



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

# Public Notice

In reply refer to Public Notice No.  
**200500359**

Issuance Date:  
March 31, 2006

Stream:

**Miller Creek**

Closing Date:

May 1, 2006

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 approximately 2.5 miles east of Nolan, at Latitude 37°45'13" and Longitude 82°16'25" in the watersheds of Miller Creek, Left Fork of Miller Creek, and Road Branch of the Tug Fork in Mingo County, West Virginia. The limits of the project site are depicted on the **Figure 1 of 10**.

**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 MT 500 Surface Mine. The purpose of the proposed project is to recover bituminous coal from the Upper Dorothy, Dorothy Rider, Upper Kittanning, Middle Kittanning, 5-Block, and Stockton coal seams. The applicant proposes to disturb approximately 571.88 surface acres in conjunction with proposed coal removal activities, as depicted in the attached drawings **Figure 2-10 of 10**. As part of this operation, the applicant proposes to construct six permanent valley fills, six temporary sediment ponds, and six temporary road crossings. The proposed valley fills and associated sediment ponds would be constructed within unnamed tributaries of Road Branch, Left Fork of Miller Creek, and Miller Creek. Additionally the applicant proposed to mine through an ephemeral reach of stream. Construction of the proposed project would result in the discharge of dredged and/or fill material into approximately 22,800 linear feet (2.82 acres) of streams, all of which are waters of U. S. This total includes direct permanent adverse impacts to approximately 19,911 linear feet of stream, including approximately 13,624 linear feet of perennial and intermittent stream and approximately 6,287 linear feet of ephemeral stream. The project would also result in temporary adverse impacts to approximately 2,889 linear feet of stream, including approximately 2,629 linear feet of perennial and intermittent stream and approximately 260 linear feet of ephemeral stream. **Figure No. 4 of 10** provides a breakdown of proposed adverse impacts relative to duration, stream type, stream name, and proposed activity. The applicant's proposed operation would generate approximately 58,739,447 cubic yards of overburden (73,413,058 million cubic yards of overburden including swell factor) to recover approximately 10,711,553 tons over the anticipated 3-year life of mine (LOM). The West Virginia Department of Environmental Protection (WVDEP) is currently reviewing the Article 3 Permit application for this project (S-5009-05) pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

**MITIGATION PLAN:** To compensate for permanent and temporary adverse impacts to waters of the U. S. associated with the proposed project, the applicant has developed a compensatory mitigation plan that includes the following elements: enhancement of approximately 4,635 linear feet of perennial reaches of Mill Fork and Miller Creek, construction of approximately 12,640 linear feet of intermittent stream within on-bench drainage ditches, and restoration of approximately 2,464 linear feet of stream proposed to be adversely impacted as a result of proposed sediment pond construction activities. An approximately 50-foot (25-feet each side) riparian buffer would be established along streams proposed to be constructed and restored. This buffer would be planted and seeded with a variety of non-native and native herbs, shrubs, and tree species. Further, the applicant proposes to preserve all mitigation areas in perpetuity through a legal instrument, such as a deed restriction or conservation easement.

**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. To date, the applicant has not performed any surveys to document the presence of potential historical, cultural, or architectural sites. 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. In accordance with the protocol outlined in the Draft Indiana Bat Recovery Plan, the applicant performed a bat survey at six sites within the project area. No federally listed bats were captured during survey, which was performed from June 8, 2005, to June 16, 2005. The site was also surveyed for the presence of Indiana bat winter habitat. Based on this survey, the applicant found no abandoned mine portals. The results of this survey were provided to the U.S. Fish and Wildlife Service (USFWS) for review. Based on the information provided, the USFWS concluded that no federally-listed threatened or endangered species are expected to be impacted by the project. Therefore, the proposed project is not likely to adversely affect federally-listed species and no further consultation under the Endangered Species Act (ESA) is required with the USFWS. This public notice serves as a request to the USFWS 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.

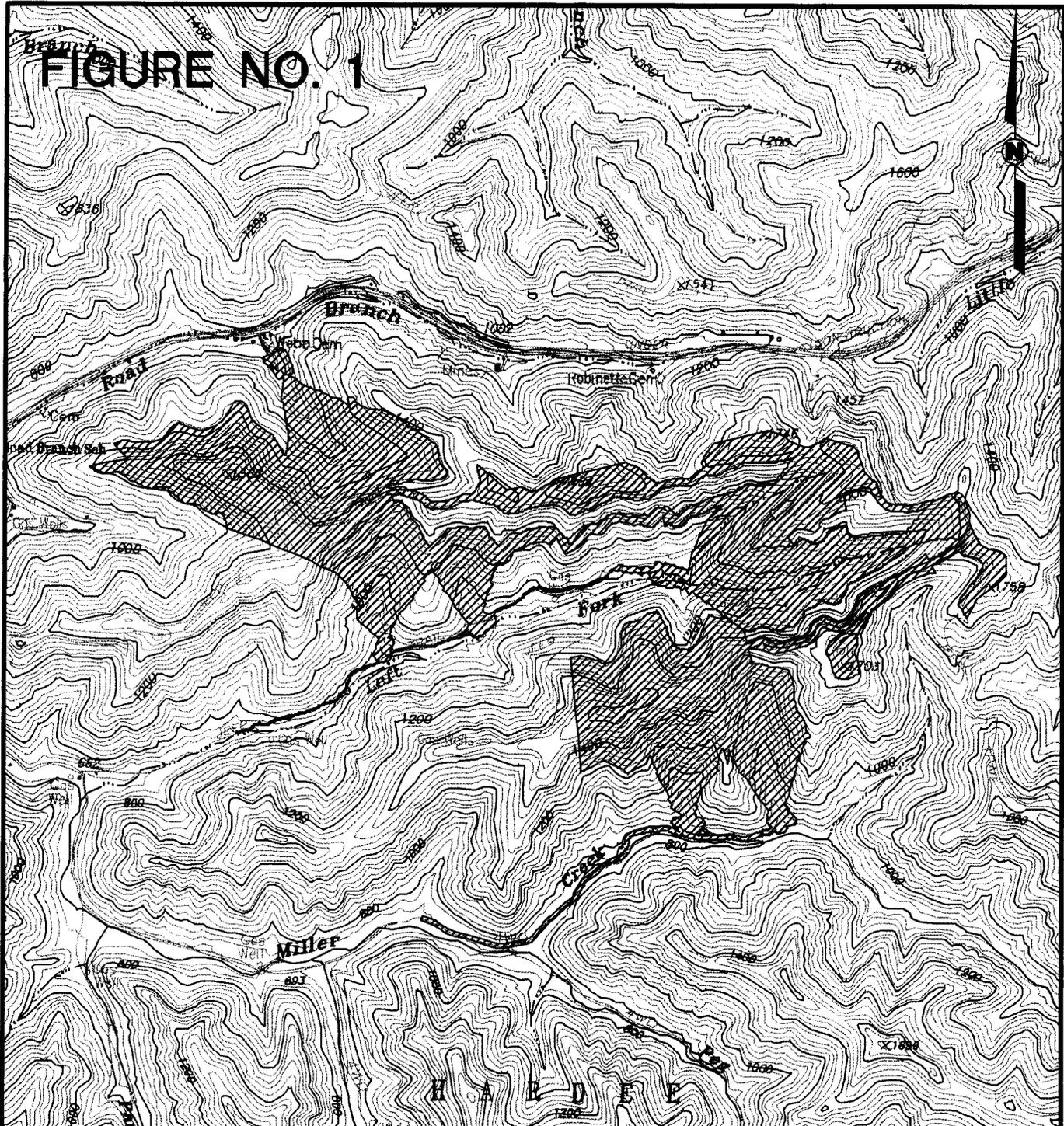
Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered 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.

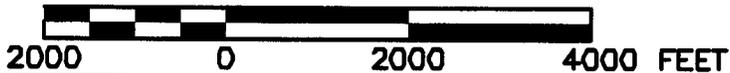
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests 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

# FIGURE NO. 1



### SCALE



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

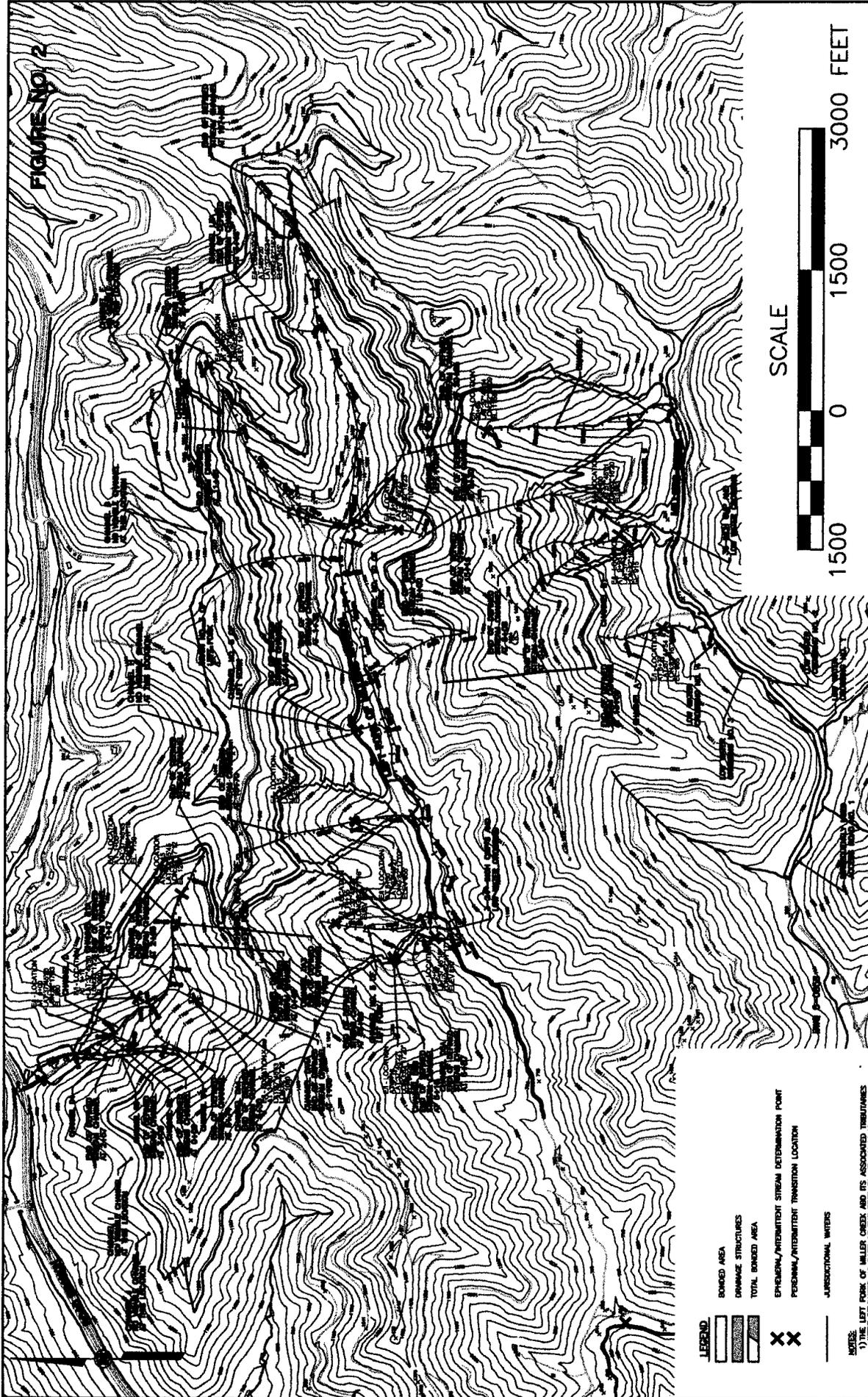
**Alliance Consulting, Inc.**  
 Engineers  
 Constructors  
 Scientists

BECKLEY, WV  
 (304) 255-0491  
 RALEIGH, NC  
 (919) 861-2267

**SITE LOCATION**  
 MT-500 SURFACE MINE  
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA  
 PREPARED FOR  
 CONSOL OF KENTUCKY  
 1800 WASHINGTON ROAD, PITTSBURGH, PA.

DRAWN BY	TLG	05/13/05
CHECKED BY		
APPROVED BY		
DRAWING NUMBER	FIGURE NUMBER	
B04-323-A8		

FIGURE NO. 2



SCALE



- LEGEND**
- BONDED AREA
  - DRAINAGE STRUCTURES
  - TOTAL BONDED AREA
  - EPHEMERAL/INTERMITTENT STREAM DETERMINATION POINT
  - PERMANENT/INTERMITTENT TRANSITION LOCATION
  - JURISDICTIONAL WATERS

**NOTES:**

- 1) THE LEFT FORK OF MILLER CREEK AND ITS ASSOCIATED TRIBUTARIES WERE Delineated AS PART OF THE PREP PLANT JURISDICTIONAL MAP. THE DRAINAGE STRUCTURES AND STREAMS SHOWN ON THIS MAP WERE PREVIOUSLY VERIFIED AND SHOWN IN RED ON THIS DRAWING.
- 2) ALL STREAMS THAT DO NOT ENTER THE FOREST AREA HAVE NOT BEEN SHOWN. THESE POINTS HAVE BEEN SHOWN TO DOCUMENT THE LOCATION OF THE FOREST AREA AND WILL BE SHOWN BY THE PROPOSED PROJECT A. E. F. & L. I.
- 3) PERMANENT/INTERMITTENT STREAM TRANSITION LOCATIONS WERE DETERMINED BASED UPON USGS TOPOGRAPHIC MAPPING FOR THE FOREST AREA.

**REFERENCE:**

TOPOGRAPHY PREPARED BY DUCENA INTERNATIONAL, INC., DENVER, CO. LAND AND PLANT COMMUNITY OF PITTSBURGH, PA. ST. LOUIS, MO. PHOTOGRAPHY PREPARED BY DUCENA INTERNATIONAL, INC. FROM AERIAL PHOTOGRAPHY DATED 04-11-71, PROVIDED BY CONSUL OF KENTUCKY, INC.

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 RALEIGH, NC  
 (919) 861-2287

**JURISDICTIONAL DETERMINATION MAP**  
 PUBLIC NOTICE 200500359 (DATED 01-05-06)  
 MT-500 SURFACE MINE (SMA NO. 5009-05)  
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA  
 PREPARED FOR  
 CONSOL OF KENTUCKY, INC.  
 1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

DRAWN BY	CHD	02/27/06
DRAWING NUMBER		FIGURE NUMBER
		2
		SHEET NUMBER
		B04-323-A79

**Legend**

MT-500 PERMIT BOUNDARY



1" = 2000'

REFERENCE: WEST VIRGINIA STATEWIDE AREA  
MAPPING BOARD DIGITAL ORTHOPHOTOGRAPHS

REV.	DATE	DESCRIPTION	P.R.

WICKLEY, WV  
(304) 253-4491

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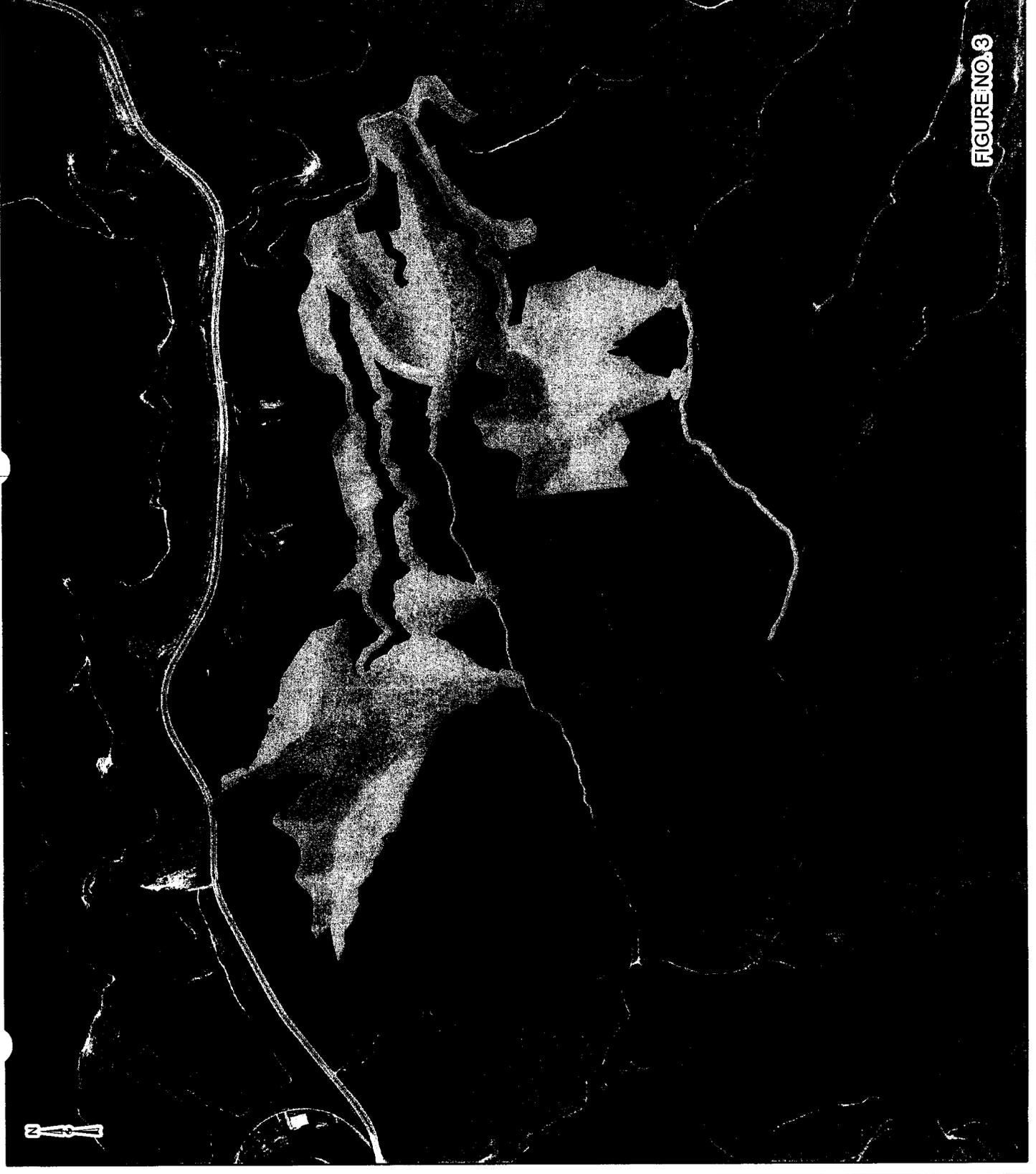
RALEIGH, NC  
(919) 941-2299

MT-500 SURFACE MINE  
AERIAL PHOTOGRAPHY LOCATION MAP

Prepared for  
CONSOL OF KENTUCKY, INC.

DATE	BY	DATE	BY
08/23/07		08/23/07	
08/23/07		08/23/07	
08/23/07		08/23/07	

DRAWING NO. B04-323-A-00



**FIGURE NO. 3**

# FIGURE NO. 4

## STREAM MEASUREMENTS TABLE VI-B-1 (ALL DRAINS)

Name of Applicant: \_\_\_\_\_ Consol \_\_\_\_\_

Facility Name: MT-500 Surface Mine

County: Mingo \_\_\_\_\_

Location: Approximately 2 miles South of Nolan  
Latitude: 37 45' 13" Longitude: 82 16' 25"

Name of Stream or Stream Section	Unimpacted	Perennial/Intermittent		Ephemeral		Perennial/Intermittent		Ephemeral	
		Length	Acres	Length	Acres	Length	Acres	Length	Acres
DRAIN B (VF 1)	22.00	567.00	0.05880	616.00	0.05560	311.00	0.03000		
DRAIN B1 (VF 1)		151.00	0.00880	995.00	0.07910				
DRAIN B1A (VF 1)				808.00	0.05120				
DRAIN #1 LEFT FORK (VF 2)		2400.00	0.43600	135.00	0.01600				
LEFT FORK OF MILLER CREEK (VF 2)	4400.00	3266.00	0.66500	765.00	0.05900	554.00	0.17900		
DRAIN LFA (VF 2)				348.00	0.01570				
DRAIN C (VF 3)		1773.00	0.15700			292.00	0.03600		
DRAIN #4 LEFT FORK (VF 4)	230.00	420.00	0.05500	720.00	0.02800	200.00	0.03600		
DRAIN #5 LEFT FORK (VF 5)	186.0	809.00	0.12300	175.00	0.01400	420.00	0.06900		
DRAIN #5A (VF 5)	462.0					153.00	0.00900	72	0.01000
DRAIN #5B (VF 5)		518.00	0.02200						
DRAIN D (VF 6)	77.0	2284.00	0.20530	438.00	0.0086	454.00	0.04140		
DRAIN D1 (VF 6)				574.00	0.02350				
DRAIN D2 (VF 6)		275.00	0.02170						
DRAIN D3 (VF 6)	18.0	282.00	0.02090						
DRAIN D4 (VF 6)	16.0	241.00	0.00820						
DRAIN D1A (VF 6)		117.00	0.00500						
DRAIN DA (VF 6)				205.00	0.01100				
DRAIN DA2 (VF 6)				40.00	0.00100				
DRAIN DA3 (VF 6)		100.00	0.00200						
DRAIN DA4 (VF 6)		330.00	0.06000						
DRAIN DA4a (VF 6)				100.00	0.00200				
DRAIN A	1255.00					45.00	0.00310		
DRAIN #2 LEFT FORK	739.00	91.00	0.02900						
DRAIN #3 LEFT FORK	829.00			148.00	0.02200			188.00	0.01300
DRAIN #8 LEFT FORK (stream crossing)	480.00			20.00	0.00300				
DRAIN #10 LEFT FORK (mine through)	1000.00			200.00	0.01500				
MILLER CREEK (5 stream crossings)						200.00	0.11000		
TOTAL	9714.0	13624.00	1.87770	6287.00	0.40470	2629.00	0.51350	260.00	0.02300



PLAN VIEW (VALLEY FILL NO. 6)



**LEGEND:**

- REGRADE
- LOWER FREEPORT
- UPPER KITTANNING
- MIDDLE KITTANNING
- FIVE BLOCK
- STOCKTON
- DOROTHY RIDER
- UPPER DOROTHY

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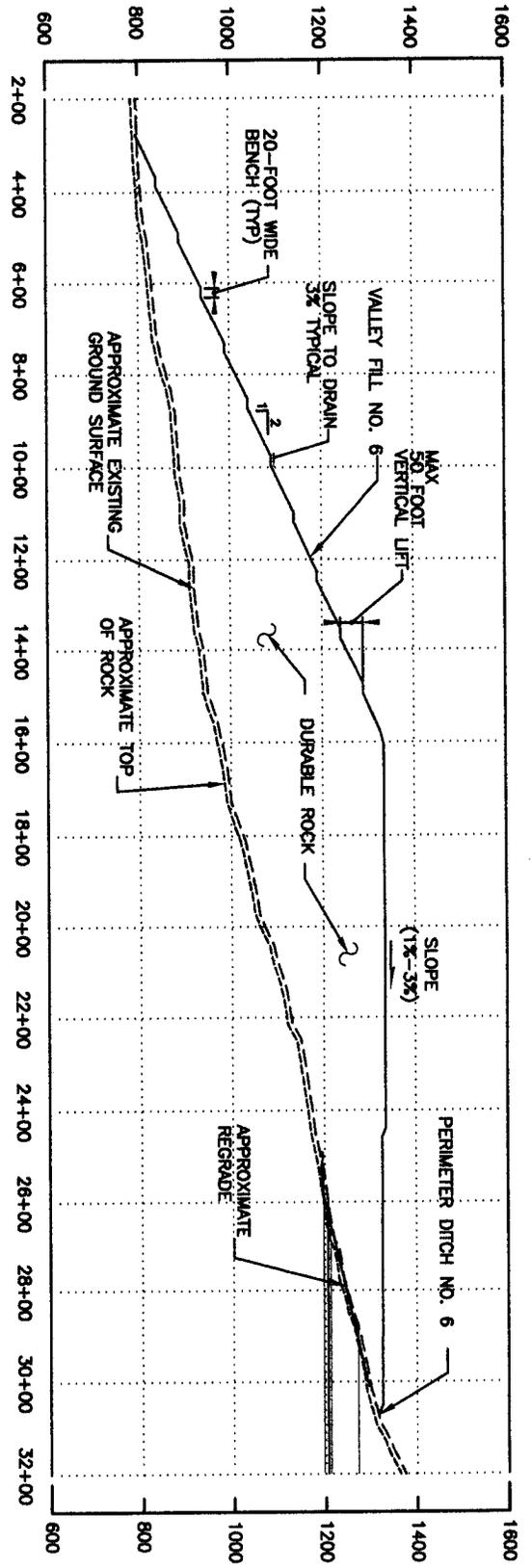
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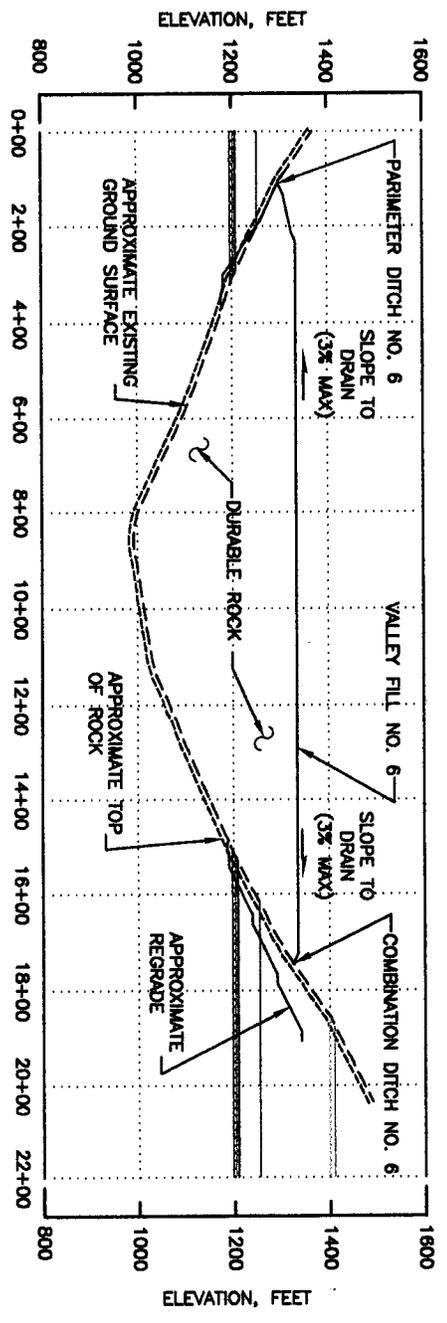
VALLEY FILL NO. 6 PLAN  
PUBLIC NOTICE 200500359 (DATED 01-05-06)  
MT-500 SURFACE MINE (SMA NO. 5009-05)  
HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA

PREPARED FOR  
CONSOL OF KENTUCKY, INC.  
1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

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APPROVED BY		
DRAWING NUMBER	FIGURE NUMBER	
B04-323-A40	5	



SECTION A-A



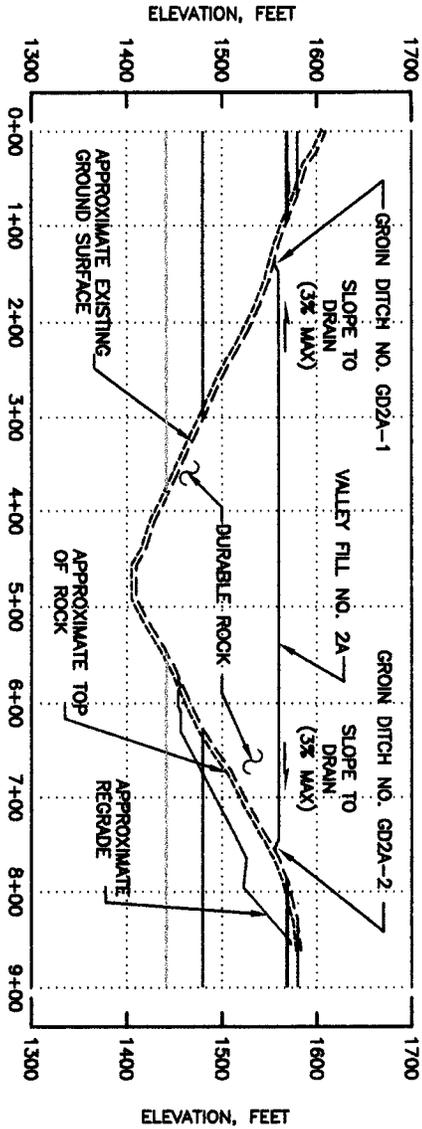
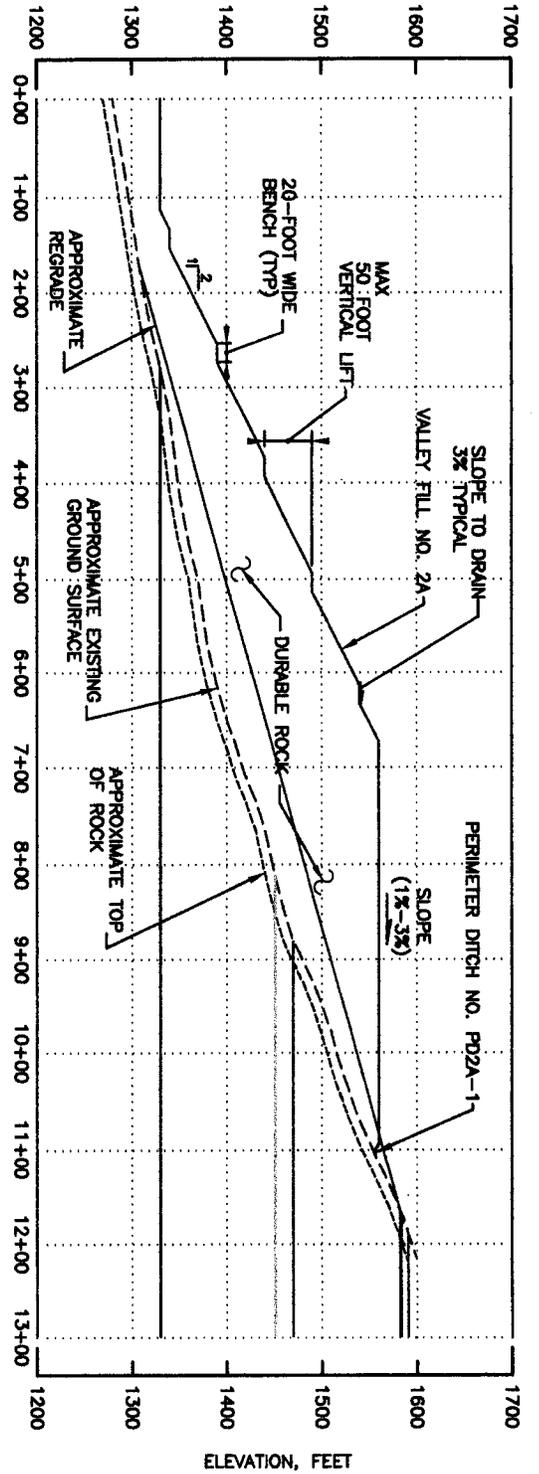
SECTION B-B

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VALLEY FILL NO. 6 SECTIONS  
 PUBLIC NOTICE 200500359 (DATED 01-05-06)  
 MT-500 SURFACE MINE (SMA NO. 5009-05)  
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA  
 PREPARED FOR  
 CONSOL OF KENTUCKY, INC.  
 1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

DRAWN BY	DSM	01/05/06
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APPROVED BY		
DRAWING NUMBER	FIGURE NUMBER	
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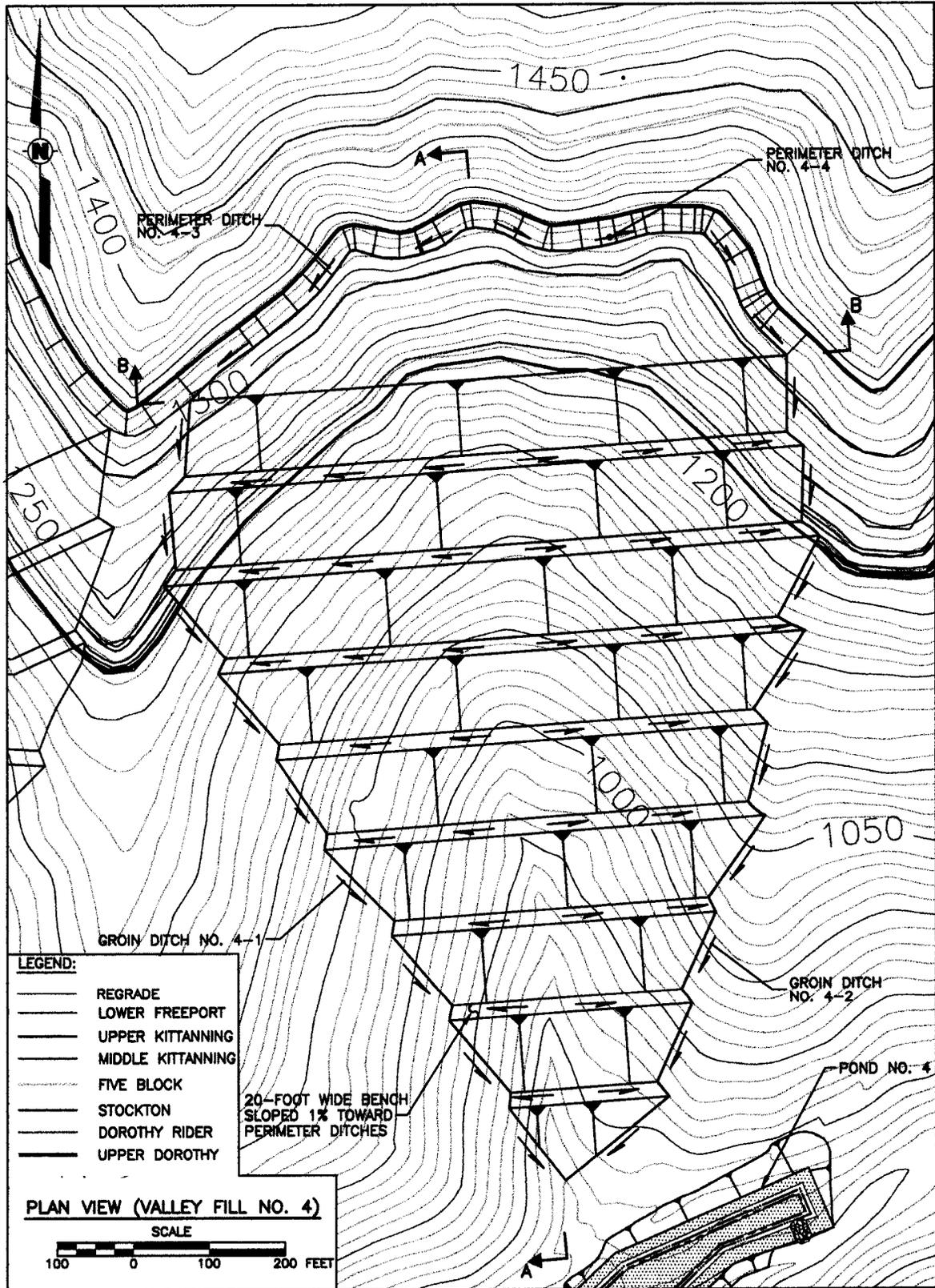


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 (919) 881-2267

VALLEY FILL NO. 2A SECTIONS  
 PUBLIC NOTICE 200500359 (DATED 01-05-06)  
 MT-500 SURFACE MINE (SMA NO. 5009-05)  
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA  
 PREPARED FOR  
 CONSOL OF KENTUCKY, INC.  
 1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

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APPROVED BY		
DRAWING NUMBER	FIGURE NUMBER	
B04-323-A42	7	

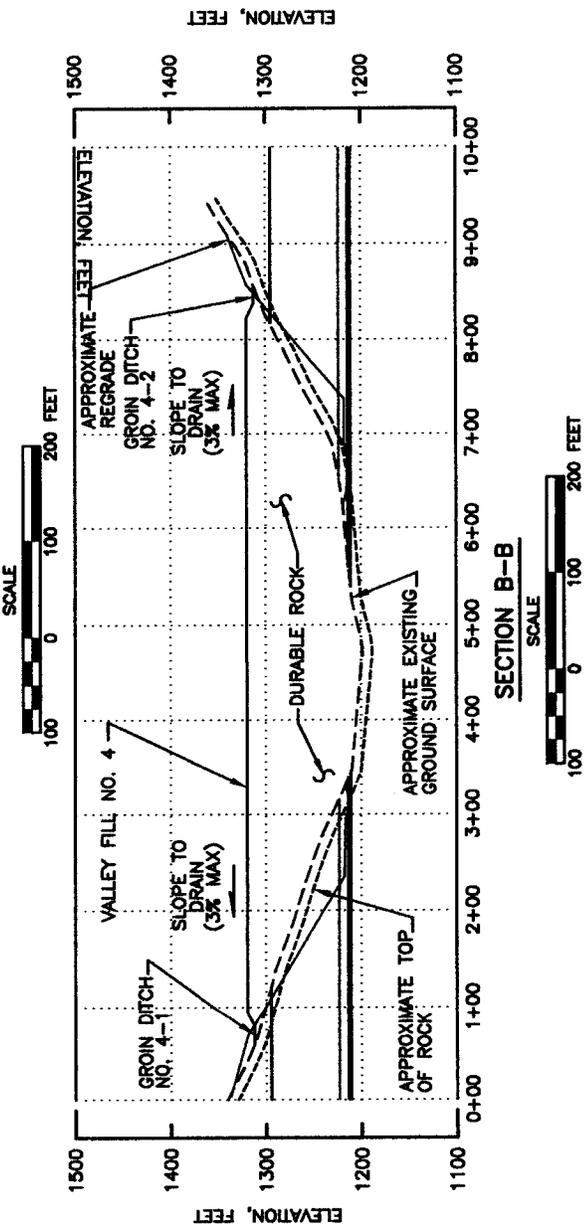
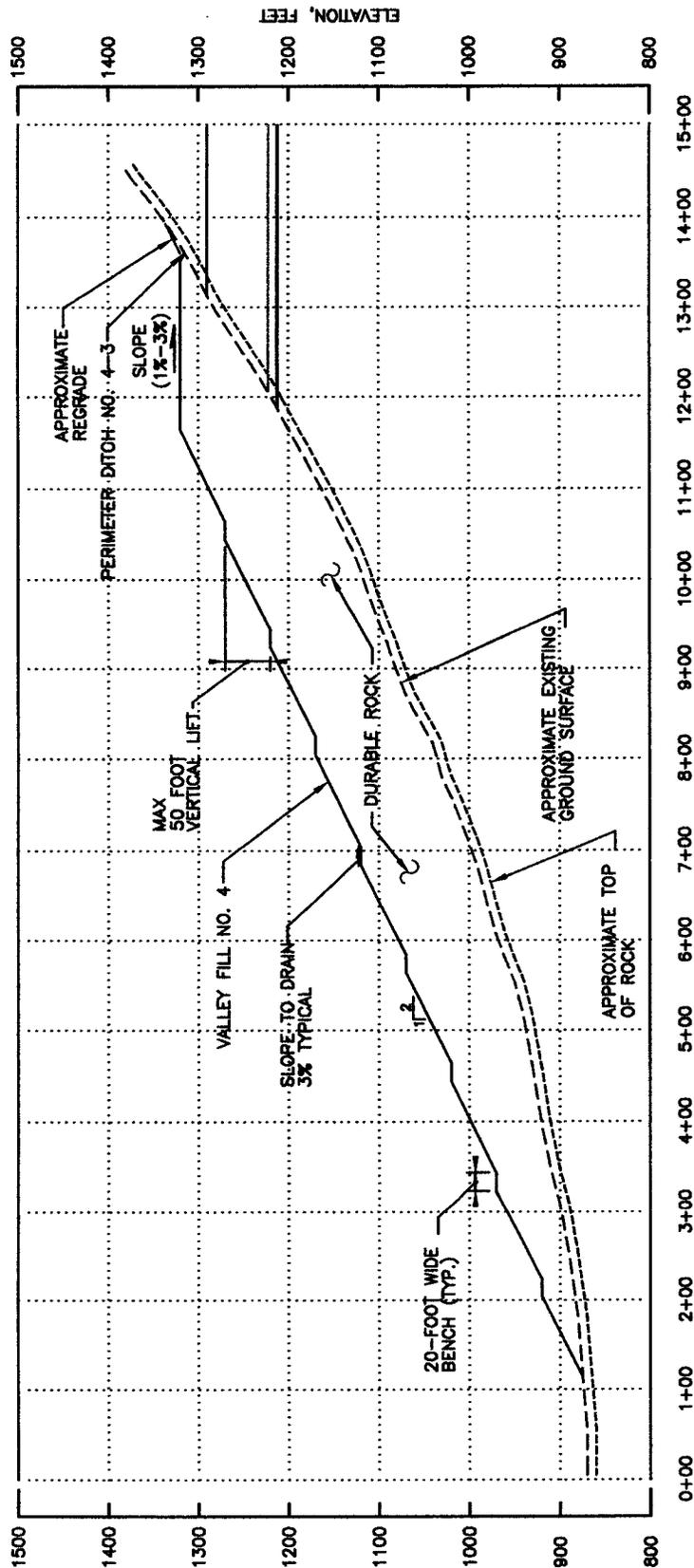


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VALLEY FILL NO. 2A SECTIONS  
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 1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

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DRAWING NUMBER	FIGURE NUMBER	
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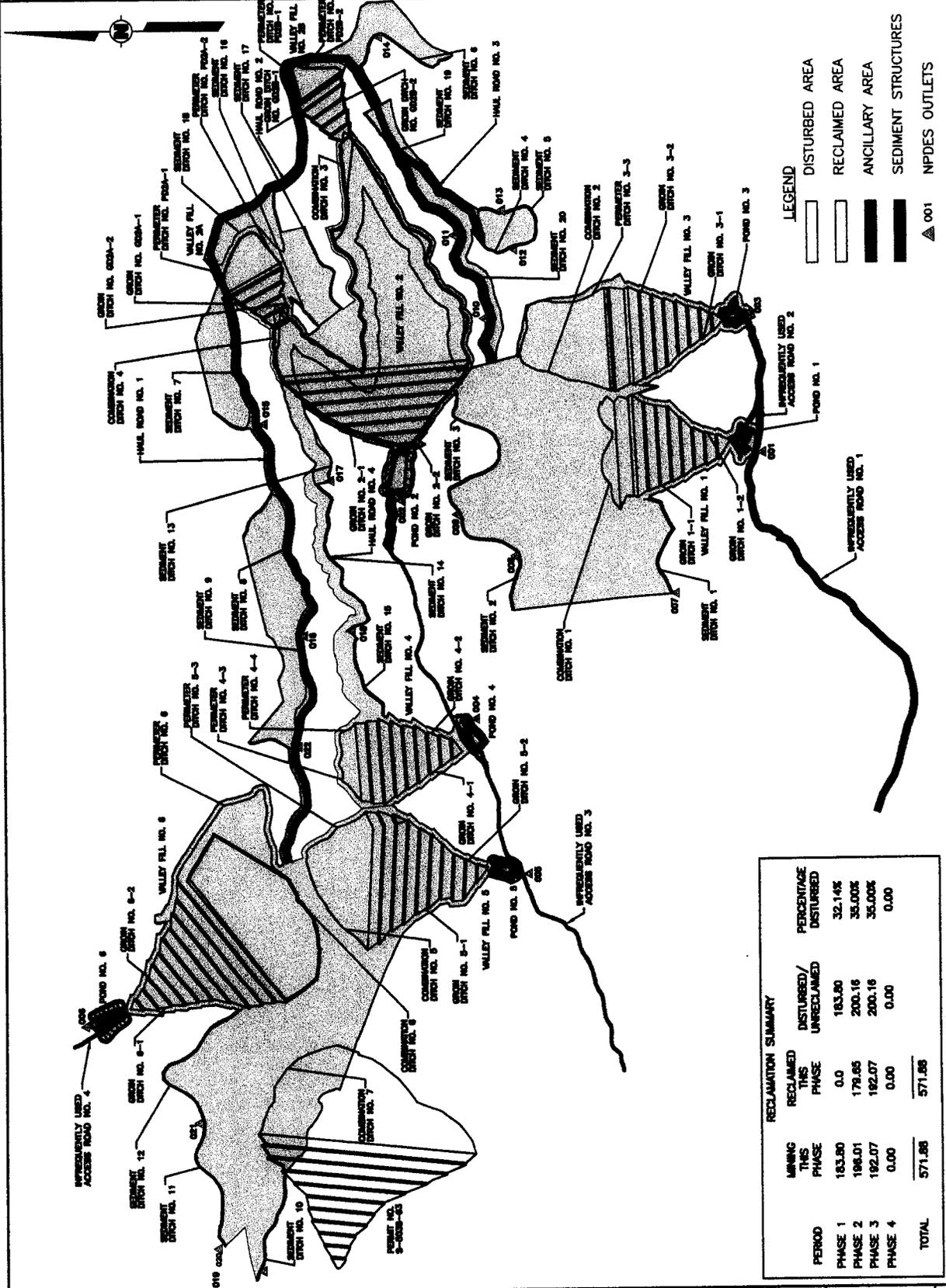


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VALLEY FILL NO.4 SECTIONS  
 PUBLIC NOTICE 200500359 (DATED 01-05-06)  
 MT-500 SURFACE MINE (SMA NO. 5009-05)  
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA  
 PREPARED FOR  
 CONSOL OF KENTUCKY, INC.  
 1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

	TLG	01/05/06
CHECKED BY		
APPROVED BY		
DRAWING NUMBER	B04-323-A44	
FIGURE NUMBER	9	



**NOTE:**  
 TOTAL BONDED AREA IS 571.88 ACRES FOR  
 CONTEMPORANEOUS RECLAMATION PURPOSES.  
 21.45 ACRES ARE NOT INCLUDED AS CERTIFIED  
 DRAINAGE STRUCTURES, ACCESS ROADS AND  
 HAUL ROADS ARE CONSIDERED SEMI-PERMANENT  
 ANCILLARY FACILITIES.

REFERENCE:  
 U.S.G.S. WILLIAMSON &  
 MAUGATUCK 7.5' QUADS

RECLAMATION SUMMARY			
PERIOD	MINING THIS PHASE	RECLAIMED THIS PHASE	PERCENTAGE DISTURBED
PHASE 1	183.80	0.0	32.14%
PHASE 2	198.01	179.86	35.00%
PHASE 3	192.07	192.07	35.00%
PHASE 4	0.00	0.00	0.00
<b>TOTAL</b>	<b>571.88</b>	<b>571.88</b>	

MINING SUMMARY			
PERIOD	DISTURBED/UNRECLAIMED	CUMULATIVE RECLAMATION	REMAINING UNDISTURBED TOTAL
PHASE 1	183.80	0.00	388.08
PHASE 2	191.85	8.31	192.07
PHASE 3	178.71	21.45	0.00
PHASE 4	0.00	0.00	0.00
<b>TOTAL</b>	<b>571.88</b>	<b>571.88</b>	<b>571.88</b>

**Alliance Consulting, Inc.**  
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 Constructors  
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 RALEIGH, NC (919) 561-2267

PHASE IV MAP  
 PUBLIC NOTICE 200500359 (DATED 01-05-06)  
 MT-500 SURFACE MINE (SMA NO. 5009-05)  
 HARDEE DISTRICT, MINGO COUNTY, WEST VIRGINIA  
 PREPARED FOR  
 CONSOL OF KENTUCKY, INC.  
 1800 WASHINGTON ROAD, PITTSBURGH, PA 15241

DRAWN BY	TLG	01/05/06
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APPROVED BY		
DRAWING NUMBER	FIGURE NUMBER	
B04-323-A76	10	