



Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 2008-491 Issuance Date: December 3, 2008

Stream: Ruth Trace Branch

Closing Date: January 2, 2009

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 United States 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: Consol of Kentucky, Inc.
1800 Washington Rd.
Pittsburgh, Pennsylvania 15241

LOCATION: The proposed project would be located approximately 3.0 miles northwest of Delbarton, in the Hardee, Lee, and Tug River Districts of Mingo County, West Virginia. The project area can be found at latitude 37° 43' 34" and longitude 82° 14' 11" on the Naugatuck, Delbarton, Myrtle, and Williamson USGS 7.5-minute quadrangles. The proposed project would be constructed in the watersheds of/and unnamed tributaries of Ruth Trace Branch of Pigeon Creek, Conley Branch of Pigeon Creek, Hell Creek of Pigeon Creek, Pigeonroost Creek of Pigeon Creek, Stonecoal Branch of Pigeon Creek, Pigeon Creek, and Miller Creek. Pigeon Creek and Miller Creek exhibit a surface water connection to the Tug Fork River, a traditional navigable water.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into approximately 52,014 linear feet of 6.615 acres of waters of the United States in conjunction with the construction, operation and reclamation of Buffalo Mountain Surface Mine [Pending approval under Surface Mining Control and Reclamation Act (SMCRA) Permit S-5018-07 and National Pollutant Discharge Elimination System (NPDES) Permit WV1029690].

The project's post mine land use would include approximately five miles of line and rough grading for the King Coal Highway. Project components would include 13 valley fills, 4 Erosion Protection Zone (EPZ) structures, several mine-through areas, 17 temporary drainage control structures, and 6 temporary stream crossings for the purpose of providing draining and erosion control (treatment facilities), access to the site, and mineral removal for the proposed surface mine.

Construction of the proposed valley fills and mine-through activities would result in direct discharges of dredged or fill material into 12,252 linear feet (1.858 acres) of perennial stream channels, 23,354 linear feet (2.774 acres) of intermittent stream channels discharge and 7,508 linear feet (0.5434 acre) of ephemeral stream channels. Construction of temporary structures (drainage control structures, road crossings and EPZ) would result in 7,330 linear feet (1.280 acres) of perennial stream channels, 1,530 linear feet (0.159 acre) of intermittent stream channels, and 40 linear feet (0.0013 acre) of ephemeral stream channels. Attachment 22 attached to this public notice details the proposed impacts to waters of the U.S. The purpose of the proposed project is to discharge dredged/fill material to construct attendant and associated features (i.e. overburden disposal, coal recovery, sediment control, etc) to facilitate efficient extraction of 16,784,000 tons of coal reserves in the SMRCA permitted area and line and rough grade for a portion of the King Coal Highway. Coal removed from the project area would be processed and moved offsite for delivery to customers. Plans for the proposal facility are attached to this public notice.

Additionally, the West Virginia Department of Transportation, Division of Highways and the Federal Highway Administration have scheduled an Informational Workshop/Public Meeting on December 11, 2008 from 4:00 PM to 7:00 PM at the Burch High School, Mingo County, WV. Requests for additional information on the workshop/public meeting should be submitted to:

Mr. David E. Cramer, PE
 Staff Engineer
 West Virginia Department of Transportation
 Commissioners Office of Economic Development
 1900 Kanawha Blvd., East
 Building 5, Room 110
 Charleston, WV 25305
 304.558.3505

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. The applicant considered five alternatives, but only one alternative was determined to be practicable: Alternative No. 5 using combined methods of Area/Mountaintop/Steep Slope/Contour with limited Auger/Highwall Mining. The coal seams proposed for development in the project area are the Upper Kittanning, Middle Kittanning, Middle Kittanning Leader, Five Block, Stockton, Coalburg Rider, Coalburg, Buffalo, Lower Buffalo, and Winifrede horizons. Each of these seams was evaluated for a combination of mining methods beginning with the uppermost seam in the geologic column (Upper Kittanning) and mining down to the Winifrede, with each seam evaluated. Area mining (full seam extraction) for each of the seams evaluated was determined not to be practicable, as a stand alone method of mining. However, the combination of area/mountaintop mining through the Coalburg, Five Block, and Middle Kittanning in various areas contouring the Coalburg, Buffalo, Lower Buffalo and Winifrede adjacent to and within the confines of the proposed fill areas, and augering and/or highwall mining along the contour areas seam was determined to be a practicable alternative. Combining Area/Mountaintop/Steep Slope/Contour with limited Auger/Highwall mining would result in the recovery of approximately 16.8 million tons or 85.1 percent of the total targeted reserves. Mining of the targeted reserves as proposed under Alternative 5 satisfies all of the minimum criteria and was, thus, determined to be a practicable alternative.

MITIGATION PLAN: The project area has been previously timbered, deep mined, and gas reserves have been developed. Also, mining has occurred in the form of surface and deep mining adjacent to the project area. In evaluating a project area containing waters of the U.S., consideration must be given to avoiding impacts on these sites. The USACE has determined that approximately 19,582 linear feet of perennial stream (Streams UT5 of Miller Creek, RTB, RTB-UT15, RFCB, RFCB-UT1, RFCB-UT3, RFHC, RFHC-UT1, RFHC-UT4, RFHC-UT10, LFHC, LFHC-UT1, LFHC-UT8, LFHC-UT9, LFHC-UT10, LFHC-UT11, PRC, PRC-UT2, and UTPC), 32,432 linear feet of intermittent streams (Streams UT4 of Miller Creek, RTB-UT3, RTB-UT8, RTB-UT10, RTB-UT12, RTB-UT13, RTB-UT17, RTB-UT1ofUT17, RTB-UT18, RFCB-UT1ofUT1, RFCB-UT1ofUT1ofUT1, RFCB-UT2, RFCB-UT4, RFCB-UT5, LFCB, RFHC-UT10ofUT1, RFHC-UT11ofUT1, RFHC-UT1ofUT4, RFHC-UT3ofUT4, RFHC-UT5, RFHC-UT6, RFHC-UT11, LFHC-UT2ofUT1, LFHC-UT5ofUT1, LFHC-UT1ofUT10, LFHC-UT1ofUT1ofUT10, LFHC-UT2ofUT10, LFHC-UT12, PRC-UT1ofUT1, PRC-UT3, PRC-UT5, UTPC-UT6, LFPRC, and UT of Stonecoal Branch) and 0.02 acre of jurisdictional wetland (Wetland 3) are located in the area of the proposed project.

Mitigation would be completed within the same major watershed as the proposed impacts (Tug Fork River). Using a combination of on- and off-site mitigation and in-and out-of-kind mitigation, the applicant would implement a watershed-based approach throughout the Pigeon Creek and Miller Creek watersheds, which are tributaries to the Tug Fork. The mitigation approach would include a combination of headwater re-establishment, establishment, and preservation, restoration and enhancement of degraded channels downstream from the proposed mine, restoration of temporarily impacted channels, and treatment of water quality downstream from the proposed mine. By implementing the prescribed mitigation measures outlined above, the applicant would provide hydrologic connectivity from the headwaters of a sub-watershed of Pigeon Creek downstream to the mouth, thereby implementing a watershed-based approach. Additionally, new drainage networks would be established throughout the project area.

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: Pursuant to Section 106 of the National Historic Preservation Act of 1966, it has been determined there are no historic properties included in or eligible for listing in the National Register of Historic Places (NRHP) that would be affected by the proposed undertaking. Reports entitled, "A Phase I Archaeological Survey of the Proposed Consol of Kentucky Miller Creek East Mine Permit, Hardee District, Mingo County, West Virginia," "Proposal for Phase II National Register of Historic Places Evaluations of Historic Period Sites 46Mo114 and 46Mo117, Consol of Kentucky, Inc., Miller Creek East Mine Permit, Hardee District, Mingo County, West Virginia," and "Phase II National Register Evaluations of the Hell Creek Homestead (46Mo114) and the Ruth Trace Branch Homestead #2 (46Mo117) for the Proposed Consol of Kentucky Miller Creek East Mine Permit, Hardee District, Mingo County, West Virginia" were prepared and submitted to West Virginia Division of Culture and History, State Historical Preservation Office (SHPO) for review. The SHPO has reviewed the reports and in a letter dated March 27, 2007 stated that only one archaeological site identified in the project area (46Mo117) was possibly eligible for inclusion in the NRHP (prehistoric component only). The letter requested the site have further evaluation and that the area be avoided in the interim. All other archaeological sites investigated in the project area were not eligible for inclusion in the NRHP and no further consultation is required. 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 collection data.

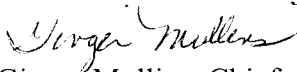
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. In the summer of 2006, a bat mist-net survey was completed in the project area to determine presence or probable absence of the Indiana bat within the proposed project area. No federally-listed bats were captured during this survey. The proposed project area was also surveyed for abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. Eight portal features were located within the project area; of these eight portals, four were determined to be potentially suitable for use by Virginia big-eared or Indiana bats. Further survey of these four portals between October 3rd and October 8th 2007 found that no

federally listed bats were utilizing these habitats. Based on these results, the WVDEP, in a letter dated October 31, 2007, recommended that Portal Closure Protocol be implemented. The portals were closed using 1-inch mesh wire chicken wire in May of 2008. This public notice serves as a request to the USFWS for any additional information they may have on whether any listed of 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 320-332, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the United States 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.

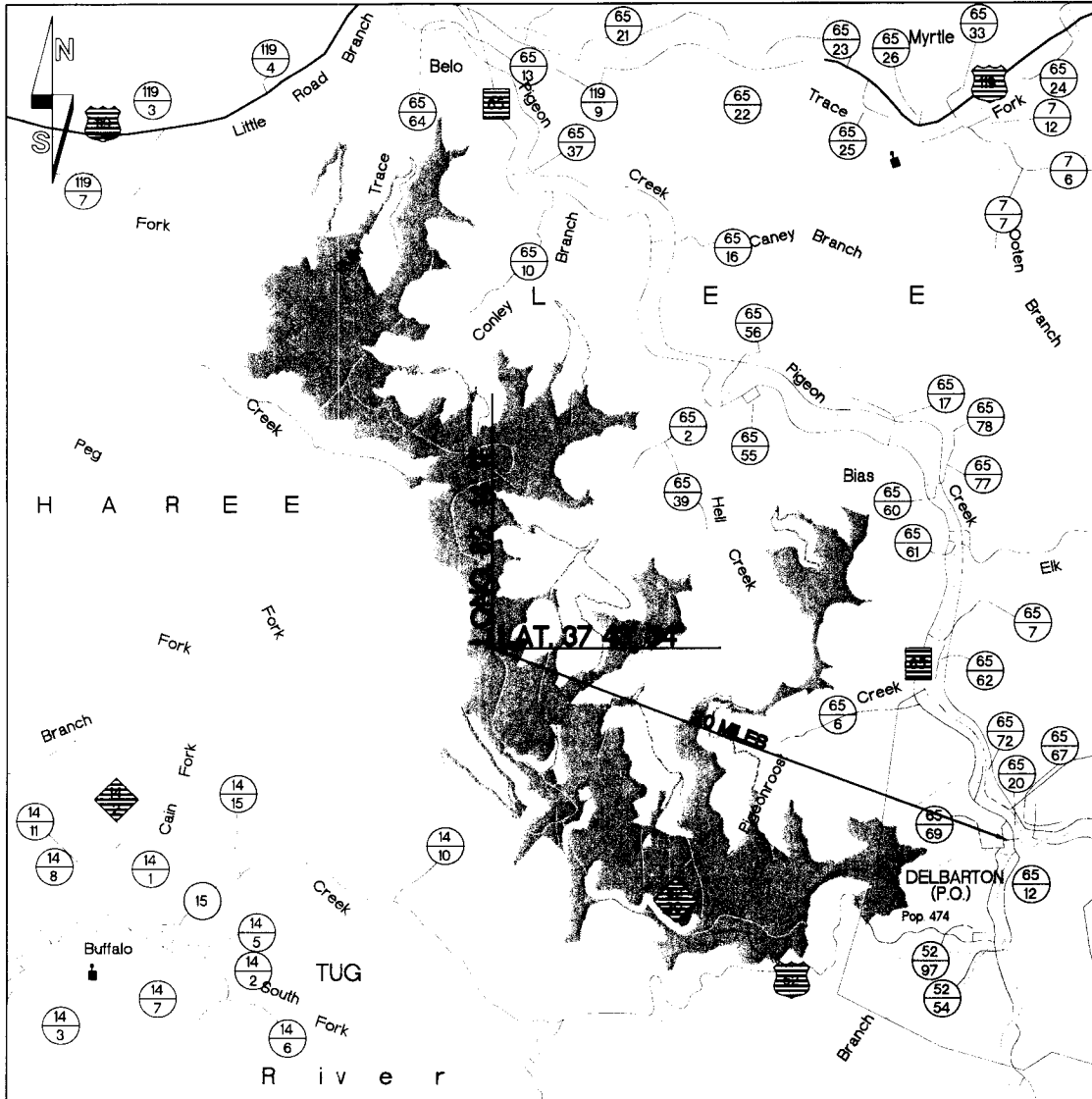
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, Energy Resource Section, CELRH-OR-FE, 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. If you have any questions concerning the above, please contact Mrs. Teresa Spagna of the Energy Resource Section at (304) 399-5610.


Ginger Mullins, Chief
Regulatory Branch

(W)

Attachment 22
 Consol of Kentucky, Inc. Buffalo Mountain
 SMCRA Permit Number S-5018-07

Structure	Stream	Stream/ Trib. ID	Permanent						Temporary								
			Perennial		Intermittent		Ephemeral		Perennial		Intermittent		Ephemeral				
			Feet	Acres	Feet	Acres	Feet	Acres	Feet	Acres	Feet	Acres	Feet	Acres			
VF1		mainstem	1870	0.2454	1600	0.1446	130	0.0079									
VF1		UT12			190	0.0174	110	0.0068									
VF1		UT13			150	0.0109	122	0.0085									
VF1		UT15	50	0.003	100	0.0071	730	0.0478									
VF1		UT17			600	0.0590	486	0.0345									
VF1		UT1-JT17			500	0.0545	300	0.0219									
VF1		UT18			350	0.0372	450	0.0344									
VF1		UT19			85	0.0041	15	0.0005									
VF1		UT15					90	0.0053									
Mine Through		mainstem							144	0.0193							
Pond 1		mainstem							600	0.0684							
Pond 1		mainstem									130	0.0157					
Pond 1		UT8															
Pond 1		UT10							125	0.0235							
Pond 1		UT3									65	0.0081					
IUAR1 Crossings																	
VF2		mainstem	790	0.1006	760	0.1009	66	0.0047									
VF2		UT4			220	0.0184	230	0.0154									
VF2		UT5			120	0.0083	180	0.0127									
Pond 2B		mainstem							90	0.0101							
Pond 2B		mainstem							325	0.0534							
Pond 2A		UT2							75	0.0126							
Pond 2A		mainstem							190	0.0335							
Pond 2A		UT3							140	0.0143							
Pond 2A		UT1-RFCB	320	0.0532	700	0.0824	40	0.0016									
VF3		UT2-UT1			2	0.0001	133	0.0063									
VF3		UT1							95	0.0122							
Pond 3		UT1-UT1							255	0.0301							
Pond 3		UT1-UT1									45	0.0025					
Pond 3		UT1-UT1									55	0.0040					
IUAR3 Crossing																	
VF4		UT5-MC	1067	0.1754	813	0.0738											
VF4		UT5-MC			75	0.0048											
VF4		UT4-MC			72	0.0043	60	0.0026									
Pond 4B		UT5-MC							90	0.0141							
Pond 4B		UT5-MC							225	0.0403							
Pond 4A		UT5-MC							80	0.0135							
Pond 4A		UT5-MC							100	0.0160							
VF6		mainstem			1760	0.1863	390	0.0267									
Pond 6		mainstem									80	0.0122					
Pond 6		mainstem									280	0.0325					
EPZ 6		mainstem			355	0.0462											
VF5		UT1-RFHC	1480	0.1018	350	0.0186	250	0.0076									
VF5		UT10-JT1			80	0.0067											
VF5		UT11-UT1			435	0.0515	645	0.0434									
Pond 5		UT1-RFHC							125	0.0142							
Pond 5		UT1-RFHC							410	0.0291							



SCALE: 1 inch = 1 mile

SMA NO.: S-5018-07

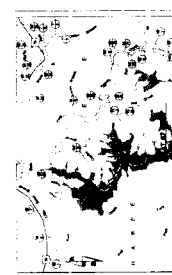
LOCATION MAP OF MINGO COUNTY
 DISTRICT(S): HARDEE, LEE, AND TUG RIVER

NEAREST P.O.: DELBARTON, WV
 NPDES NO.: WV1029690

QUAD(S): DELBARTON, MYRTLE, NAUGATUCK, WILLIAMSON

RECIEVING STREAMS: Unnamed Tributaries of/and Ruth Trace Branch, Unnamed Tributaries of/and Conley Branch, Unnamed Tributaries of/and Hell Creek, Unnamed Tributaries of/and Pigeonroost Creek, an Unnamed Tributary of Stonecoal Branch, all of Pigeon Creek, Unnamed Tributaries of Pigeon Creek, Unnamed Tributaries of/and Miller Creek, and Unnamed Tributaries of Buffalo Creek, all of Tug Fork of Big Sandy River of the Ohio River

10F10



REVISIONS

1. Approved by State Planning Board (SPB) and the Kentucky State Planning Board (KSPB) on 10/15/1987.

2. Approved by the Board of Zoning Appeals (BZA) on 11/10/1987.

3. Approved by the Board of Zoning Appeals (BZA) on 11/10/1987.

4. Approved by the Board of Zoning Appeals (BZA) on 11/10/1987.

5. Approved by the Board of Zoning Appeals (BZA) on 11/10/1987.

LEGEND

1. Proposed Mine Tract

2. Proposed Access Road

3. Proposed Access Road

4. Proposed Access Road

5. Proposed Access Road

6. Proposed Access Road

7. Proposed Access Road

8. Proposed Access Road

9. Proposed Access Road

10. Proposed Access Road

11. Proposed Access Road

12. Proposed Access Road

13. Proposed Access Road

14. Proposed Access Road

15. Proposed Access Road

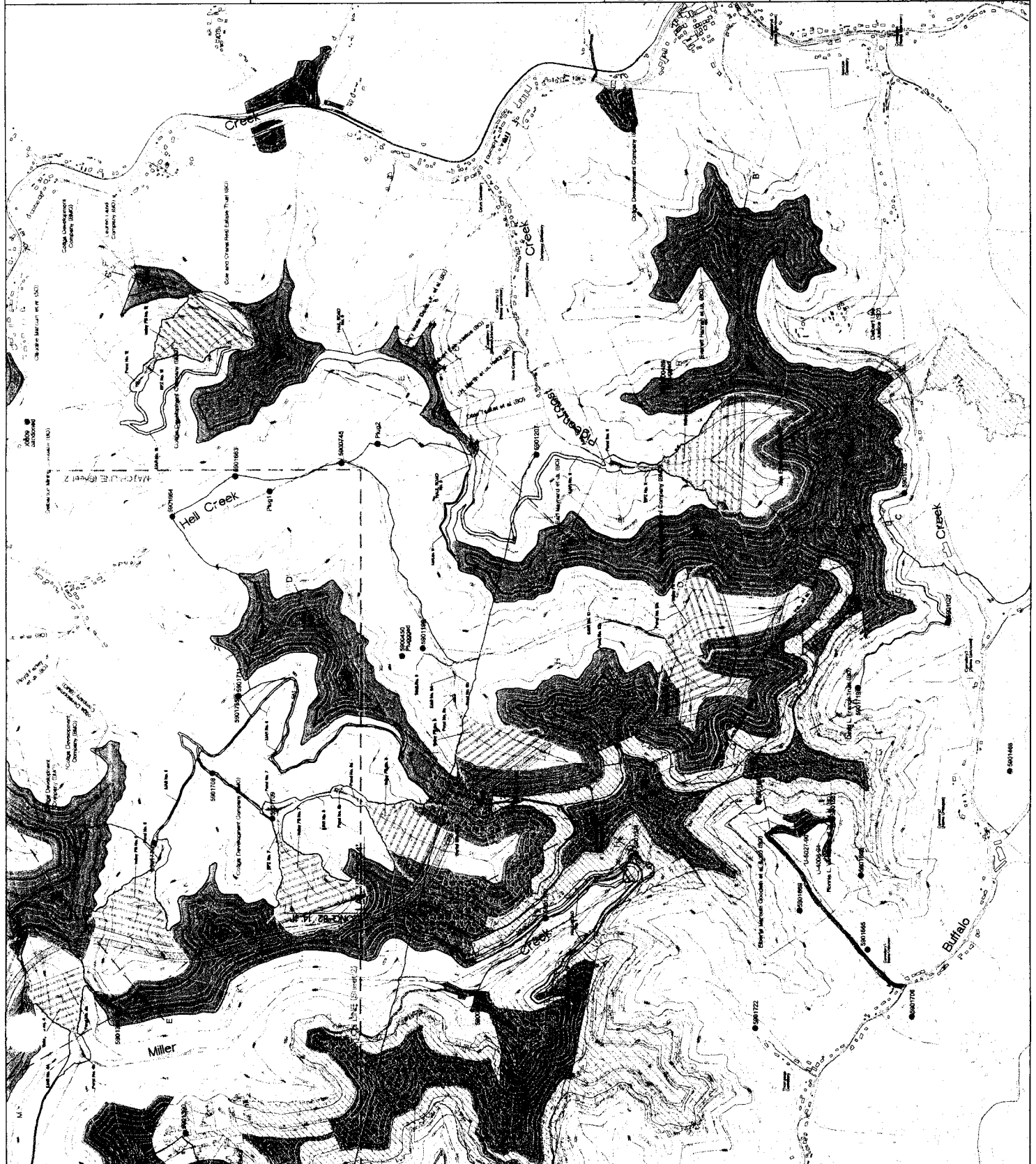
16. Proposed Access Road

17. Proposed Access Road

18. Proposed Access Road

19. Proposed Access Road

20. Proposed Access Road



CONSOLIDATED

CONSOLIDATED OF KENTUCKY, INC.

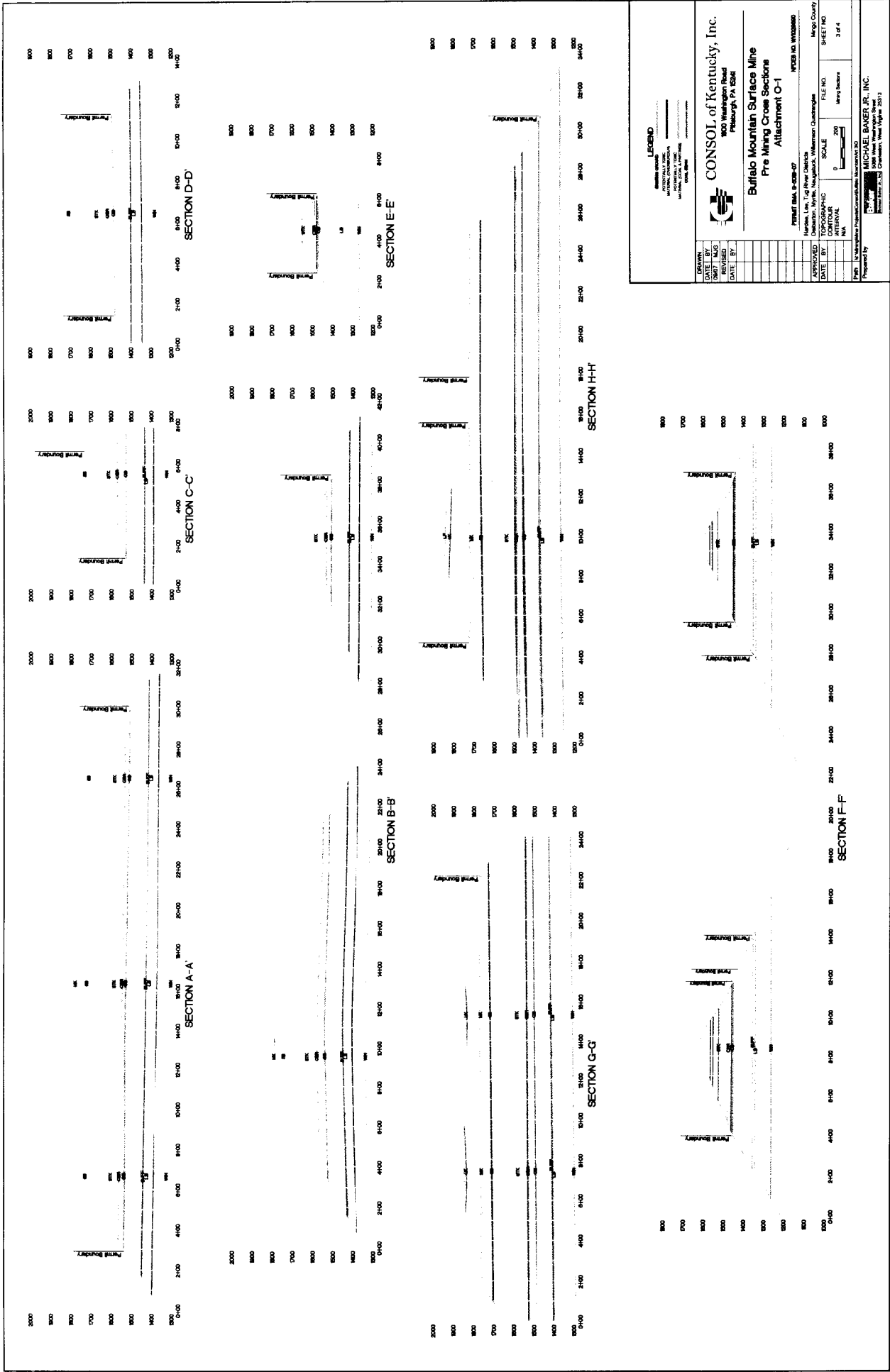
1000 Washington Street
 Lexington, KY 40502

**Buffalo Mountain Surface Mine
 Proposed Map
 Absorption A-1**

Project No. 1000-1000
 Sheet No. 1000-1000
 Date: 10/15/1987

Scale: 1" = 1000'

Prepared by: MICHAEL BAKER, INC.
 1000 Washington Street
 Lexington, KY 40502



LEGEND

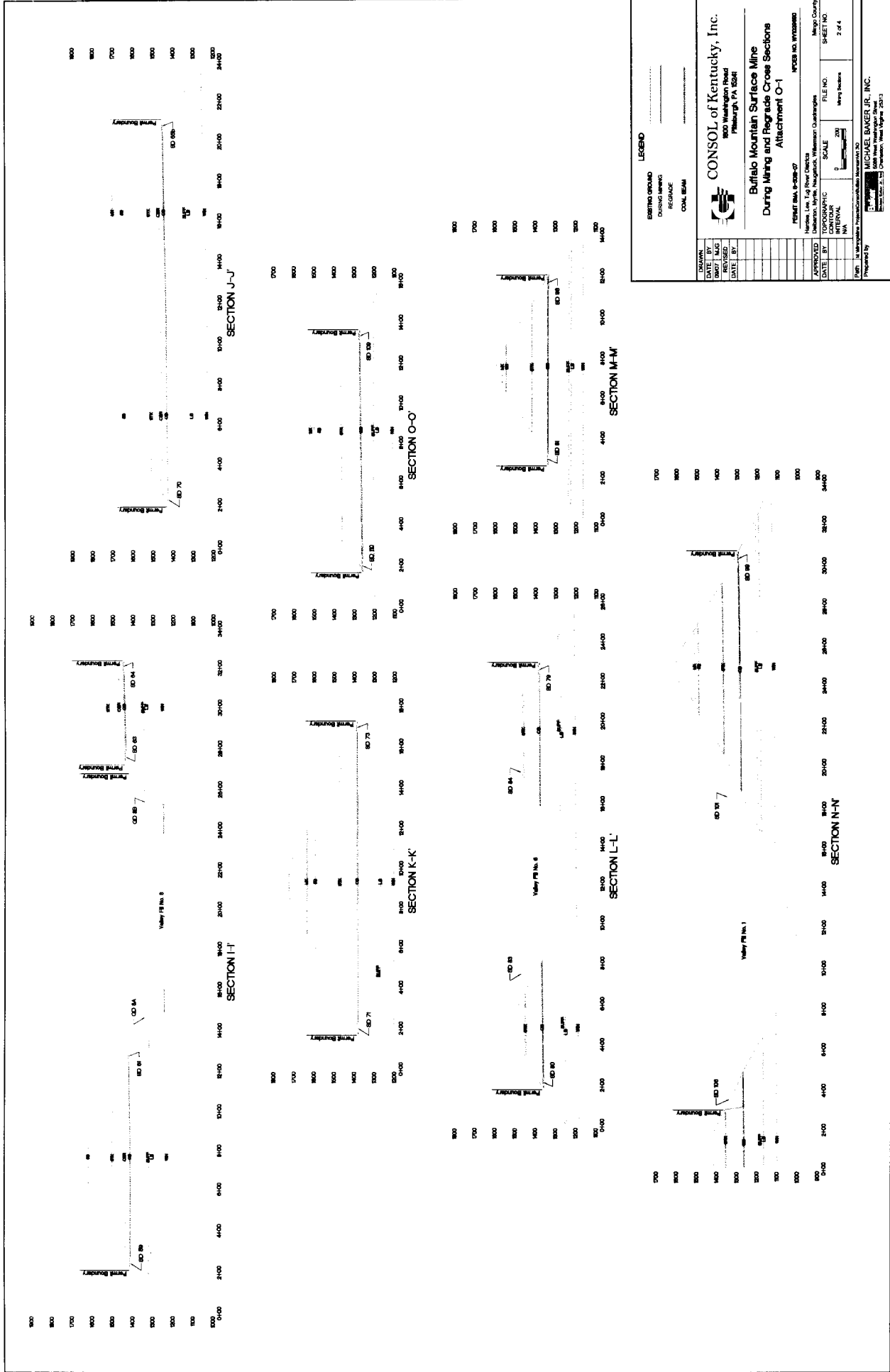
CONSOL of Kentucky, Inc.
 800 Washington Road
 Pittsburgh, PA 15204

Buffalo Mountain Surface Mine
 Pre Mining Cross Sections
 Attachment O-1

PROJECT: BMA 8-2008-07
 NAD83 UTM WGS84

APPROVED: [Signature] Mingo County
 DATE: [] FILE NO. []
 REVISION: [] TOPOGRAPHIC SCALE: 1" = 200'
 DATE: [] INTERVAL: 10'
 BY: [] SHEET NO. 3 of 4

Prepared by: [Signature] MICHAEL BAUER, JR., INC.
 1000 West Virginia Plaza, Charleston, West Virginia 25313



LEGEND

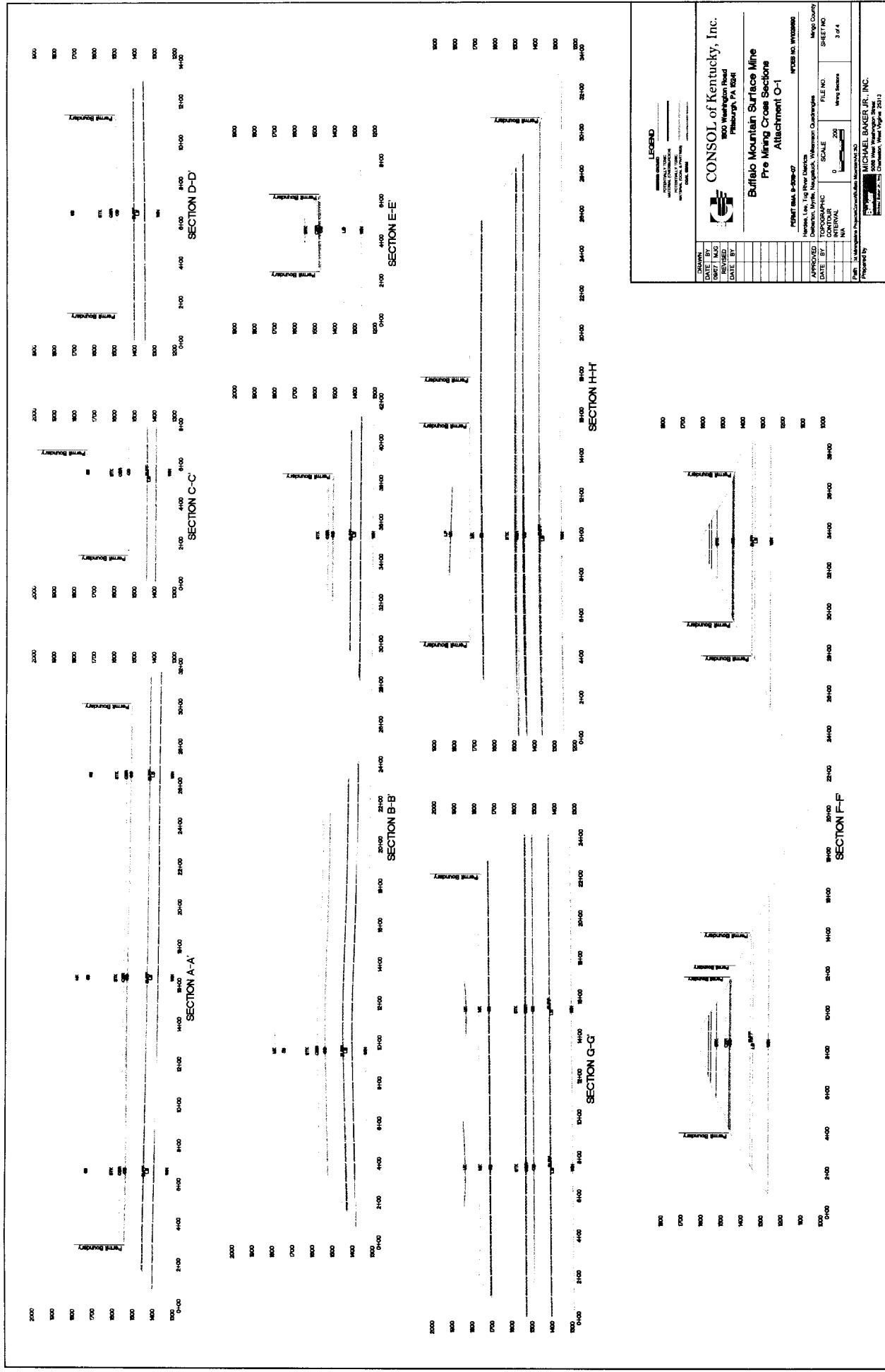
EXISTING GRADE
 Dotted line
 REGRADE
 Solid line
 CON. REM.

CONSOL of Kentucky, Inc.
 800 Washington Road
 Pittsburgh, PA 15241

**Buffalo Mountain Surface Mine
 During Mining and Regrade Cross Sections
 Attachment O-1**

PROJECT No. B-2007
 Mine No. 1, 2, 3, 4, 5, 6, 7
 Location: Wayne, Washington, Westmoreland, Allegheny Counties
 APPROVED: [Signature] DATE: [Date]
 DRAWN BY: [Name] DATE: [Date]
 CHECKED BY: [Name] DATE: [Date]
 FILE NO.: [Number]
 SHEET NO.: [Number]
 SCALE: [Ratio]
 INTERVAL: [Value]
 MAPPING: [Value]
 DATE: [Date]

Prepared by: **MICHAEL BAKER JR., INC.**
 1000 West 10th Street
 Charleston, West Virginia 25301



LEGEND

CONTOUR
SPOT ELEVATION
PERMIT BOUNDARY

CONSOL of Kentucky, Inc.
Buffalo Mountain Surface Mine
Pre Mining Cross Sections
Attachment O-1

POINT 8114 8-208-27
Hessels, Lee, Tig River District
Mason County
Mason County

APPROVED
DATE: BY
TOPOGRAPHIC
SCALE: 1" = 200'
CONTOUR
ELEVATION
M.A.

FILE NO.
SHEET NO.
3 of 4

Prepared By: MICHAEL BAKER, JR., INC.
Date: 10/15/2013

80f10

