



STATE OF ALABAMA
SURFACE MINING COMMISSION

P. O. BOX 2390 — JASPER, ALABAMA 35502-2390
(205) 221-4130

TAKEN FROM
P-3742
ASMC PERMIT FILE

OFFICE OF THE DIRECTOR

REPORT OF ALABAMA HERITAGE DATA BASE INQUIRY

Date: 4/26/93

Report #: 93-04-26-1

Prepared By: [Signature]

Company Name: Beard Mining & Minerals Co., Inc.

Mine Name: Cane Creek Mine

Number of Acres: 948

USGS Quad Sheet(s) Involved: Cordova

County(s): Walker

Section(s), Township(s), Range(s) of Mine Area: Section 31, Township 14 South, Range 6 West; Section 36, Township 14 South, Range 7 West; Section 5, 6, 7, and 8, Township 15 South, Range 6 West; Section 1, Township 15 South, Range 7 West

Date Inquiry Conducted: 4/26/93

Date of Last Data Base Update: 01/13/92

Result of Inquiry:

There were no species listed on the Alabama Heritage Data Base within or adjacent to the proposed permit area.



ARCHAEOLOGICAL BASE LINE ASSESSMENT REPORT

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Client Name: Environmental Engineering Services, Inc.
345 W. 20th Street
Jasper, Alabama 35501
ATTN: Lamar Nelson

Project Name: Cane Creek Mine (Beard Mining and Minerals Company, Inc.).

Legal Designation: Section 31, T14S, R6W; Section 36, T14S, R7W; Sections 5, 6, 7, and 8, T15S, R6W; Section 1, T15S, R7W; Walker County, Alabama.

Exhibit Reference: USGS 7.5' Cordova, Alabama quadrangle.

Assessment Procedure:

National Register of Historic Places Review

Three properties listed in Alabama Tapestry of Historic Places may exist in or near the study area. While they are not listed on the NRHP, they may be eligible for inclusion. These structures include the Green Home, Long Memorial Methodist Church and the Long Miller House. The exact locations of these structures in relation to the study area is undetermined.

Alabama Archaeological Site Files Review

No previously recorded archaeological sites are listed within the study area.

Other Source Review

The 1915 Walker County Soil Map shows several structures in the Cordova area, although it is difficult to determine if any of these existed in the study area.

Professional Assessment of Project Area

Significant Cultural Resource Probability Estimate

Historic:	High	Medium	Low
Prehistoric:	High	Medium	Low

Recommendations: This office strongly recommends a cultural resources survey be performed for the study area in compliance with NHPA Section 106 as mandated by OSM Civil Action No. 87-1020, dated October 8, 1991. The structures discussed above should be located to determine if they are within the study area. The presence of a large creek in the area (Cane Creek) greatly increases the potential for aboriginal occupation. A cultural resources survey would determine the presence and significance of such sites.

May 5, 1993
Date

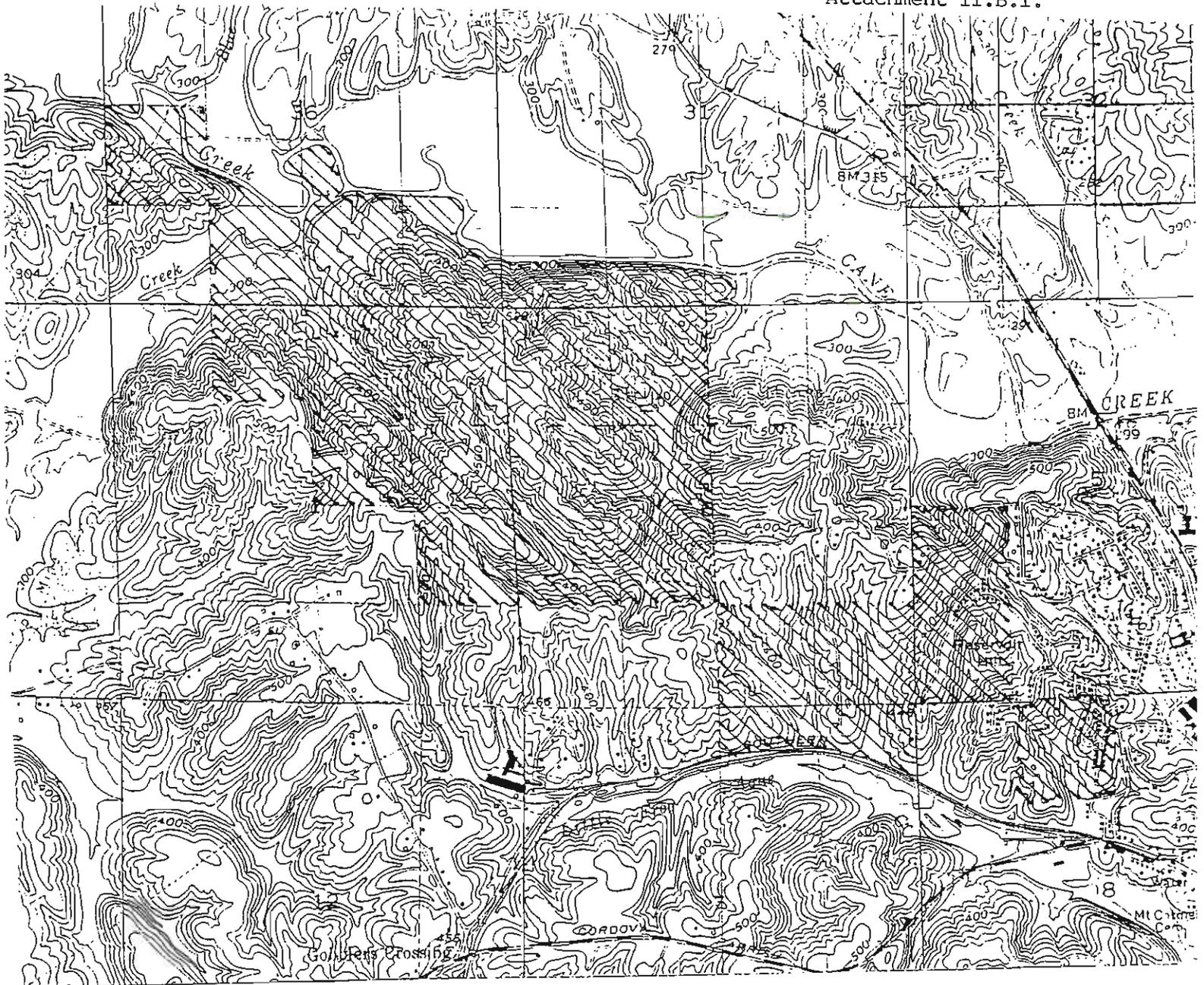
Carey B. Oakley
Signature, Carey B. Oakley

Review and evaluation by the Alabama State Historic Preservation Office:

Date

Signature





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P-3742
 ASMC PERMIT FILE



STUDY AREA

MAP SHOWING LOCATION OF PROPOSED MINING ACTIVITY

SECTION 31, TOWNSHIP 14 SOUTH, RANGE 6 WEST

SECTION 36, TOWNSHIP 14 SOUTH, RANGE 7 WEST

SECTIONS 5, 6, 7, AND 8, TOWNSHIP 15 SOUTH, RANGE 6 WEST

SECTION 1, TOWNSHIP 15 SOUTH, RANGE 7 WEST

MARION COUNTY, ALABAMA - GLENN ALLEN QUADRANGLE



Environmental, Mining, Oil and Gas
 345 W. 20th Street
 Jasper, Alabama 35501
 Phone (205)384-5582

BEARD MINING & MINERALS CO., INC.

CANE CREEK MINE

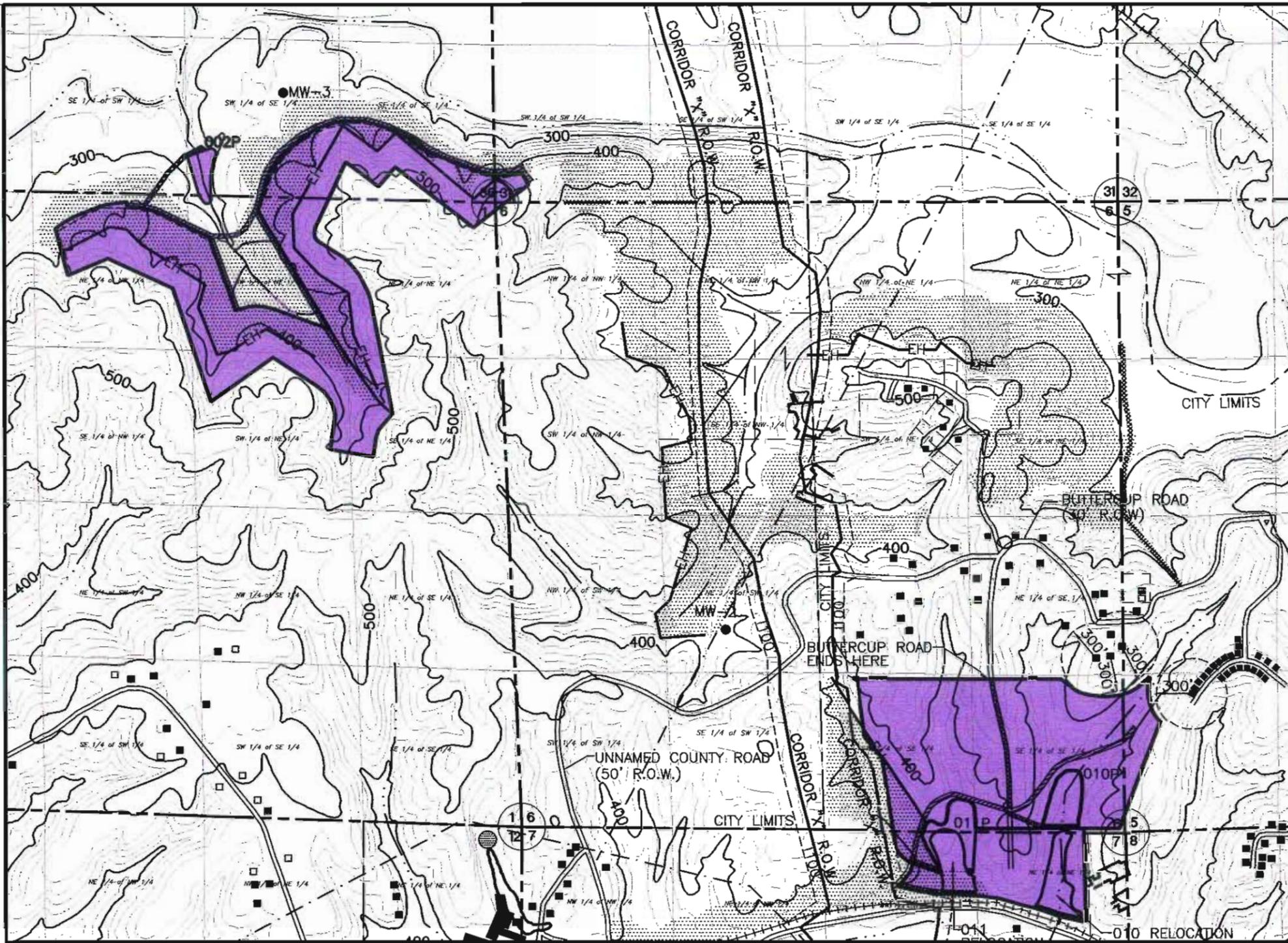
APPROVED BY:

B.M.W.

SCALE

1" = 2000'

V:\Doc Drafting\BMR\Beard Mining\B-1\BMSLMR-4.dwg 09/08/10 07:43



LEGEND

 AREA OF INTEREST R-4

NOTE: AREA OF INTEREST IN
SECTION 36, TOWNSHIP 14 SOUTH, RANGE 7 WEST
SECTION 31, TOWNSHIP 14 SOUTH, RANGE 6 WEST
SECTION 1, TOWNSHIP 15 SOUTH, RANGE 7 WEST
SECTION 5, 6, 7, TOWNSHIP 15 SOUTH, RANGE 6 WEST
WALKER COUNTY, ALABAMA

Scale: 1" = 500'
Contour Interval = 20'

BASE MAP TAKEN FROM
CORDOVA U.S.G.S.
QUADRANGLE MAP.



PERC

ENGINEERING CO., INC.

1806 Hwy. 78 West Jasper, AL 35501/P.O. Box 1712-35502
(205) 384-5553 Office (205) 295-3114 Fax

drawn by: G.O.R.

dwg name: BMSLMR-4

scale: 1"=1000'

mathematical closure: _____

field survey: _____

BEARD MINING & MINERALS CO. INC

CAINE CREEK MINE

P-3232/REVISION R-4

SITE LOCATION MAP

SHEET 1 OF 1



STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130

BOB RILEY
GOVERNOR

M. BARNETT LAWLEY
COMMISSIONER

HOBBIE SEALY
ASSISTANT COMMISSIONER

PATRICIA J. POWELL, DIRECTOR
GREGORY M. LEIN, ASSISTANT DIRECTOR
STATE LANDS DIVISION

TELEPHONE (334) 242-3484
FAX NO (334) 242-0999

August 24, 2010

Mr. Heath Franks
PERC Engineering Co., Inc.
P.O. Box 1712
Jasper, AL 35502-1712

RE: Sensitive Species Information request
Beaird Mining & Minerals Co. Inc. - Caine Creek Mine

Dear Mr. Franks:

The Natural Heritage Section office received your e-mail dated 6/8/2010 addressed to Ashley Peters on 6/8/2010 and has since developed the following information pertaining to sensitive species (state protected, and federally listed candidate, threatened, and endangered species). I have enclosed a list of sensitive species which the Natural Heritage Section Database or the U.S. Fish and Wildlife Service have indicated occur or have occurred in Walker County. Additionally, I have listed some potentially helpful and informative web sites at the end of this letter.

The Natural Heritage Section database contains numerous records of sensitive species in Walker County. Our database indicates the area of interest has had no biological survey performed at the delineated location, by our staff or any individuals referenced in our database. Therefore we can make no accurate assessment to the past or current inhabitancy of any federal or state protected species at that location. A biological survey conducted by trained professionals is the most accurate way to ensure that no sensitive species are jeopardized by the development activities.

The closest sensitive species is recorded in our database as occurring approximately 0.9 miles from the subject site. This federally listed threatened species (Orangenacre Mucket) is found in numbers only in a few streams originating in and flowing through U. S. Forest Service lands in northwest Alabama. Isolated individuals are occasionally found in the upper Tombigbee and Black Warrior River drainages. Habitat modification, sedimentation,



Mr. Heath Franks

8/24/2010

Page 2

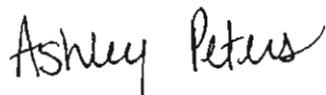
and water quality degradation represent the major threats to this species. This species appears relatively tolerant of nondestructive intrusion, though heavy recreational use of habitat could potentially be excessively disruptive.*

I hope this information will be useful to you. The provided information is to help you in fulfilling your necessary legal obligations. This does not constitute any form of Section 7 consultation. The Natural Heritage Section recommends that the U. S. Fish and Wildlife Service field office in Daphne be contacted for Section 7 consultations.

The information does not suggest that protected species are not at this location. The specific location of a sensitive species is considered confidential information by a State Lands Division Regulation and can be released only to individuals who enter into a confidentiality and indemnity contract with the State Lands Division.

The Natural Heritage Section provides this information as a service to the people of Alabama. The NHS acts as a clearing house for species distribution data. We happily accept any information environmental researchers are willing to donate. Sensitive species exact locations are kept confidential. If you would be willing to donate any information to this database, we will be better able to assist all individuals interested in environmental compliance.

Sincerely,



Ashley Peters
Database Manager
Natural Heritage Section

Enclosures

*Paraphrased Information from NatureServe. 2006. NatureServe Explorer: An online encyclopedia of life [web application]. Version 5.0. NatureServe, Arlington, Virginia. Available <http://www.natureserve.org/explorer>. (Accessed: August 18, 2006).

Potentially helpful web sites

Information about federally listed species
<http://daphne.fws.gov/es/specieslst.htm>

Mr. Heath Franks
8/24/2010
Page 3

<http://www.pfmt.org/wildlife/endangered/>
<http://www.natureserve.org/explorer/>

State Protected Species Regulations:
<http://www.outdooralabama.com/hunting/regulations/regs.cfm>

ALABAMA'S FEDERALLY LISTED AND STATE PROTECTED SPECIES (BY COUNTY)

This is a list of protected species that are believed to occur in the designated county and the legal protection status of each species. This list is a combination of the U.S. Fish and Wildlife Service (Daphne field office) federally listed species county and state lists and the Alabama State Lands Division's Natural Heritage Section (SLD-NHS) Database of species occurrence data. This list is continually being updated, and, therefore, it may be incomplete or inaccurate and is provided strictly for informational purposes. Site specific information can be provided by the Alabama SLD-NHS and/or the U.S. Fish and Wildlife Service (Daphne field office) prior to project activities. To be certain of occurrence, surveys should be conducted by qualified biologists to determine if a sensitive species occurs within a project area. Species not listed for a given county does not imply that they do not occur there, only that their occurrence there is as yet unrecorded by these two agencies. This list is currently under review and reflects only our current understanding of species distributions. It also does not constitute any form of Section 7 consultation. The Alabama SLD-NHS recommends that the U.S. Fish and Wildlife Service field office in Daphne be contacted for Section 7 consultations.

Walker

Protection Status	Common Name	Scientific Name	Applicable State Regulation
Candidate	Black Warrior River Waterdog	<i>Necturus alabamensis</i>	
Endangered	Harperella	<i>Ptilimnium nodosum</i>	
Endangered/ State Protected	Ovate Clubshell	<i>Pleurobema perovatum</i>	220-2-.98 (1) (a)
Endangered/ State Protected	Triangular Kidneyshell	<i>Ptychobranehus greenii</i>	220-2-.98 (1) (a)
State Protected	Alligator Snapping Turtle	<i>Macrolemys temminckii</i>	220-2-.92 (1) (c)
State Protected	Long-tailed Weasel	<i>Mustela frenata</i>	220-2-.92 (1) (e)
State Protected	Paddlefish	<i>Polyodon spathula</i>	220-2-.94
Threatened	Mohr's Barbara's Buttons	<i>Marshallia mohrii</i>	
Threatened/ State Protected	Finelined Pocketbook	<i>Hamiota altilis</i>	220-2-.98 (1) (a)
Threatened/ State Protected	Flattened Musk Turtle	<i>Sternotherus depressus</i>	Section 9-11-269
Threatened/ State Protected	Orangenacre Mucket	<i>Hamiota perovalis</i>	220-2-.98 (1) (a)

Key to codes on list:

Endangered - Federally listed as an endangered species by the U. S. Fish and Wildlife Service

Threatened - Federally listed as a threatened species by the U. S. Fish and Wildlife Service

Candidate - Federally listed as a candidate species by the U. S. Fish and Wildlife Service

Experimental - Species is protected throughout its range, except for the nonessential experimental population, by the U. S. Fish and Wildlife Service

State Protected - It is unlawful to take, capture or kill; possess, sell or trade for anything of monetary value, or offer to sell or trade these species. Alabama Regulations relating to game, fish and furbearing animals. 2009-2010. Alabama Department of Conservation and Natural Resources. See <http://www.outdooralabama.com/hunting/regulations/regs.cfm> for more information.

Notes:

- Bald eagle (*Haliaeetus leucocephalus*), red-cockaded woodpecker (*Picoides borealis*) and the American peregrine falcon (*Falco peregrinus anatum*) may occur in any county, if habitat exists.
- Wood stork: July - October
- Bald eagle (*Haliaeetus leucocephalus*) has been delisted. This species is still protected by the non-game species regulation and the migratory bird act. This species distribution is statewide but it is most likely to be observed near large rivers and reservoirs.
- Sea turtles: Only loggerhead is potential nester, the rest are in coastal waters.
- Black bear (*Ursus americanus* sp.) - known to exist in Mobile County, but not listed.
- Gulf moccasinshell (*Mediondus penicillatus*), oval pigtoe (*Pleurobema pyriforme*), Chipola slabshell (*El liptio chipolaensis*), and purple bankclimber (*Elliptoideus sloatianus*) are freshwater mussels of the family Unionidae found only in eastern Gulf Slope streams draining the Apalachicolan Region, defined as streams from the Escambia to the Suwannee river systems, and occurring in southeast Alabama, southwest Georgia, and north Florida. All are listed as "Endangered".
- Fanshell (*Cyprogenia stegaria*), oyster mussel (*Epioblasma capsaeformis*), and Catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*) are historically known to be found in the Tennessee River system and drainage.
- Gentian pinkroot (*Spigelia gentianoides*) has been historically found along the Alabama-Florida border.
- West Indian Manatee (*Trichechus manatus*) has been known to move north along the gulf coast west to Louisiana.



STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130

May 13, 1993

Jim Folsom
GOVERNOR

Charley Grimsley
COMMISSIONER

WM. C. "BILL" GOOLSBY
ASSISTANT COMMISSIONER

DIVISION OF GAME AND FISH
CHARLES D. KELLEY
DIRECTOR

ASSISTANT DIRECTOR

TAKEN FROM
P-3742
ASMC PERMIT FILE

Mr. Lamar Nelson
Environmental Engineering Services, Inc.
345 West 20th Street
Jasper, AL 35501

Dear Mr. Nelson:

The Alabama Department of Conservation and Natural Resources has reviewed the request for an archaeological base line assessment for Beard Mining and Mineral Co., Inc., Cane Creek Mine, Walker County, Alabama). We have no objection to this project providing the project does not adversely affect endangered or threatened species or impact water quality parameters in the project areas.

We also recommend that the applicant utilize sod strips, silt fences, or superior means of erosion control within the project boundaries to control siltation in downstream watersheds. Wetlands that are impacted by these projects should be replaced using a 2:1 mitigation ratio.

Sincerely yours,

GAME & FISH DIVISION

Jon H. Hornsby
Environmental Coordinator

JHH:jlh





STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
WILDLIFE AND FRESHWATER FISHERIES DIVISION

64 NORTH UNION STREET, SUITE 567
POST OFFICE BOX 301456
MONTGOMERY, ALABAMA 36130-1456
(334) 242-3465
FAX (334) 242-3032
www.outdooralabama.com



BOB RILEY
GOVERNOR

M. BARNETT LAWLEY
COMMISSIONER

The mission of the Wildlife and Freshwater Fisheries Division is to manage, protect, conserve, and enhance the wildlife and aquatic resources of Alabama for the sustainable benefit of the people of Alabama.

M. N. "CORKY" PUGH
DIRECTOR

FRED R. HARDERS
ASST. DIRECTOR

November 3, 2010

Mr. Heath Franks
PERC Engineering Co., Inc.
P. O. Box 1712
Jasper, AL 35502

**RE: Gunner-Reilly Corp.
Cane Creek Mine**

Dear Mr. Franks:

Based on a review of the project proposal, the Division of Wildlife and Freshwater Fisheries has no objection provided:

1. No state- or federally-protected species is adversely impacted by mining. We note that you have coordinated with the Natural Heritage Section, State Lands Division, regarding potential impacts to both state- and federally-protected species. In its letter of June 9, 2010, the Natural Heritage Section stated that no biological survey is known to have been conducted at the delineated location; therefore, no accurate assessment of the presence or absence of a protected species at the site could be inferred from the records in their database. The nearest recorded occurrence of a sensitive species is 0.9 miles from the subject property. If there is a potential for adverse impacts to state- or federally-protected species, a sensitive species survey by a qualified biologist is strongly recommended. We request the opportunity to review any species surveys conducted for the proposed project. If adverse impacts to protected species occur as a result of the project, further coordination with the Department of Conservation (334-242-3851) and the United States Fish and Wildlife Service (251-441-5181) will be required.
2. No net loss of stream or wetland function and habitat should occur as a result of the project. If flowing streams, ditches, or wetlands will be impacted by the proposed activity, the Army Corps of Engineers - Mobile District (251-690-3188), should be contacted to determine if the activity falls under a Corps regulation requiring mitigation for adverse ecological, morphological, or hydrological impacts. Be advised that the USACE advises that all wetlands on mine sites, whether on previously disturbed or pristine areas, fall within the category of jurisdictional wetlands; however, dredge and fill activities might be permitted under specified

conditions. We have no objection to the use of a wetland mitigation protocol such as WRAP (the Wetland Rapid Assessment Procedure), provided it is properly applied and provided that

Mr. Franks
11/03/2010
Page 2 of 2

temporal losses are correctly accounted for. We have no objection to the purchase of mitigation credits from a Corps-sanctioned wetland mitigation bank.

3. The density or diversity of aquatic biota is not adversely impacted and that aquatic habitat quality in streams and wetlands is not diminished: excessive siltation resulting from uncontrolled erosion at a mine site can be as destructive to the aquatic ecosystem of a stream or wetland as acid mine discharges. We are therefore very concerned about the degradation/loss of aquatic habitat which may occur as a result of siltation associated with mining operations. We are also very concerned about the loss of stream habitat and stream functions which occur when settling ponds are constructed on intermittent or perennial streams. Such ponds not only result in the loss of stream functions within the impounded areas, but downstream flows below the dam are altered (during low rainfall periods, there is often no flow or inadequate flow in the stream downstream of the dam) and the upstream movement of fish is restricted except during floods, resulting in aquatic habitat fragmentation. Sediment ponds should be temporary and subsequently removed post mining. The best way to protect aquatic habitat is to prevent sediment from entering a stream or wetland, not to contain the sediment within the stream or wetland once it has entered the aquatic ecosystem. We therefore recommend that spoil banks or other slopes be grassed as early as possible (well prior to reclamation), that silt barriers, terraces, and check dams be properly installed and maintained, that streamside buffer zones be 100 feet in width and well vegetated in order to function properly, that sedimentation ponds not be constructed in streams or wetlands, and that the mine owner/operator should be responsible for in-kind restoration or mitigation if streams or wetlands are adversely impacted by mining activities.
4. Channel realignment, excavation, diversion or alteration of flow, impoundment, or excessive sedimentation of streams should not occur as a result of mining. If such impacts do occur, the mine owner/operator should provide corrective action through active restoration or stream mitigation for unresolved impacts.
5. State water quality standards (particularly those related to erosion control, water turbidity, and dissolved oxygen) should be strictly adhered to.

We appreciate the opportunity to comment on this project.

Sincerely,



Matthew D. Marshall
Environmental Coordinator



United States Department of the Interior



FISH AND WILDLIFE SERVICE
P.O. Drawer 1190
Daphne, AL 36526

May 5, 1993

TAKEN FROM
P-3742
ASMC PERMIT FILE

Mr. Lamar Nelson
Environmental Engineering Services, Inc.
345 West 20th Street
Jasper, AL 35501

In Reply Refer To:
Log No. 4-3-93-213W

Dear Mr. Nelson:

This responds to your letter dated April 27, 1993 concerning a proposal to surface mine coal (i.e., Cane Creek Mine) in Walker County, Alabama. We have reviewed the information you enclosed and have the following comments in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. et seq.) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

A. Fish and Wildlife Coordination Act

According to the project map, the permitted area is located within drainages of Cane Creek, which is a tributary of the Mulberry Fork system. Significant adverse impacts to fish and wildlife resources could be minimized by containing sedimentation and all other mining generated runoff on site. According to our National Wetlands Inventory maps, there are palustrine forested and palustrine open-water wetlands within the permitted area. We have enclosed a copy of the project map showing these wetlands. Mining and sedimentation pond construction activities should be located at least 100 ft. from Cane Creek and these wetland areas. In addition, due to the potential for fill activities in Cane Creek and the wetland areas, we recommend contacting the U. S. Army Corps of Engineers for necessary permits.

B. Endangered Species Act

We have records for the following endangered (E) and threatened (T) species from the Mulberry Fork system:

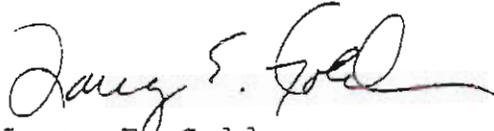
flattened musk turtle (Sternotherus depressus) T
triangular kidneyshell (Ptychobranchus greeni) E
dark pigtoe (Pleurobema furvum) E
upland combshell (Epioblasma metastriata) E
ovate clubshell (Pleurobema perovatum) E
fine-lined pocketbook (Lampsilis altilis) T



The flattened musk turtle is threatened by overcollecting and habitat degradation in the form of water pollution and siltation from mining, forestry, agriculture, and industrial and municipal sewage effluents. The above listed freshwater mussels are also highly susceptible to perturbations in water and habitat quality. As a group, freshwater mussels have experienced a regionwide decline in recent years, and possibly represent the most endangered animals on our continent. Therefore, it is imperative that all mining generated runoff be contained on site with soundly constructed sedimentation ponds. Strict enforcement of siltation prevention measures should ensure that no impacts occur to habitat in downstream areas.

If you need further information regarding our concerns or if the scope of the project changes, please contact Brett Wehrle at our office (Phone: 205-441-5181).

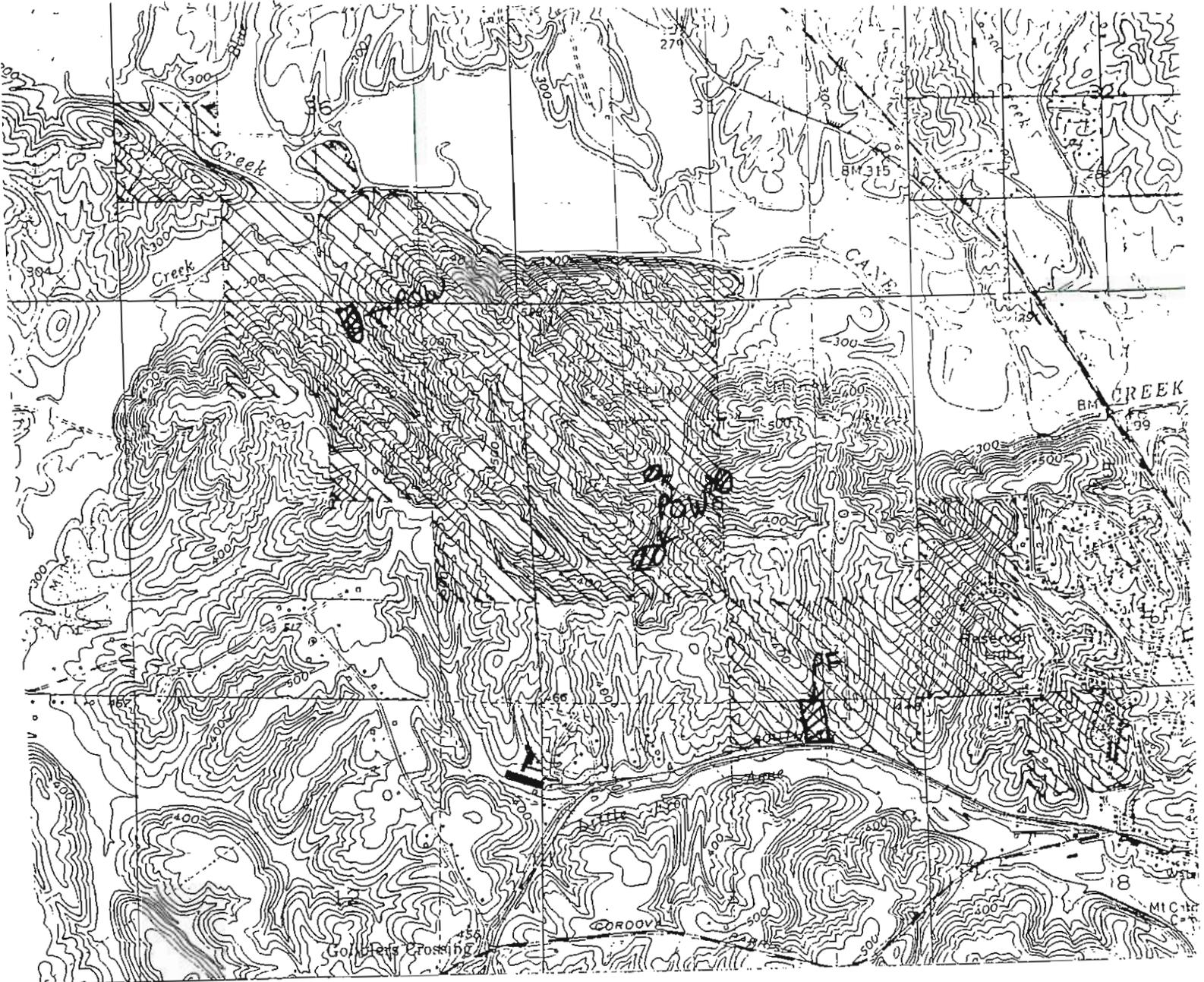
Sincerely yours,



Larry E. Goldman
Field Supervisor

TAKEN FROM
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 Palustrine forested and Palustrine open-water wetlands
 TAKEN FROM
 P-3742
 ASMC PERMIT FILE

RECEIVED
 SURFACE MINING
 COMMISSION

 **STUDY AREA**
 MAP SHOWING LOCATION OF PROPOSED MINING ACTIVITY
 SECTION 31, TOWNSHIP 14 SOUTH, RANGE 6 WEST
 SECTION 36, TOWNSHIP 14 SOUTH, RANGE 7 WEST
 SECTIONS 5, 6, 7, AND 8, TOWNSHIP 15 SOUTH, RANGE 6 WEST
 SECTION 1, TOWNSHIP 15 SOUTH, RANGE 7 WEST
 MARION COUNTY, ALABAMA — GLENN ALLEN QUADRANGLE

 Environmental, Mining, Oil and Gas
 345 W. 20th Street
 Jasper, Alabama 35501
 Phone (205)384-3582

BEARD MINING & MINERALS CO., INC.

CANE CREEK MINE

APPROVED BY:	SCALE
B.M.W.	1" = 2000'

**BIOLOGY MALACOLOGY ICHTHYOLOGY ENTOMOLOGY
TAXONOMY ORNITHOLOGY BOTANY**

ENVIRONMENTAL ASSESSMENTS

YOKLEY ENVIRONMENTAL CONSULTING SERVICE

**3698 Chisholm Road
Florence, Alabama 35630**

**Fax (256) 712-5517
E-Mail: paulyokley@comcast.net**

**Phone (256) 764-3780
Cell Phone (256) 648-0182**

August 14, 2010

Environmental Survey

On Friday, August 13, 2010, an environmental assessment for habitat for the following federally listed endangered, threatened, or of concern species was done on the Cane Creek Mine sites, Gunner-Reilly Corp., Walker County, Alabama.

Black Warrior Waterdog	<i>Necturus alabamensis</i>
Upland Combshell Mussel	<i>Epioblasma metastrata</i>
Ovate Clubshell Mussel	<i>Pleurobema perovatum</i>
Flattened Musk Turtle,	<i>Sternotherus depressus</i>
Mohr's Barbara's Buttons	<i>Marshallia mohrii</i>
White Fringeless Orchid	<i>Platanthera integrilabia</i>

The proposed Cane Creek Mine site expansion consists of two locations with a total of approximately 165 acres. The soil cover on both sites is sand and clay with sandstone rock. Both locations are dry uplands. No wet sites were found on or immediately adjacent to the two locations. Habitat suitable for the two plant species does not exist on nor immediately adjacent to the two proposed mine locations.

Location #1 in this report [see attached map and satellite photos] is immediately east of the Interstate 22 [U.S. 78] corridor right-of-way. An active railroad right-of-way is the southern boundary of this site. This site has been previously surface mined. The majority of this site was an active surface mine until several years ago. This site has evidence of surface mining operations prior to required reclamation. The site has high walls, a strip pit pond, surface mine spoil piles, and a large sedimentation pond. There is very little forest cover and this is located along the north and eastern boundary lines. The forest cover is a mix of re-growth pine with some hardwoods. Kudzu covers some areas of the site that were surface mined prior to required reclamation. There was no water flowing from the site at the time of the survey. Little Frog Ague Creek is located along the south side of the railroad right-of-way. There was no water in Little Frog Ague Creek at this location at the time of this survey. Habitat for the aquatic species listed in this report does not exist on or immediately adjacent to this site. The proposed surface

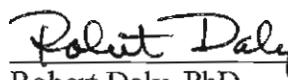
mine activity for Location #1 will have no detrimental effect on the listed species. BMP's must be followed to protect the current status of the area aquatic environments.

Location #2 in this report [see attached map and satellite photos] is approximately one half [1/2] mile northwest of Location #1 and is approximately 1,000 feet west of the Interstate 22 [U.S. 78] corridor right-of-way. Cane Creek flows adjacent to the northern boundary line of this proposed site. The closest approach of Cane Creek to Location #2 is about 250 feet north of the site boundary line and at least 100 feet below the level of the site. Location #2 was surface mined prior to required reclamation. The site has extensive high walls and surface mine spoil piles, and several small strip pit ponds. A very dense forest of pines and some hardwoods that are at least 40 years of age covers a portion of the location. A significant portion of the location [see satellite photo] that was clear-cut more than two years ago is covered by a thicket of young trees, vines, and mixed annual and perennial herbaceous plants. A drainage area is located in the middle of the proposed site. This drainage area carries runoff northward towards Cane Creek. At the time of the survey, this drainage route did not have any water flow. This drainage route joins with a small stream called Bull Barn Creek just before Bull Barn Creek flows into Cane Creek [a distance of approximately 300 feet]. Bull Barn Creek is a small low flow stream and has no habitat suitable for the listed aquatic species. The point where the drainage runoff flow and Bull Barn Creek flow enters Cane Creek is approximately 1,500 feet from the center of Location #2. A large sedimentation pond is scheduled for the above-mentioned Location #2 drainage route [see site map or sat photo]. The watershed along the site boundary above Bull Barn and Cane Creek is a very thick re-growth pine forest with areas of hardwoods. The scope of this watershed extends from approximately 250 feet to at least 1,500 feet out from the site. There is an immediate flood plain region along Bull Barn Creek and Cane Creek. This flood plain has a mixed stand of hardwoods and other typical stream bank vegetation.

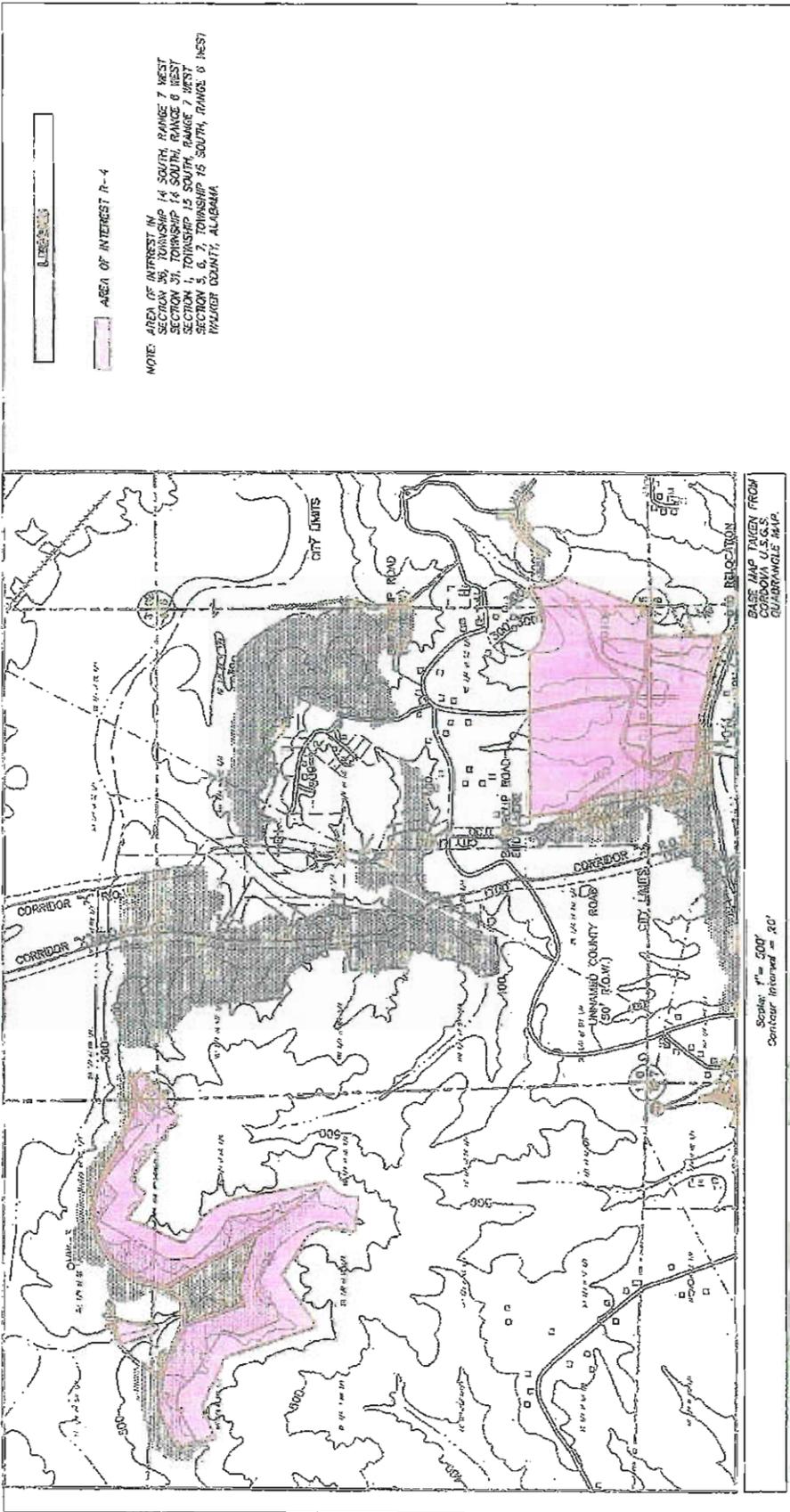
Cane Creek was surveyed for habitat and the possible presence of the listed aquatic species and this was done by direct observation of the streambed, the immediate flood plain, and the water in the creek. The creek bed is a mix of sand and small gravel with a very heavy load of silt. The streambed is constantly changing as the flow level in the creek changes with rainfall and runoff. In a few locations, small collections of logs and debris from flood stage conditions occur. No rock formations and other suitable habitat exist for the musk turtle and the waterdog. Neither freshwater snails nor freshwater mussels were observed in the creek. No Asian clam shells, freshwater mussel shells, or freshwater snail shells were found. In this area, Cane Creek is a long pool of very slow flowing turbid water [at the time of the survey] with a average depth of one to three feet. At the time of the survey, the creek water had a pH of 7.2 and a temperature of 86°F [air temp 101°F]. Habitat for the aquatic species listed in this report does not exist on or immediately adjacent to this site. The proposed surface mine activity for Location #2 will have no detrimental effect on the listed species. BMP's must be followed to protect the current status of these aquatic environments.



Paul Yokley, Jr., PhD
Biologist



Robert Daly, PhD
Biologist



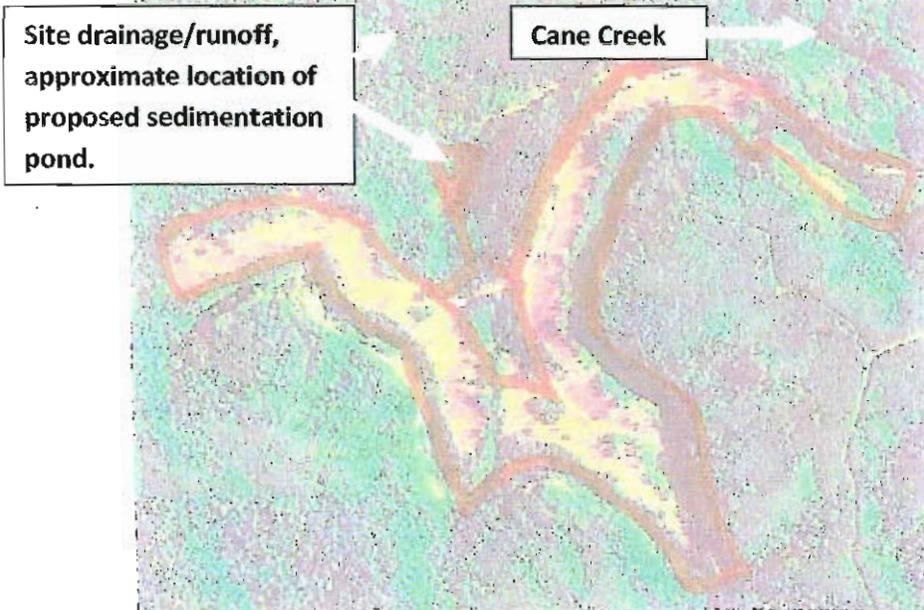
DEVELOPMENT BY GENERAL'S CO., INC.
 GAME CHECK NAME
 P-0000/REVISION R-0
 SITE LOCATION MAP
 SHEET 1 OF 1

drawn by: G.O.R.
 dwg name: BMSLMR-4
 scale: 1"=1000'
 mathematical closure: _____
 field survey: _____

PERC
 ENGINEERING CO., INC.
 1000 1/2 S. 10th Street, Suite 100, Okemah, OK 74450
 (405) 257-2000



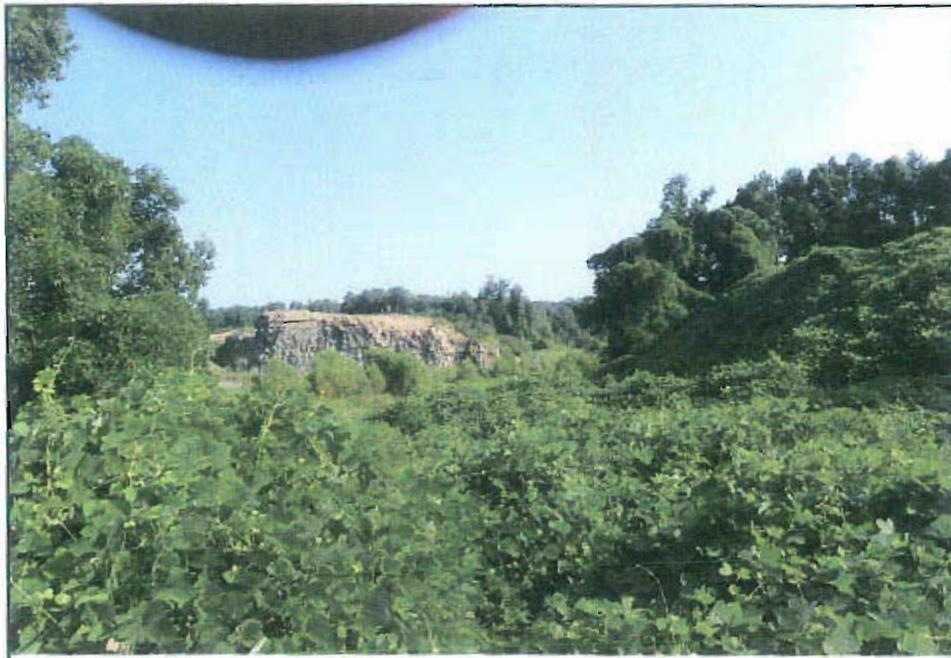
Cane Creek Location #1: approximate boundary lines, sat photos at least two years old. Interstate 22 [U.S. 78] is completed.



Site drainage/runoff,
approximate location of
proposed sedimentation
pond.

Cane Creek

Cane Creek Location #2: approximate boundary lines, sat photos at least two years old. Open areas were clear cut.



Cane Creek Mine: Location #1, view to north across site from southeast corner, previous surface mine area prior to required reclamation. GPS: N 33 45 36.8, W 87 12 09.4



Cane Creek Mine: Location #1, view to northwest across site from southeast corner, previous surface mine area prior to required reclamation, recent surface mine in distance. GPS: N 33 45 36.8, W 87 12 09.4



Cane Creek Mine: Location #1, view from center of site to west, I-22 in distance on left, northern boundary line in forest area above high wall. GPS: N 33 45 36.8, W 87 12 09.4



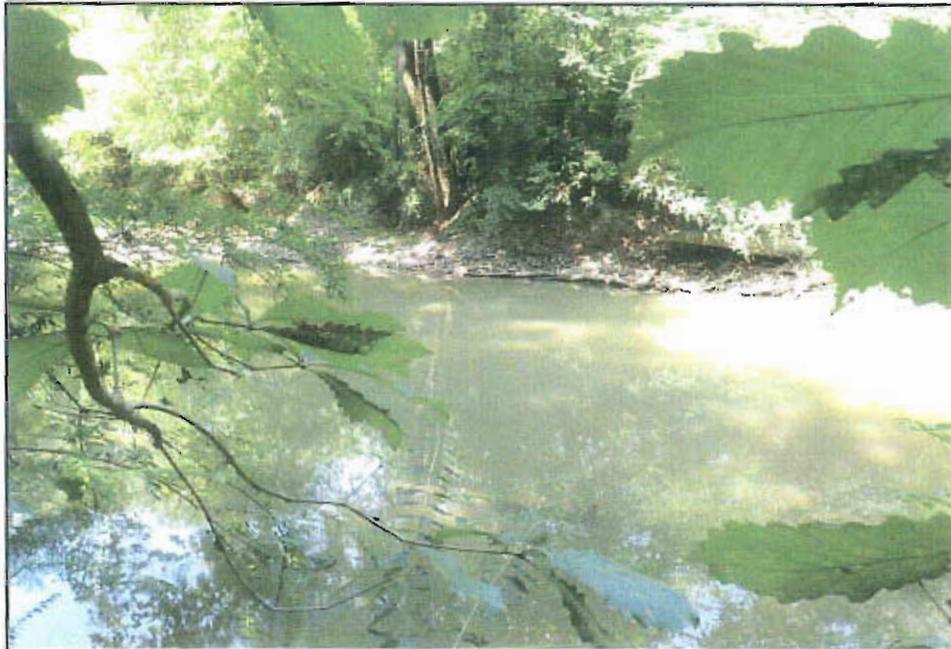
Cane Creek Mine: Location #1, view from center of site to east, eastern boundary line in tree line in background, with kudzu area to right. GPS: N 33 45 36.8, W 87 12 09.4



Cane Creek Mine: Location #2 , view from middle area of site to west, previous clear cut area in foreground, high wall behind trees in background, drainage route in middle of photo, photo taken from old mine road. GPS: N 33 46 28.0, W 87 13 20.0



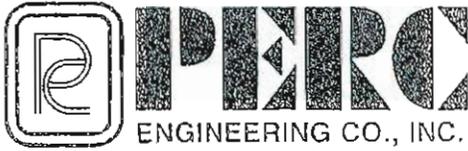
Cane Creek Mine: Location #2 , view of Cane Creek, from edge of stream bank of flood plain. GPS: N 33 46 41.9, W 87 13 25.8



Cane Creek Mine: Location #2 , view of Cane Creek, from edge of stream bank of flood plain.
GPS: N 33 46 41.9, W 87 13 25.8



Cane Creek Mine: Location #2 , view of Cane Creek, from edge of stream bank of flood plain,
flood debris area. GPS: N 33 46 41.9, W 87 13 25.8



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KM



Telephone: (205) 384-5553
Facsimile: (205) 295-3114 - Main Building
(205) 295-3115 - Water Lab
Web Address: www.percengineering.com

August 18, 2010

Mr. Bill Pearson
Fish and Wildlife Services
Daphne ES Field Office
1208-B Main Street
Daphne, Alabama 36526

Post-it Fax Note 7671 Date 8/31/10 # of pages 1
To Heath Franks
Co./Dept. PERC
Phone #
Fax # 205-295-3114
FROM: Sandy M
Co.: USFWS
Phone #: 251-441-5184
Fax #: 251-441-6222

RE: Gunner-Reilly Corp.
Cane Creek Mine

Dear Mr. Pearson:

Attached please find a request for the identification of areas of special concern for the above referenced disturbance for a surface coal mining operation. Please reference previous correspondence received from the Fish and Wildlife Service (2010-TA-0565). A biological survey for the area within the "Permit Boundary" is attached. Please process at your earliest convenience. Your prompt consideration will be most appreciated.

If you require additional information, please feel free to call at (205) 295-3112 or email at hfranks@percengineering.com.

Sincerely,
PERC Engineering Co., Inc.

Handwritten signature: Heath Franks

Heath Franks
Environmental Scientist



U.S. Fish and Wildlife Service
1208-B - Daphne, Alabama 36526
Phone: 251-441-5181 Fax: 251-441-6222

Based upon our records and the information provided in your letter, we agree with your findings that no federally listed species/critical habitat occur in the project area. If project design changes are made, please submit new plans for review.

Handwritten signature: William J. Pearson
William J. Pearson, Field Supervisor

8/31/2010
Date # 6