



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. 200301526

Date: April 30, 2007

Notice No. 04-38A

Closing Date: May 30, 2007

1. TO ALL 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 (33 U.S.C. 1344).
2. APPLICANT: The Ohio Valley Coal Company
56854 Pleasant Ridge Road
Alledonia, OH 43902
3. LOCATION: The project is located in Sections 35 & 36, Washington Township, Belmont County, Ohio. The site coordinates: Latitude 39'55'31", Longitude 81'00'25.51".
4. PURPOSE AND DESCRIPTION OF WORK: This Public Notice (PN) amendment will replace PN 04-38 previously advertised on August 2, 2004. The applicant proposes to construct a course coal refuse disposal area, a new slurry impoundment within Casey Run, a named tributary to Captina Creek, and a sediment pond (pond 015). The proposed course coal refuse disposal area would impact approximately 2,207 linear feet (LF) of unnamed intermittent stream and 62 LF of ephemeral stream channels. The proposed slurry impoundment would impound approximately 6,426 LF of ephemeral, 14,928 LF of intermittent and 9,574 LF of perennial stream channel. In addition, eighteen small wetlands totaling 0.46 acre will be impacted by the project. Approximately 33,197 LF of stream channel would be affected by these activities. Casey Run, an intermittent stream in its upper reaches and perennial stream in its lower reaches, flows south through the proposed site. The aquatic life use designation of Casey Run is Warmwater Habitat. Downstream of the proposed activity, Casey Run flows into Captina Creek, designated Exceptional Warmwater Habitat, which then flows into the Ohio River. The purpose of the proposed impoundment is to store coal refuse resulting from an existing

coal preparation plant located at the Powhatan No. 6 Mine. The proposed impoundment will be approximately 130 acres and have a total affected area of approximately 304 acres. Construction of the No. 3 slurry impoundment will be completed in three stages, plus a reclamation stage, that will provide 10 years of coarse and fine refuse disposal capacity. Underdrains will collect the existing groundwater contributions to Casey Run under the proposed impoundment and coarse refuse fill. Seventy-two streams, including Casey Run, will be impacted by the proposed activities. The site is currently composed of old field, scrub shrub, and immature and mature forest. Coal refuse fill would remain permanent and upon completion, would be capped with soil and converted to pastureland. A mitigation plan has not been submitted for review at this time. Drawings of the proposed activity are attached.

5. WATER QUALITY CERTIFICATION: This permit decision will not be made until the State of Ohio, Environmental Protection Agency (OEPA), issues, denies, or waives State Certification. This public notice does not serve as application to the OEPA for certification required by Section 401 of the Clean Water Act. The applicant must apply directly to the OEPA for individual water quality certification. The OEPA will also consider whether or not the proposed activity will comply with sections 301, 302, 303, 306, 307 of the Clean Water Act or any other appropriate State laws. Any person wishing to comment, provide information, and/or request a public hearing concerning certification for this project should write to the:

Ohio Environmental Protection Agency
Division of Surface Water
Section 401 Coordinator
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Randy Bournique
Re: Public Notice CELRP-OP-F No. 04-38A

6. IMPACT ON NATURAL RESOURCES: The District Engineer has consulted the most recently available information and has determined that the project may affect the continued existence of the Indiana bat (*Myotis sodalist*), a Federally endangered species. The Corps recommended a mist-net survey be conducted to determine if the species is present at the site. This Public Notice serves as a request to the U. S. Fish and Wildlife Service (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).

7. IMPACT ON CULTURAL RESOURCES: 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 application. The requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

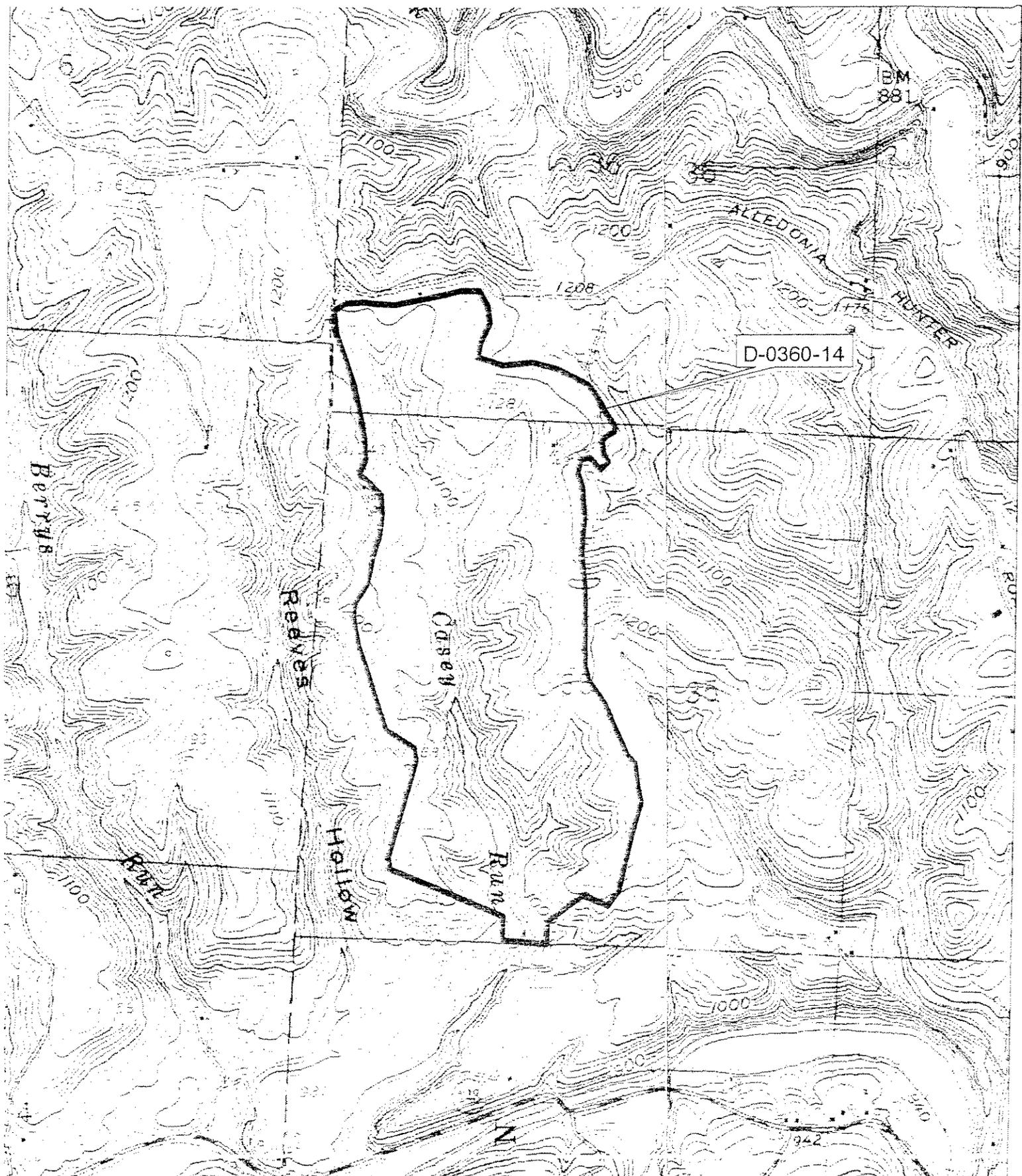
9. EVALUATION: Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposals must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain 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 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 overall public interest of the proposed activity. 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 (40 CFR Part 230).

10. RESPONSES: A permit will be granted 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 issue or deny the requested DA Permit. All responses to this notice should be directed to the Regulatory Branch, attn Allen Edris, at the above address, by telephoning (412) 395-7158, or by e-mail at allen.r.edris@lrp02.usace.army.mil. Please refer to CELRP-OP-F 200301526 (Public Notice No. 04-38A) in all responses.

FOR THE DISTRICT ENGINEER:

Michael J. Cummings, Jr.
Chief, Regulatory Branch



ODNR/DMRM

The Ohio Valley Coal Co., D-0360-14, Powhatan #6, 304.0 acres

Belmont Co., Washington Twp. Sections 35 & 36

Armstrong Mills & Hunter Quads

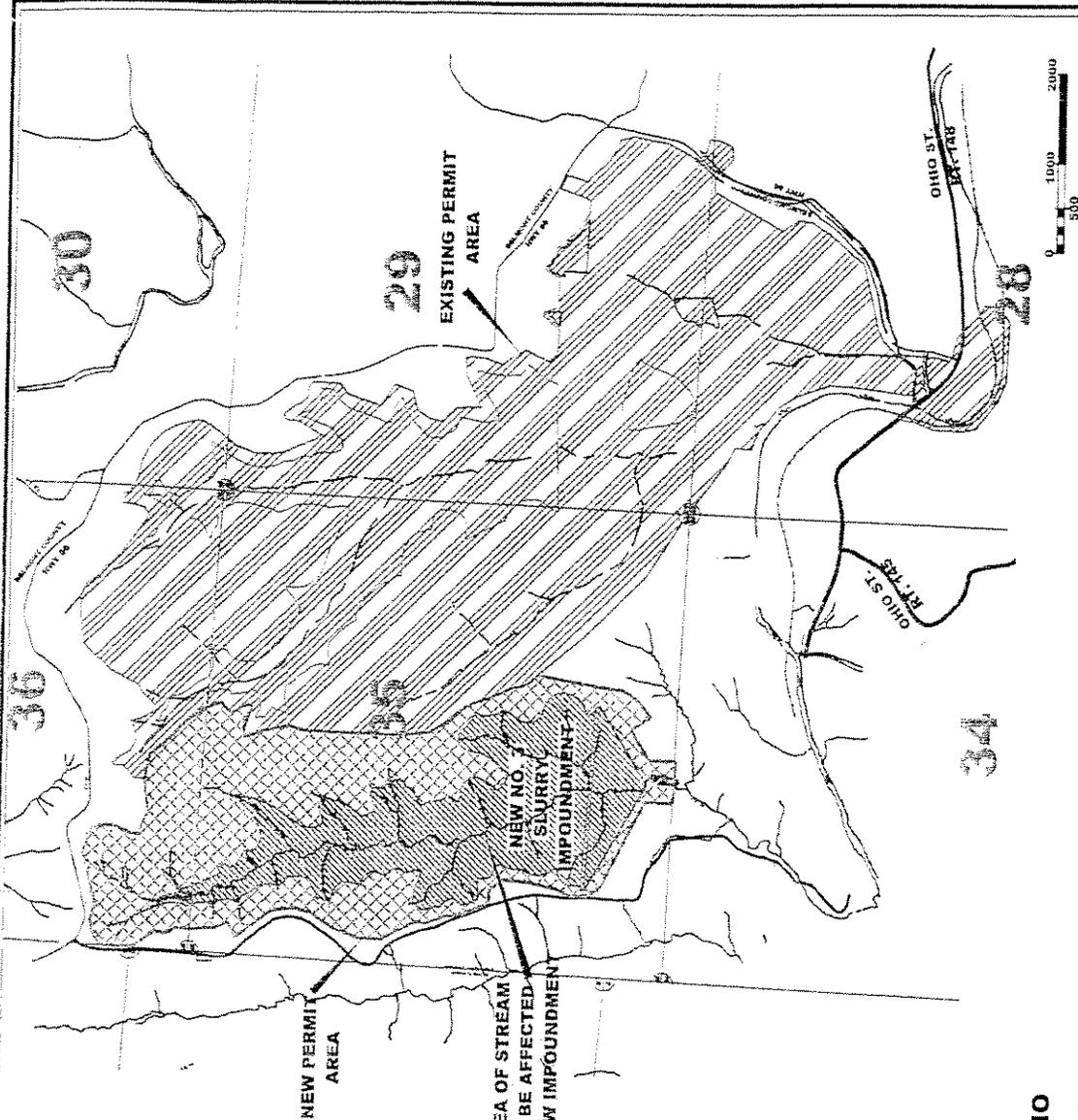
Map printed 4/30/2004

625 0 625 1250 Feet



1:15000



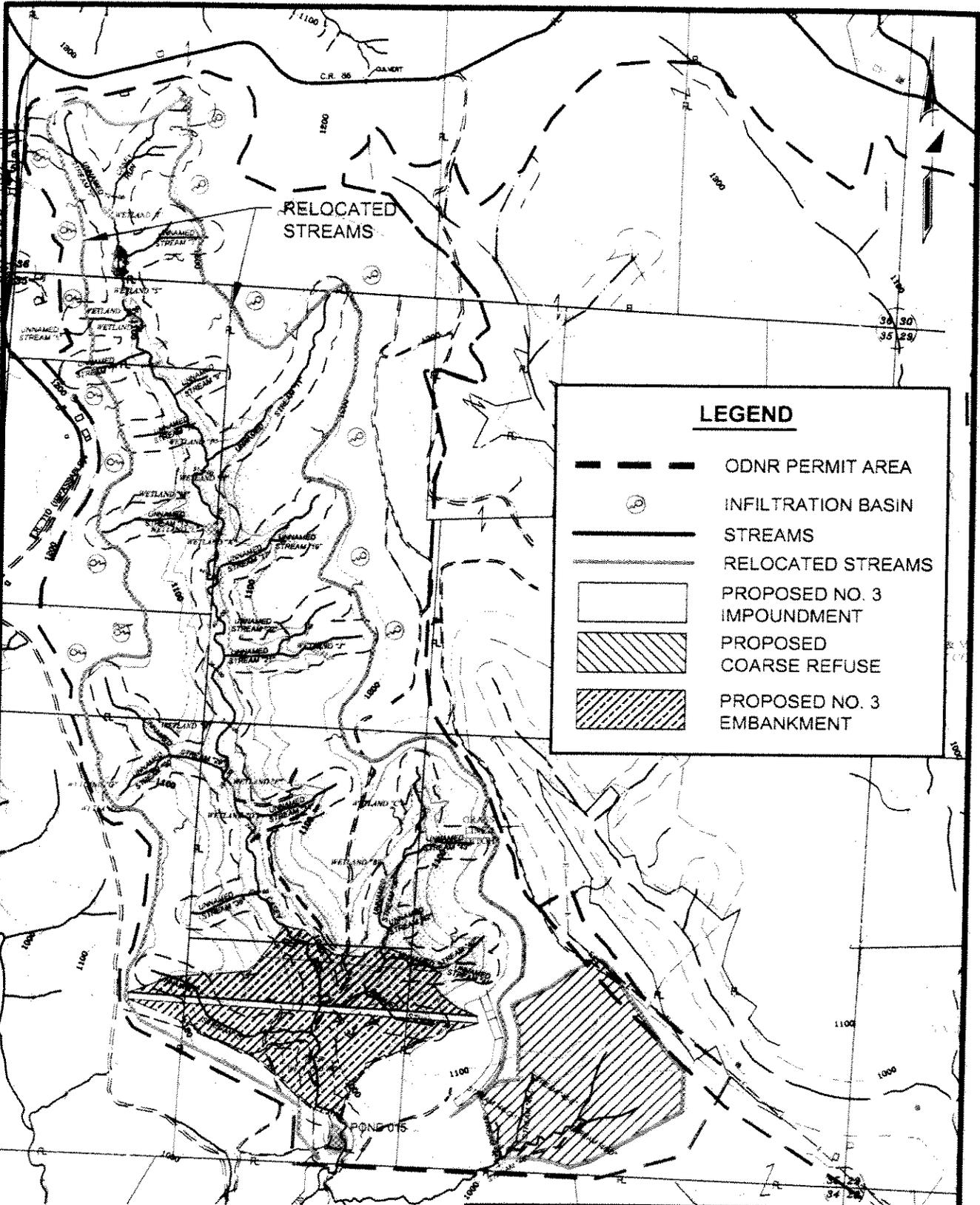


LOCATION:
 SECTIONS 35 AND 36
 SMITH TOWNSHIP
 BELMONT COUNTY, OHIO
 7 1/2 MIN. USGS QUADRANGLE MAPS
 ARMSTRONG MILLS AND HUNTER, OHIO

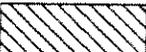
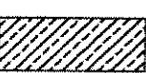
THE OHIO VALLEY COAL COMPANY
 POWHATAN NO. 6 MINE
 US ARMY CORPS OF ENGINEERS SECTION 404 LOCATION MAP
 NEW NO. 3 SLURRY IMPOUNDMENT

SCALE: 1" = 2000'

met:\water\PA\58\AWQC\WATER_QUALITY\FIGURES\7387_EXHIBIT_3_CONCEPT_MITIGATION_PLAN_ONSITE.dwg Lovoull Lovoull OCT 09 2006 4:52 PM



LEGEND

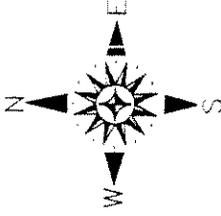
-  ODNR PERMIT AREA
-  INFILTRATION BASIN
-  STREAMS
-  RELOCATED STREAMS
-  PROPOSED NO. 3 IMPOUNDMENT
-  PROPOSED COARSE REFUSE
-  PROPOSED NO. 3 EMBANKMENT

R.D.Zande & Associates

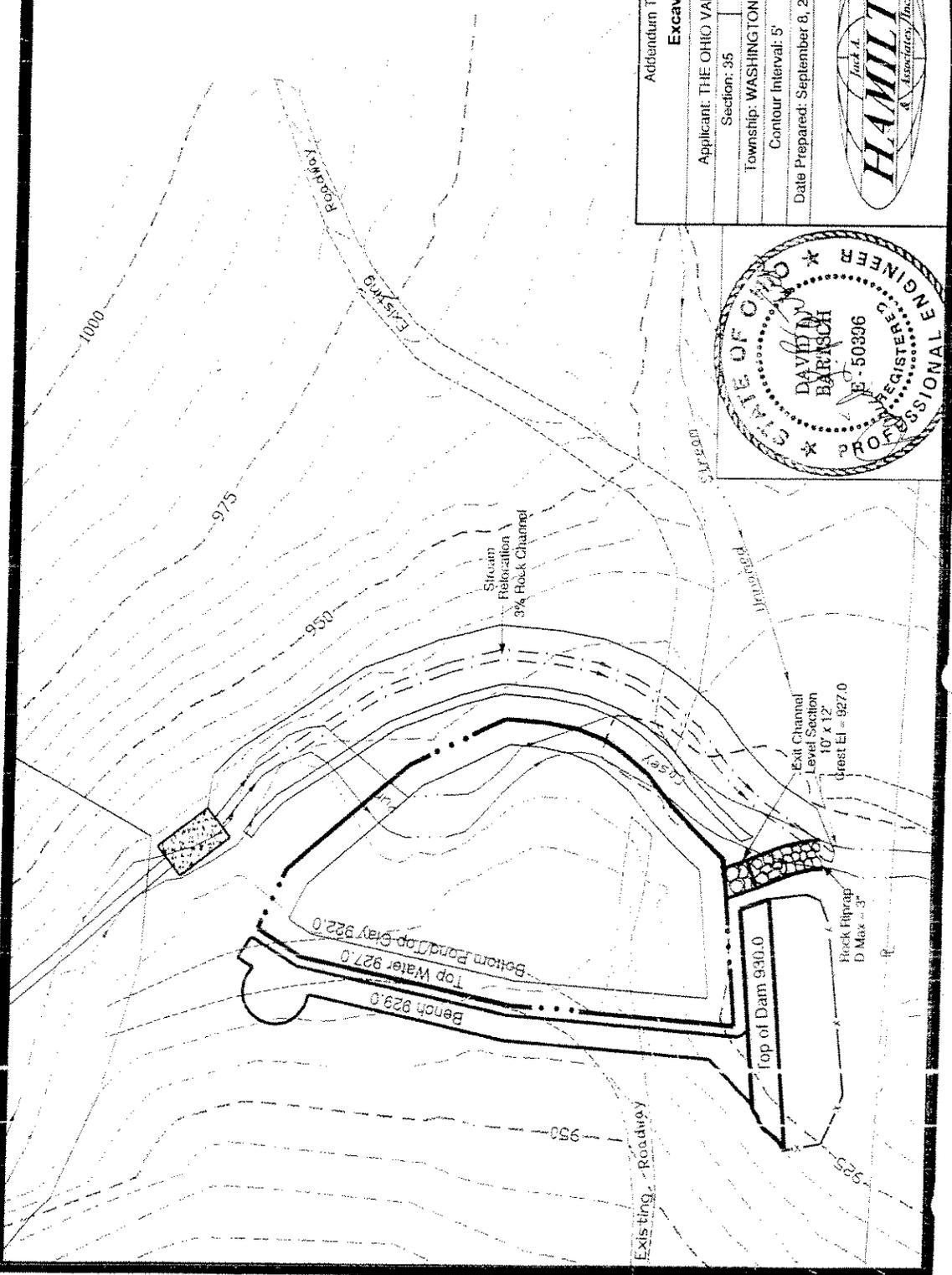
0 800
SCALE IN FEET

**PROTECTION OF EXISTING USE
EXHIBIT 3
CONCEPTUAL MITIGATION PLAN
ON-SITE**

DATE:	SCALE:
OCTOBER 2006	1" = 800'



Note: Pond is to be over excavated 1.5' to allow for installation of clay liner.



Addendum To Attachment 20, Item 7.
Excavated Pond 015

Applicant: THE OHIO VALLEY COAL COMPANY		I-0360-14	
Section: 35	Township: 5	Range: 4	
Township: WASHINGTON		County: BELMONT	
Contour Interval: 5'		Scale: 1" = 50'	
Date Prepared: September 8, 2003		Contm #469-42	
342 High St., Box 471 Flushing, Ohio 43977 Ph: (740) 968-4947 Fax: (740) 968-1225 e-mail: hamilton@1st.net www.hamiltonindusoc.com			



CM2\469-42\PM0215-090603.DWG