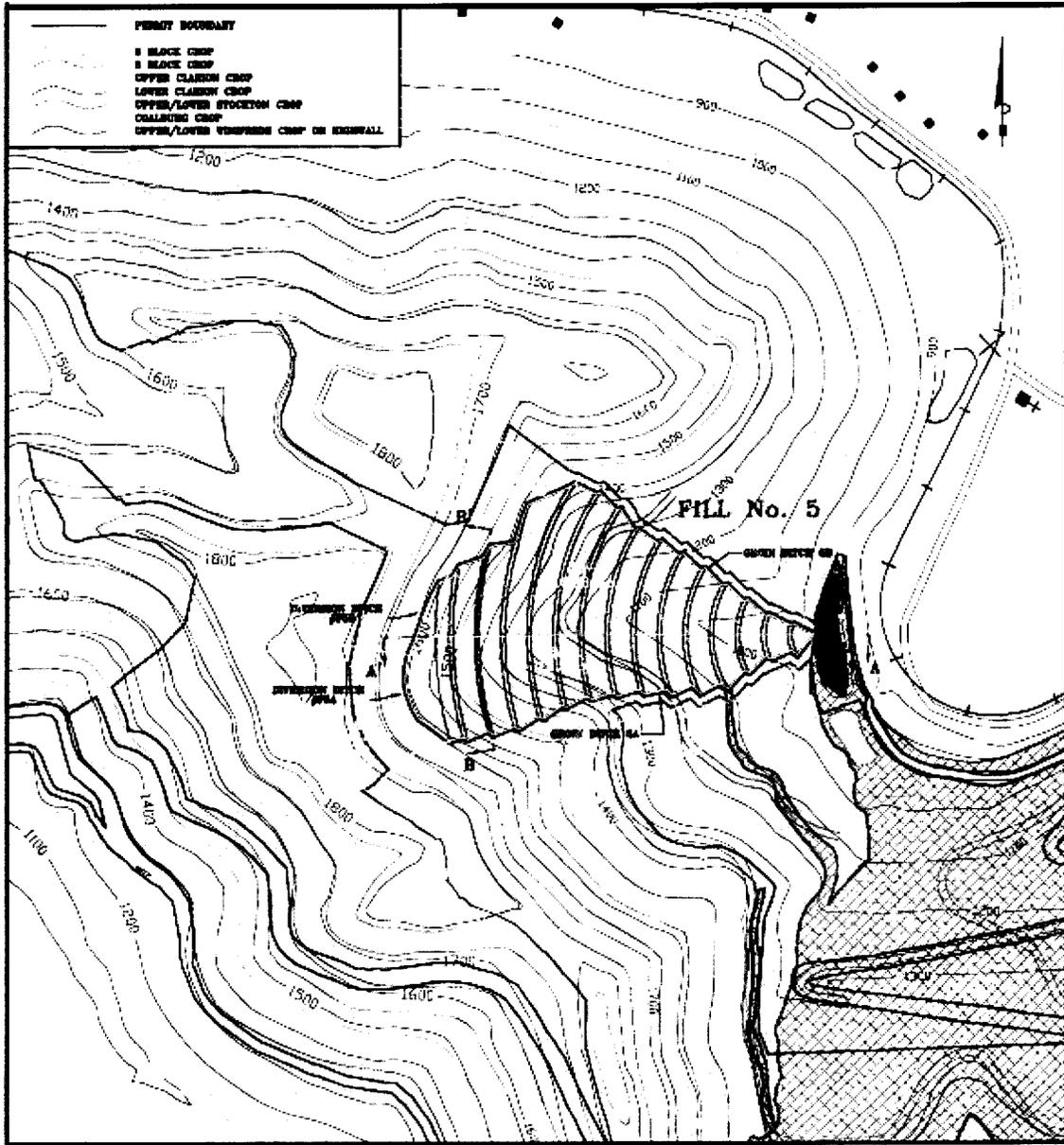
Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 3 of 11  
 Fill No. 1



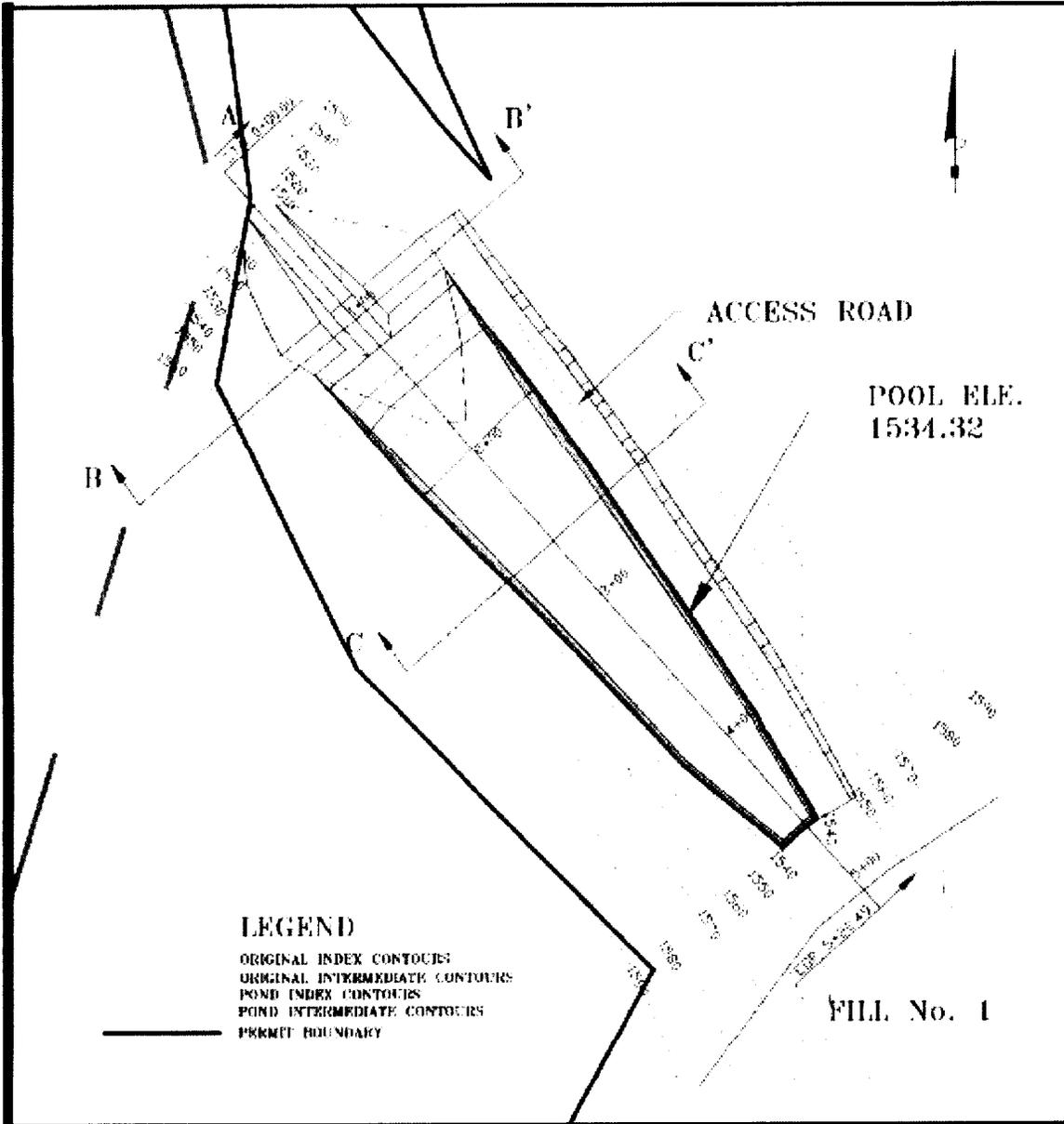
Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 4 of 11  
 Fill No. 2



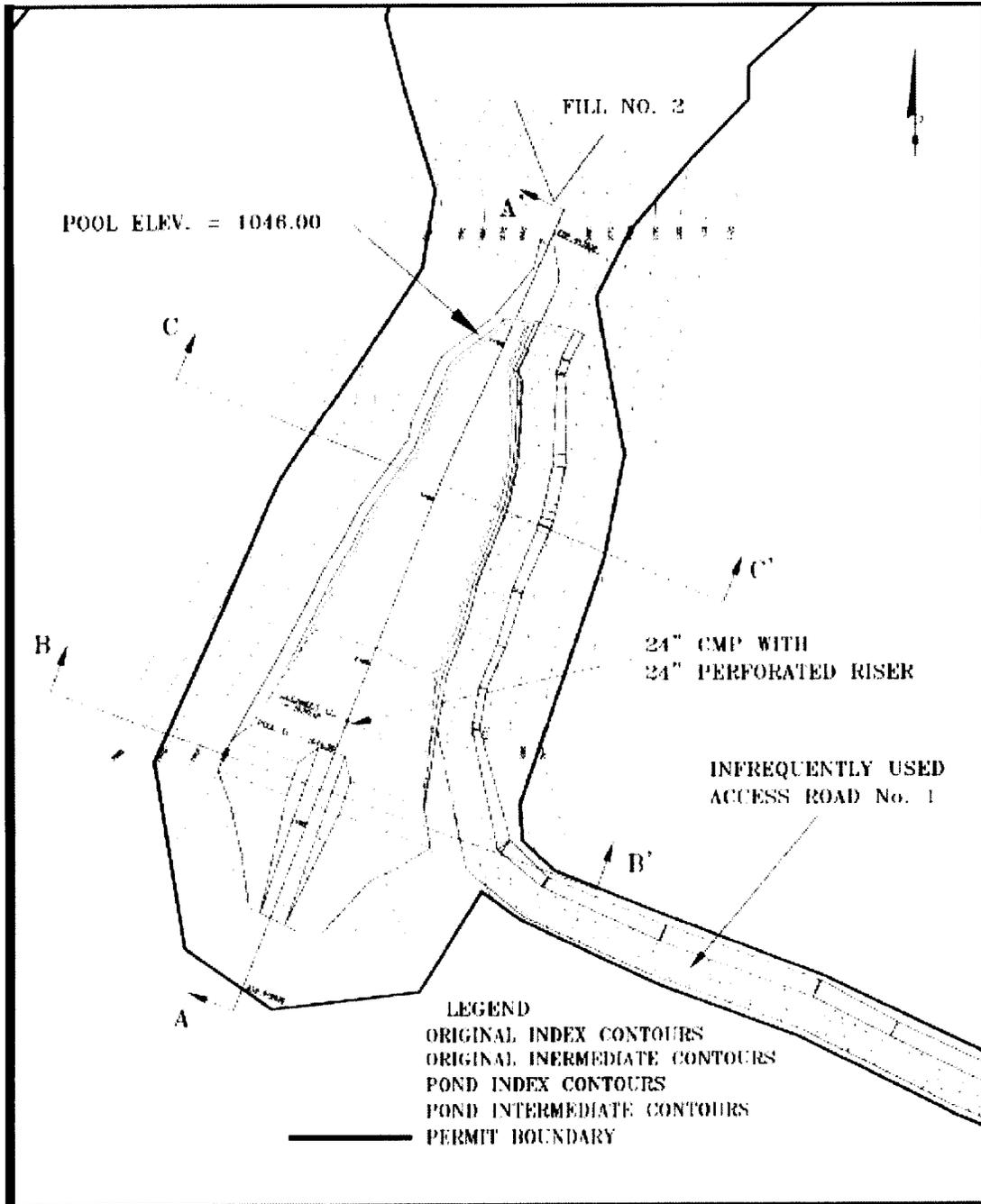




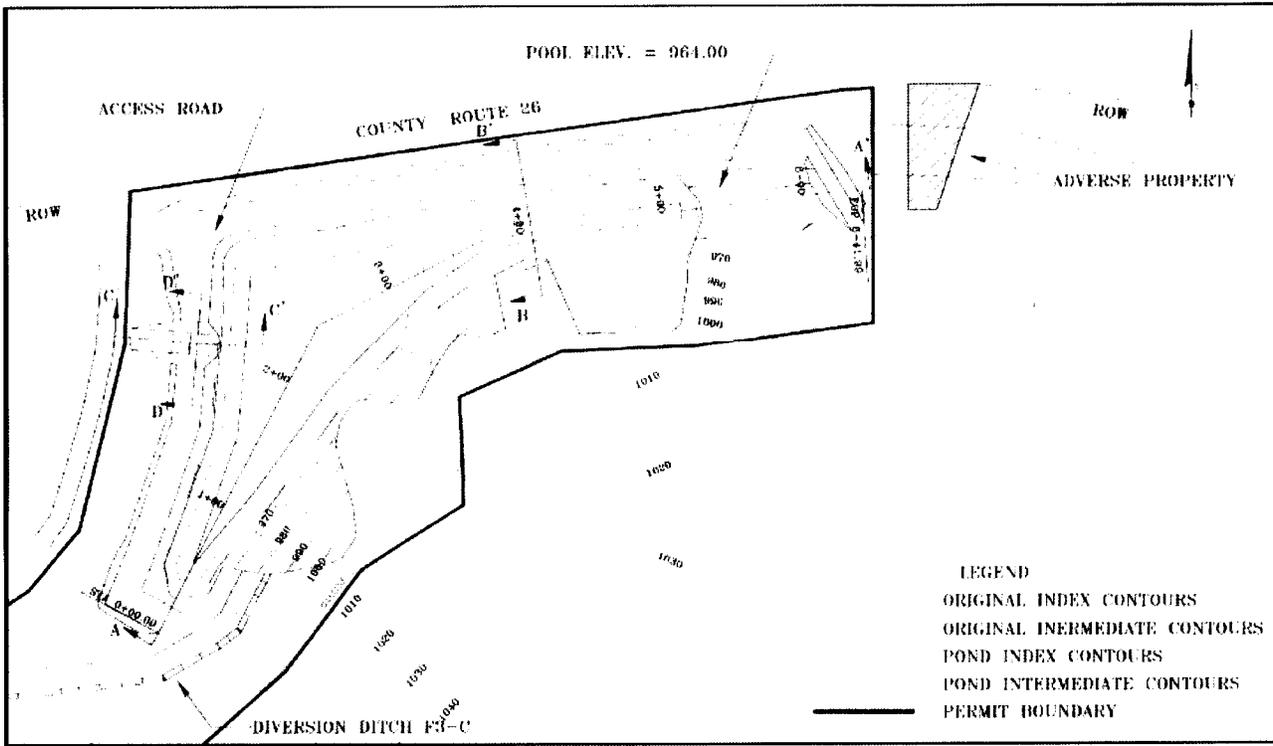
Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 7 of 11  
 Fill No. 5



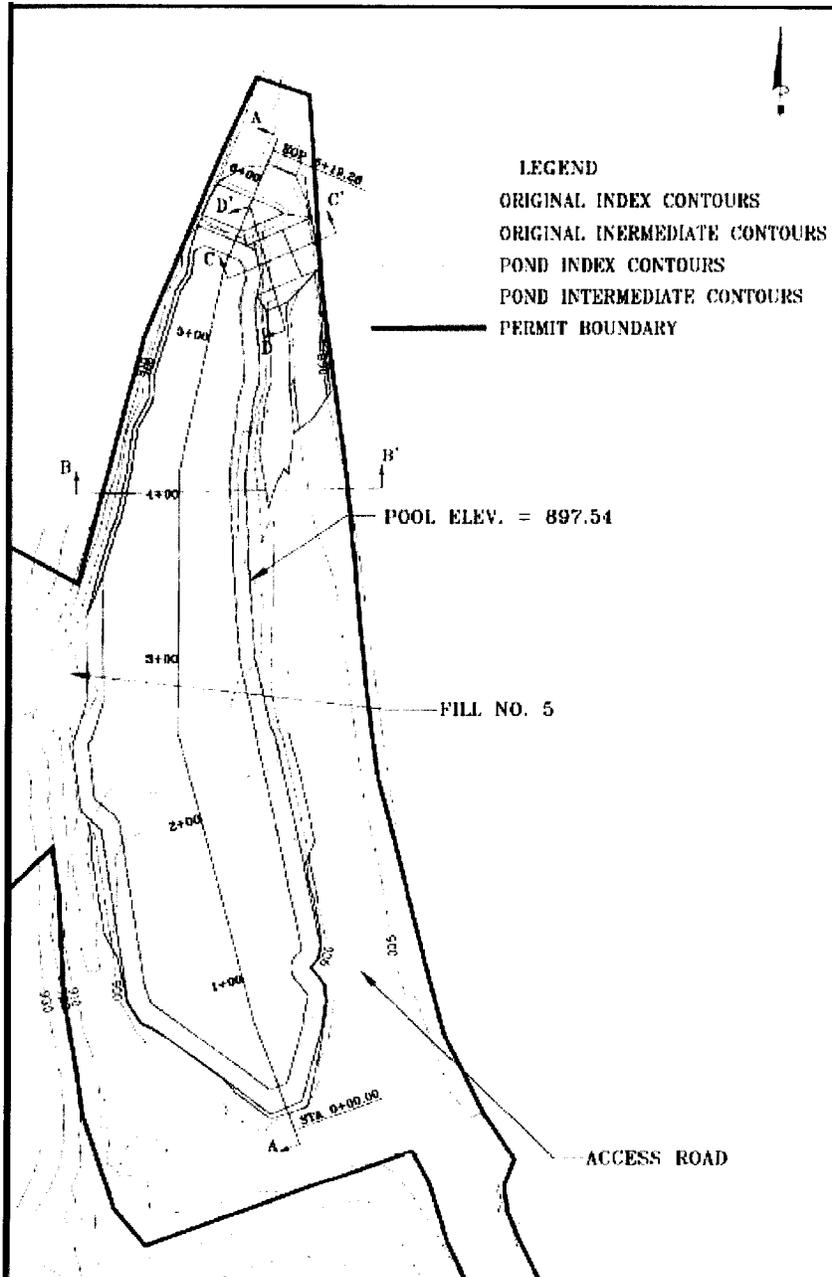
Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 8 of 11  
 Pond No. 1



Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 9 of 11  
 Pond No. 2



Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 10 of 11  
 Pond No. 3



Independence Coal Company  
 Falcon Surface Mine – 200100451-2  
 Drawing 11 of 11  
 Pond No. 5