

Public Notice

**U.S. Army Corps
of Engineers**
Pittsburgh District

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Application No. 2013-1793

Date: October 29, 2013

Notice No. 13-47

Closing Date: November 29, 2013

1. **TO ALL WHOM IT MAY CONCERN:** The following Cheat Canyon stream preservation project has been submitted by the West Virginia Department of Environmental Protection (WVDEP) for approval under the West Virginia In-Lieu Fee Program (WVILFP).
2. **APPLICANT:** Glenn McLernon
WV In-Lieu Fee Coordinator (Stream and Wetland Mitigation)
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304
3. **LOCATION:** The Cheat Canyon stream preservation project is located within the 8-digit Cheat River HUC (05020004), located in Albright, Preston County, West Virginia.
4. **PURPOSE AND DESCRIPTION OF WORK:** The WVDEP proposes to purchase and permanently protect 228.5 acres of riparian buffer along the Cheat River as an ILF stream preservation project. The West Virginia Stream and Wetland Valuation Metric was not used for this project because the impacts were previously expressed in acres of stream impact, not stream credit. Therefore, the project will generate 46.8 acres of preserved stream (not including the riparian buffer), which is intended to off-set 3.78 acres of stream impact; therefore, the impact is being mitigated at a 12:1 ratio. Please see attached mitigation site plan.
5. **WEST VIRGINIA CERTIFICATION:** The West Virginia Department of Environmental Protection is not required to issue 401 Water Quality Certification as a 404 Department of the Army permit is not required.
6. **IMPACT ON NATURAL RESOURCES:** The District Engineer has consulted the most recently available information and has determined that the project will have no effect on endangered species or threatened species, or result in destruction or adverse modification of habitat of such species which has been determined to be critical. While concurrence with this determination is not required, this Public Notice serves as a request to the U.S. Fish and Wildlife 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 area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

7. **IMPACT ON CULTURAL RESOURCES:** No impact to historic and archeological resources is anticipated as this project will not require earth disturbance. The National Register of Historic Places has been consulted, and it has been determined that there are no properties currently listed on the register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archeological, scientific, prehistorical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).
8. **PUBLIC INVOLVEMENT:** Any person may request, in writing, within the comment period specified in the paragraph below entitled "RESPONSES," that a public hearing be held to consider this proposed West Virginia In-Lieu Fee Project. The requests for public hearing shall state, with particularity, the reasons for holding a public hearing.
9. **EVALUATION:** Interested parties are invited to state any objections they may have to the proposed WVILF project.
10. **RESPONSES:** This project will be authorized under the existing WVILF Instrument unless its issuance is found to be contrary to the public interest. Written statements concerning the proposed activity should be received in this office on or before the closing date of this Public Notice in order to become a part of the record and to be considered in the final determination. Any objections which are received during this period may be forwarded to the applicant for possible resolution before the determination is made whether to approve as an ILF project. All responses to this notice should be directed to the Regulatory Branch, attn Donald Bole at the above address, by telephoning (412) 395-7576, or by e-mail at Donald.R.Bole@usace.army.mil Please refer to File 2013-1793 in all responses.

FOR THE DISTRICT ENGINEER:

/SIGNED/

Jon T.Coleman
Chief, Southern Section
Regulatory Branch



West Virginia In-Lieu Fee Stream and Wetland Mitigation Program



MITIGATION PLAN

Cheat Canyon Stream Mitigation Project

Cheat River HUC
Preston County, WV

September 2013

Table of Contents

West Virginia In-Lieu Fee Stream and Wetland Mitigation Program	0
1. Introduction	2
1.1. Project Location	2
1.2. Proposed Service Area	2
2. Mitigation Objectives.....	2
Figure 2. West Virginia In-Lieu Fee Mitigation Program service areas.....	4
3. Site Selection Criteria.....	5
4. Site Protection Instrument.....	7
5. Baseline Information	7
6. Determination of Credits	8
7. Mitigation Work Plan.....	8
8. Maintenance Plan.....	8
9. Performance Standards	9
10. Monitoring and Reporting Requirements.....	9
11. Long-Term Management Plan.....	9
12. Adaptive Management Plan.....	10
13. Financial Assurances.....	10
14. Credit Release Schedule.....	10
15. Literature Cited	10
Figure 3. Cheat Canyon Mitigation Project site plan.....	11
Appendix A. Photographs of the Cheat Canyon project site.....	12

1. Introduction

This Mitigation Plan presents the details of the Cheat Canyon In-Lieu Fee Mitigation Project approved conceptually by the West Virginia Interagency Review Team. This plan is organized according to the Department of Defense and Environmental Protection Agency 40 CFR Part 230, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule published April 10, 2008, effective June 9, 2008 (2008 Rule). This plan is also consistent with the West Virginia In-Lieu Fee Stream and Wetland Mitigation Program Instrument (WVILF Instrument), finalized on June 3, 2013.

1.1. Project Location

The proposed Cheat Canyon In-Lieu Fee Mitigation Project includes approximately 228.5 acres owned by Heartwood Forestland Fund VI, LP (HFF), in Preston County, West Virginia. The project site is part of a larger approximately 3,900 acre property owned by HFF along both sides of the Cheat River in an area called Cheat Canyon; which extends from the confluence of Muddy Creek, just north of the Town of Albright, WV, downstream to the confluence of Big Sandy Creek near Snake Hill Wildlife Management Area. The project site includes a riparian corridor along the main stem of the Cheat River approximately 20,200 feet long (3.83 miles). The project site is located at Latitude 39.568651, Longitude -79.719860 (WGS 84 Decimal Degrees), in a remote area approximately 5 miles northwest of Albright, WV. Access to the project site is along a woods road/old railroad grade that parallels the Cheat River along the northern bank. To access the road travel north on SR 26 from the Town of Albright and turn left onto Beech Run Road. Travel approximately 0.3 miles and turn left onto the woods road. Figure 1 contains a location map of the project site.

1.2. Proposed Service Area

The proposed service area for the Cheat Canyon Project is the 8-digit Cheat River HUC (05020004). Figure 2 contains a map of the service area.

2. Mitigation Objectives

The proposed project will include the preservation of 228.5 acres of riparian corridor along the Cheat River, including parts of six tributary streams which empty into the Cheat within the project area. The total length of stream protected by the project includes 20,200 linear feet along the main stem of the Cheat River and an additional 1,800 linear feet along the six tributary streams. The objective of the project is to permanently protect the aquatic resources, riparian areas, and ecological values of the subject property through fee acquisition of the land and designation of the property in part as a Nature Preserve owned by The Nature Conservancy (TNC) and in part as a Wildlife Management Area owned and managed by the State of West Virginia, Division of Natural Resources (DNR). The proposed corridor will be 600 feet wide (300 feet on each side of the river) for approximately 13,432 linear feet and 300 feet wide on the north side of the river only for 6,787 linear feet (Note: in this section the south bank of the river is protected under a settlement agreement with Invenergy). The project will generate an estimated 46.8 acres of stream mitigation not including the area of the proposed buffer.

Figure 1. Cheat Canyon In-Lieu Fee Mitigation Project site location.

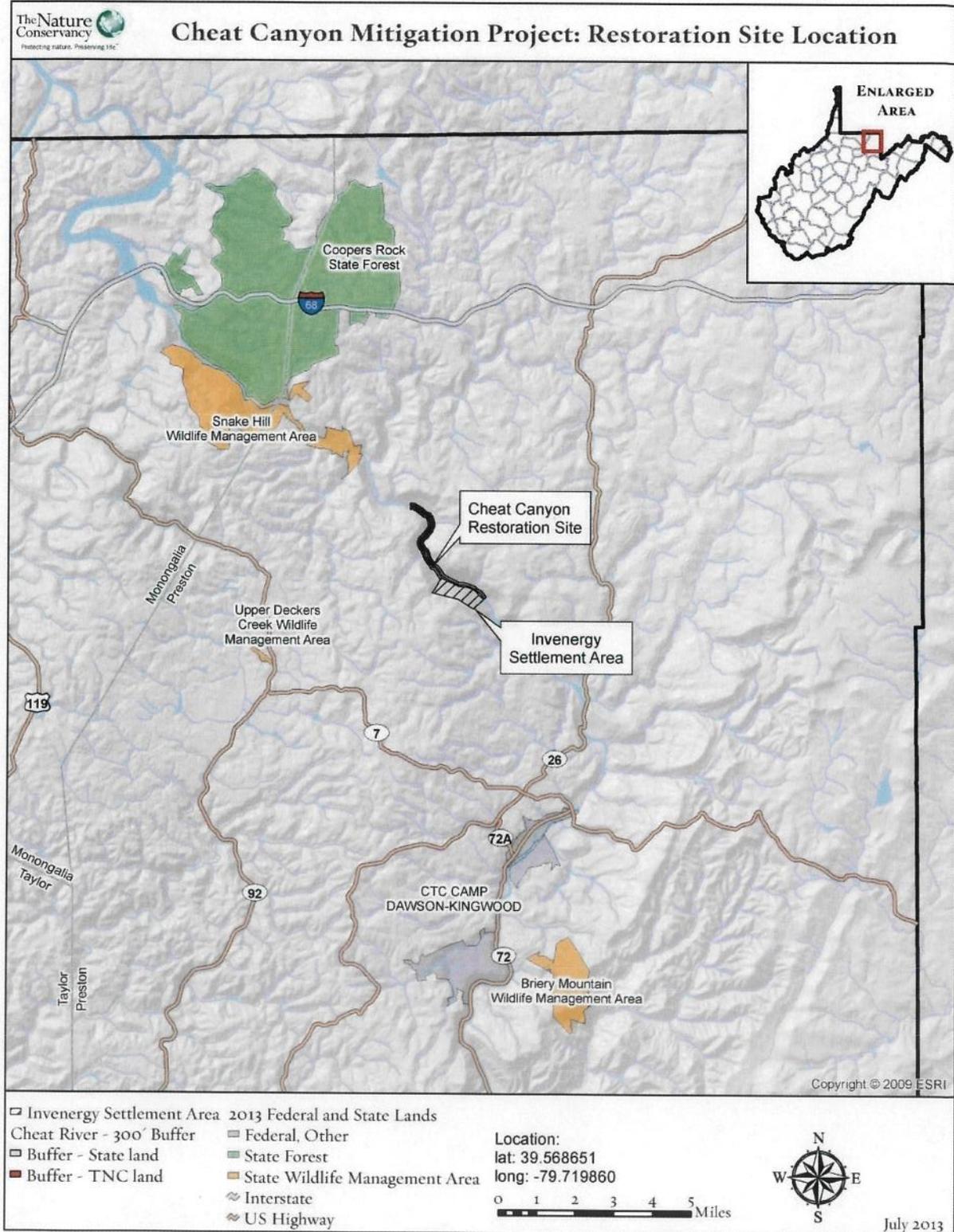
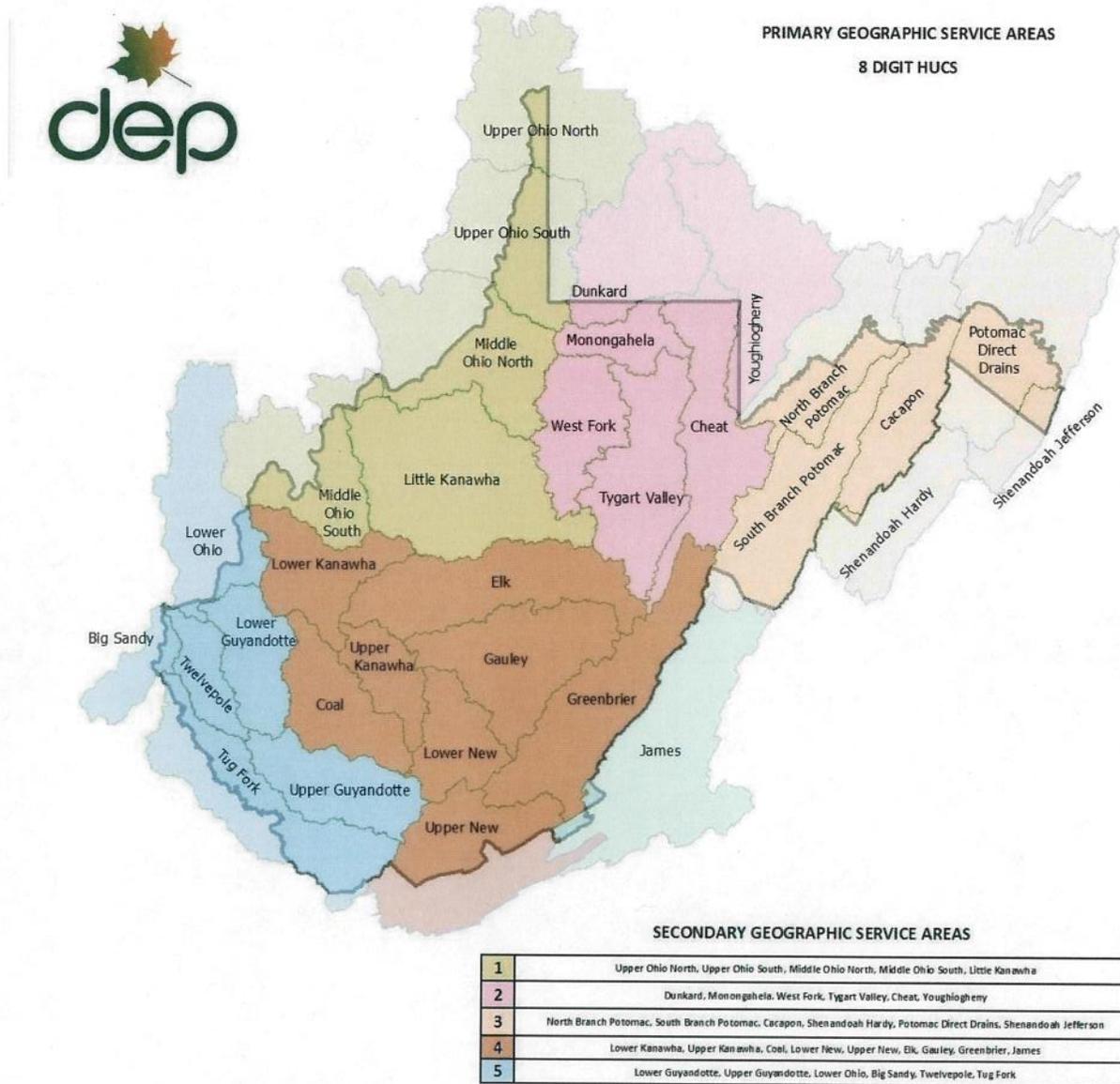


Figure 2. West Virginia In-Lieu Fee Mitigation Program service areas.



The Cheat River is a perennial stream and a large tributary of the Monongahela River, which joins with the Allegheny River at Pittsburgh, Pennsylvania to form the Ohio River. The river originates from numerous tributary streams that flow out of higher elevations of the central Appalachian Mountains. The total watershed area for the Cheat River is approximately 1,426 square miles. Various sources estimate that approximately 80-85% of the watershed remains forested, much of that currently protected as part of Monongahela National Forest. The project area is located in the lower reach of the Cheat River Watershed in an area called Cheat Canyon, and is less than 1 river mile upstream of the Snake Hill Wildlife Management Area.

Cheat Canyon is noted for its important ecological attributes including: all known habitat for the federally threatened Cheat flat-spined three toothed land snail (*Triodopsis platysoides*) (endemic to the canyon); a cave which supports a hibernating colony of the federally listed Indiana bat (*Myotis sodalis*), populations of the Organ Cave snail (*Fontigens tarterea*), and the only known global populations of two cave-dwelling invertebrates; and globally rare river scour communities that occur along the Cheat River and support the globally imperiled large-flowered Barbara's buttons (*Marshallia grandiflora*) and the state rare smooth rose (*Rosa blanda*). Cheat Canyon is also noted for its recreation opportunities including whitewater rafting and a rail trail route that was formerly a portion of the Allegheny Trail. For these reasons the Cheat River through Cheat Canyon is of great interest to state and federal government, and non-governmental conservation organizations.

The Lower Cheat River was once considered dead, largely due to acid mine drainage (AMD) from coal mining activities in the area. A watershed plan for the lower Cheat River watershed (Pavlick, M., et. al, 2005) identified in detail many of the issues impacting the Cheat River including sources of AMD, other point and non-point pollution sources, and sedimentation (Note: sedimentation was identified in the watershed plan as an issue but the plan acknowledged that details on specific sources was lacking). After decades of work from government and non-government organizations the stream again supports aquatic life. There are several programs and organizations continuing their work to address AMD and other point and non-point pollution sources. This in-lieu fee mitigation project can complement and support these programs and organizations in the restoration effort along the Cheat River by preserving over three miles of intact, forested riparian buffer, thereby preventing activities that might cause sedimentation, damage stream banks, or result in a loss of habitat for aquatic dependent species.

3. Site Selection Criteria

Selection of the proposed project site was based in part on identified needs of the watershed, landscape context, ecological value of the site, and opportunity. A watershed based assessment of the Cheat River 8-digit HUC watershed conducted by The Nature Conservancy indicates that the majority of sub-watersheds (12-digit HUC) classified as in fair to poor condition (based on a relative comparison of all 12-digit HUC within the Cheat River 8-digit HUC watershed) or in need of some type of restoration or preservation, occur along the lower reaches of the Cheat River. The majority of the upper part of the watershed is in good to very good condition, and in large part already protected as part of Monongahela National Forest. The proposed project site is located entirely within the Greens Run 12-digit HUC sub-watershed which is situated within the lower Cheat River watershed. Based on the analysis, the Greens Run sub-watershed was characterized as in fair condition due primarily to water quality impacts from past land use conversion. This project will permanently preserve a significant length of stream bank along the main stem of the Cheat River, portions of six tributary streams, and a significant riparian buffer, thereby reducing the probability of impacts from sedimentation, degradation of the stream bank, or the loss of habitat for aquatic dependent species resulting from incompatible activities or land use changes.

As discussed in the Objectives section above, the project site is located approximately one river mile upstream of Snake Hill Wildlife Management Area in an area of conservation interest by state and federal governments, and non-governmental organizations due to the significance of ecological resources in Cheat Canyon and along the river. It will also be contiguous with a 300-acre parcel along the south side of the Cheat River that will be turned over to the State as part of the Invenergy Settlement. The property is part of the largest remaining private tract along the main stem of the Cheat River and there is a willing landowner and an agreed upon appraised value.

The 2008 Compensatory Mitigation Rule permits preservation to be used to provide compensatory mitigation when the following criteria are met:

- (1) The resources to be preserved provide important physical, chemical, or biological functions for the watershed;
- (2) The resources to be preserve contribute significantly to the ecological sustainability of the watershed;
- (3) Preservation is determined by the district engineer to be appropriate and practicable;
- (4) The resources are under threat of destruction or adverse modification; and
- (5) The preserved site will be permanently protected through an appropriate real estate or other legal instrument.

The proposed Cheat Canyon In-Lieu Fee project will meet the above stated criteria:

- (1) The project will preserve over three miles along the main stem of the Cheat River including all associated stream banks, riparian buffers, river scour communities, portions of tributary streams, and other imbedded habitat types from any future incompatible land uses in an area of highly erodible soils.
- (2) Several of the species that may benefit from this project are known only from this location or are very rare either globally or in West Virginia. This includes the Cheat flat-spined three toothed land snail, large-flowered Barbara's buttons, and smooth rose. Many other species, including the federally listed Indiana bat may benefit from preservation of the riparian buffer. For this reason the site is of great conservation interest to federal, state, and non-governmental wildlife or conservation organizations.
- (3) The Interagency Review Team has determined that in this circumstance, preservation is appropriate and practicable. Review by the district engineer will be part of the review process for this mitigation plan.
- (4) Over the past several years, the resources discussed in this mitigation plan have been threatened by timber harvesting, and the potential for mineral, oil, or gas development. Disputes over these issues have been the subject of at least one lawsuit and settlement.
- (5) The project site will be permanently protected through fee acquisition of the land and designation of the property in part as a Nature Preserve owned by The Nature Conservancy and in part as a Wildlife Management Area owned and managed by the State of West Virginia Division of Natural Resources.

4. Site Protection Instrument

The property will be permanently protected through fee acquisition of the site and designation of the property in part as a Nature Preserve owned by TNC and in part as a Wildlife Management Area owned and managed by DNR. As part of due diligence prior to acquisition of the project site, the applicant has completed a minerals assessment, environmental hazards assessment, and title work to ensure that the project site is free from mineral claims, known environmental hazards, or encumbrances; or that the risk of these issues occurring is low. In addition to designation of the project site as defined above, the project will include development of a natural resource management plan that will include provisions which prohibit incompatible uses that might otherwise jeopardize the objectives of the compensatory mitigation project. The management plan will include a provision requiring 60-day advance notification to the district engineer before any action is taken to void or modify the protection instrument, management plan, or long-term protection mechanism, including transfer of title, or establishment of any other legal claims over the project site.

5. Baseline Information

The project site is characterized by very steep, forested slopes (approximately 50% slope throughout most of the canyon) which extend from the rim of Cheat Canyon down through the proposed mitigation site to the Cheat River. The river through this reach is largely contained within rocky cliffs, with a very narrow, if any, floodplain bench. The river contains numerous pools, riffles, rapids, and large boulders, with occasional gravel bars in bends and pools. Most of the shoreline up to the cliff edge is comprised of large rocks. Six high gradient tributary streams originate on the broad flats above the canyon rim and extend down through the project area to the Cheat River. These include Conner Run, Gum Run, Hackleberry Run, and several unnamed streams. The tributary streams are very steep and rocky, with numerous waterfalls. Typical photographs of the Cheat River within the project area and Conner Run are included in Appendix A. An old railroad grade/woods road meanders in and out of the northern edge of the project boundary along the north side of the Cheat River at approximately the 1,200-foot contour line. This is the primary management access to the property and the former route of the Allegheny Trail. The intent is to maintain this grade as an access road and trail route.

With the exception of the 60-foot wide railroad grade/road, the entire proposed project area is heavily forested. Typical tree species include red oak, yellow poplar, hickory, sycamore, and red maple; with a sparse to locally dense understory of rhododendron, sassafras, paw paw, and numerous other species. On the northern side of the river, small sections of the project site have been logged within the last 10 years and are now covered in a dense growth of overstory tree regeneration and early successional species (sumac, grape vine, blackberry), but this generally constitutes less than 1% of the total project area. Vegetation along the river bank below the cliff line and on the gravel bars is scattered due to the rocky nature of the shoreline and scouring by the river. However, scattered pockets of Japanese knotweed do occur in more protected areas within this zone.

The project area includes several surface-exposed strata of sedimentary rock from the Pennsylvanian and Mississippian age including: the Allegheny Formation, Pottsville Group, Mauch Chunk Group, Greenbrier Group, and Pocono Group. Cliffs and rock outcrops within the canyon are generally composed of hard, resistive sandstone and shales; however limestone outcrops within the lower part of the canyon along the river. Soils on the project site consist predominantly of Dekalb Channery Sandy Loam, 35-65% slope, rubbly. This soil type is rated as extremely erodible. Ernest Silt Loam, 15-25% slope, extremely stony, and Ernest Silt Loam, 3-15% slope, extremely stony, do occur in a few very small areas on the project site, primarily in drainages along tributary streams. Both of the latter soil types are listed as moderately erodible. None of these soil types is listed as hydric.

6. Determination of Credits

The West Virginia Stream and Wetland Valuation Metric was not used to calculate mitigation credits for this project. The stream impacts this project is providing mitigation for occurred prior to development of the Valuation Metric so no comparable data was collected on the functional condition of the impacted site. The mitigation requirements (or Debits) for the permit were described in terms of acres of stream. The ILF program accepted responsibility for 3.78 acres of stream mitigation. To remain consistent with the methodology used to describe the mitigation required (Debits), the mitigation provided by this project (Credits) was also calculated as acres of stream.

By taking the total linear feet of stream preserved and multiplying that by 100 feet wide for the main stem of the Cheat River and 10 feet wide for the tributary streams $((20,200 \times 100) + (1,800 \times 10))$, the total acres of stream preserved equals 46.8 acres: a 12.4:1 ratio of preserved stream to impacted stream. This estimate does not include the buffer area to be preserved. Including the buffer area of 228.5 acres boosts the ratio of preserved stream to impacted stream to 60.4:1, not including the area of the main stem of the Cheat River.

7. Mitigation Work Plan

Geographic boundaries of the project area are depicted on the site plan in Figure 3. The project will include preservation of a riparian corridor 300 feet wide on both sides of the Cheat River starting at the northern extent of the Invenergy property boundary and extending downstream approximately 13,432 linear feet. The project will also include preservation of a riparian buffer 6,787 feet long along the north side of the Cheat River adjacent to the Invenergy property boundary (which extends to the river on the south bank). The Invenergy property will be protected through a separate settlement agreement and will become part of the proposed wildlife management area. The preservation area will include an additional 1,800 linear feet of tributary streams entering the Cheat River within the project boundary, all stream banks, riparian buffers, river scour communities, and other imbedded habitat types. Total area of preservation will be approximate 228.5 acres. No other work is proposed for this mitigation project.

8. Maintenance Plan

Since this mitigation project is preservation only, no maintenance activities are proposed to meet the performance standards for the project.

9. Performance Standards

Success of the Cheat River In-Lieu Fee Mitigation project will be based on preservation of the site by transfer of a general warranty deed from the landowner to TNC and/or DNR, and recordation of the deed in Preston County, WV.

10. Monitoring and Reporting Requirements

A copy of the recorded deed will be provided to the IRT to confirm ownership and protection of the project site. A natural resource management plan that includes information described in Section 4. {Site Protection Instrument} will be developed for the site within one year of the project closing by TNC and DNR. The management plan will be submitted to the IRT. No additional monitoring or reporting requirements are proposed for this project.

11. Long-Term Management Plan

Ownership of the project site will remain in part with TNC and in part with DNR. Both TNC and DNR will remain the responsible parties for long-term management and maintenance of the project site. Management of the project site will be described in a more comprehensive natural resource management plan developed jointly by TNC and DNR within one year of acquisition. That management plan will include provisions specific to this mitigation project that:

1. Designate the mitigation site as a preservation area to permanently protect the conservation values of the site including: aquatic communities, streams, stream banks, riparian buffers, river scour communities, and other imbedded habitat types; and
2. Protect the site from incompatible uses that may result in damage to the conservation values of the project area or result in erosion and sedimentation issues that impact water purity including: timber harvesting; development of roads, trails, or other improvements (excluding the Allegheny Trail route and the proposed raft landing area); recreational activities that result in damage to the mitigation area, erosion or sedimentation issues, or overuse or misuse of the site; excavation or development of mineral resources; alteration, pollution, depletion, or extraction of surface water; hardening of shorelines including jetties, groins, or bulkheads; or other activities that would result in damage to the conservation values of the project area; and

Consistent with the 2008 Rule and the WVILF Instrument, TNC may transfer long term management responsibilities for its ownership to DNR. If this occurs, the entire project site will be managed as part of a state wildlife management area by DNR subject to the rules and provisions of West Virginia Code §20-3-2 and any additional conditions placed on the TNC ownership by TNC as a result of this mitigation plan. Transfer would be accomplished through a management agreement.

TNC and DNR will conduct an annual evaluation of the project site to identify any management needs. Both parties will then coordinate work plans to address any management needs identified. Based on initial observations, long-term management needs are expected to include annual monitoring of the project site and legal defense to ensure continued protection. Estimated costs for this management activity are \$2,964.00 annually. TNC and DNR may conduct management activities using existing staff or contract the work to a third party vendor.

Management activities will be financed by a non-wasting endowment provided as part of the project costs by the WV ILF Program to TNC. These funds will be restricted to funding long-term management activities on the project site and legal defense. The endowment amount was calculated based on the annual expected management costs and an expected annual return of 4% interest on the endowment. The endowment amount needed to provide for the annual management costs and legal defense is \$74,108. Interest generated annually from the endowment will be utilized to conduct management activities on the project site, including both TNC and DNR ownerships.

Should TNC transfer long-term management responsibilities for the entire project area to DNR, TNC will retain the endowment fund but will provide the annual interest to DNR for management activities on the project site, or coordinate directly with DNR to contract management activities on the project site. Utilization of the funds would be specified the management agreement between DNR and TNC.

12. Adaptive Management Plan

TNC and DNR will be the responsible parties for implementing any adaptive management actions required on the project site. However, because the mitigation project is preservation only and all success criteria and credit release performance standards are met by protection of the site as defined above in Section 4 {Site Protection Instrument}, and TNC and DNR will verify that the condition of the site meets the criteria specified in the mitigation plan prior to closing, unforeseen changes in site conditions or other components of the project are not anticipated. TNC and DNR will notify the IRT if any significant modification of the project is to occur.

13. Financial Assurances

As described in the WV ILF Instrument, an amount equivalent to 20% of the project funds have been set aside in a contingency account to provide financial assurance that the project will meet the ecological success criteria and the provisions of the real estate protection instrument.

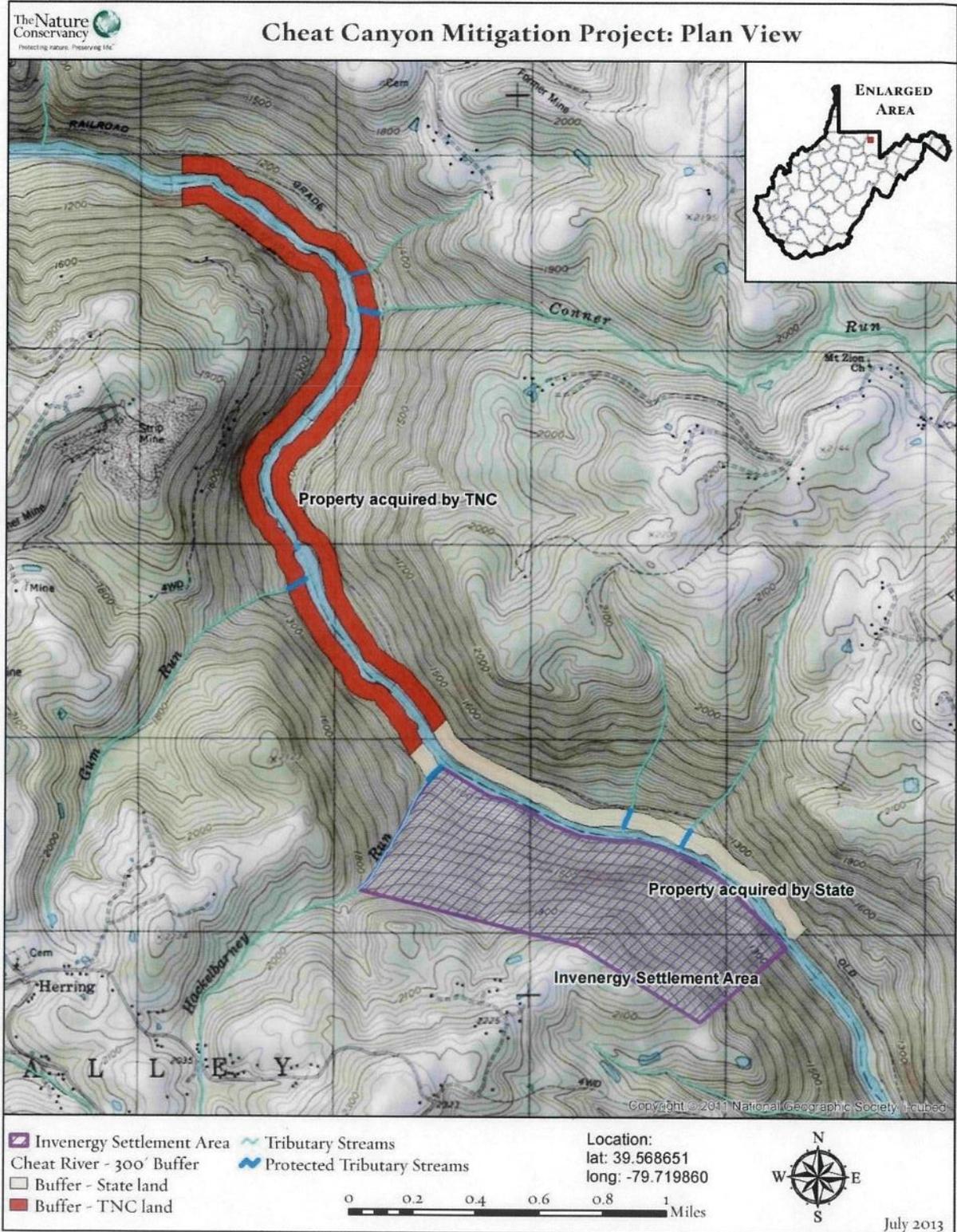
14. Credit Release Schedule

Protection/Preservation of Site	100%
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15. Literature Cited

Pavlick, Meredith, E. Hansen, and M. Christ. 2004. Watershed Based Plan for the Lower Cheat River Watershed: From River Mile 43 at Rowlesburg, WV to the West Virginia/Pennsylvania Border, including all tributaries. Morgantown, WV: Downstream Strategies.

Figure 3. Cheat Canyon Mitigation Project site plan.



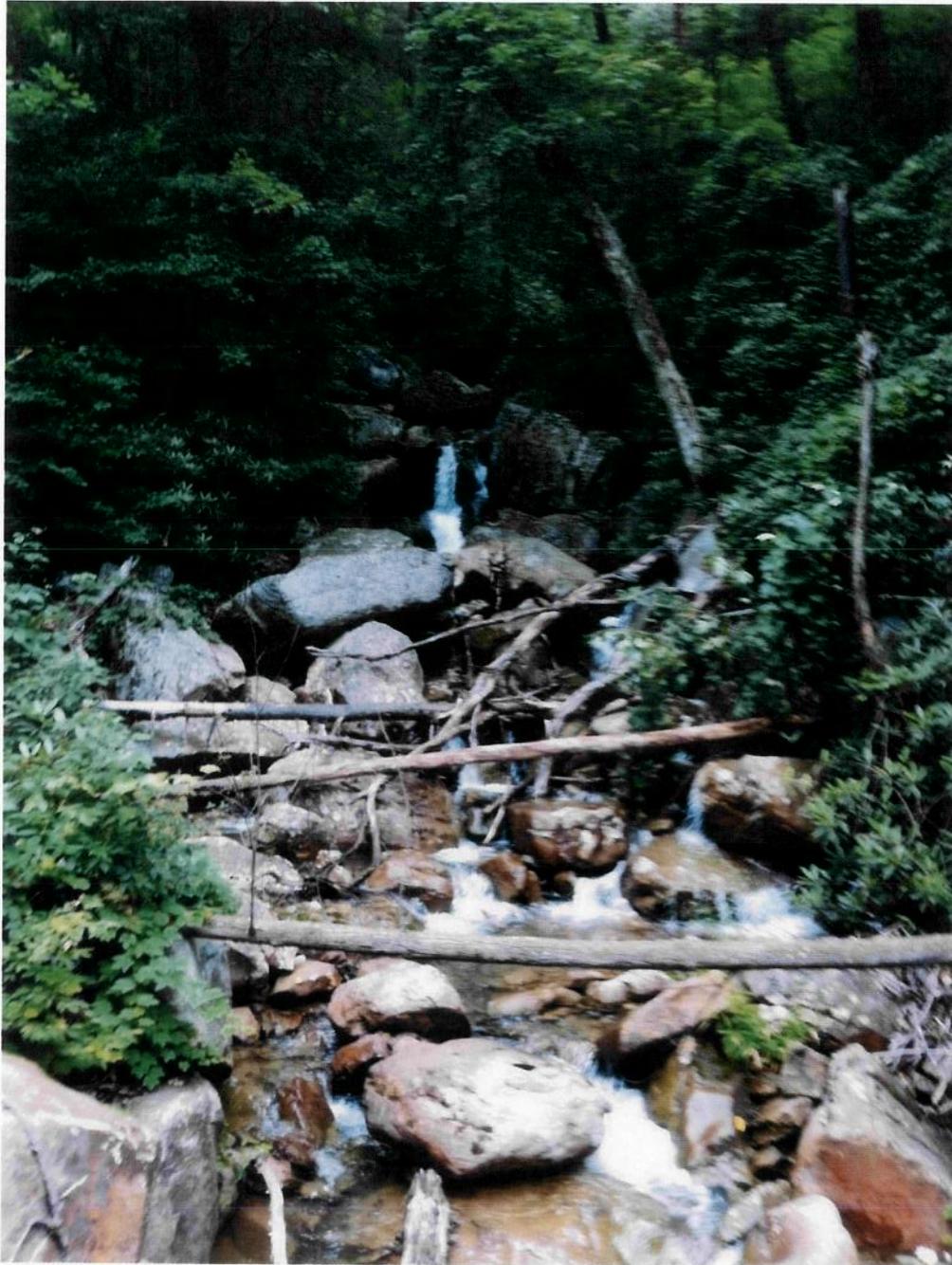
Appendix A. Photographs of the Cheat Canyon project site.



Typical character of the Cheat River within the project area including the forested riparian corridor.



Typical character of the Cheat River within the project boundary including the forested riparian corridor and a vegetated gravel bar on the left side of the photograph.



Photograph of Conner Run, a tributary of the Cheat River, at the point where it enters the project boundary.