

Information Redacted pursuant to
5 U.S.C. Section 552 (b)(5), Exemption 5,
Privileged Inter/Intra Agency Document

Specific Privilege: Deliberative Process Privilege

Information Redacted pursuant to
5 U.S.C. Section 552 (b)(5), Exemption 5,
Privileged Inter/Intra Agency Document

Specific Privilege: Deliberative Process Privilege

Information Redacted pursuant to
5 U.S.C. Section 552 (b)(5), Exemption 5,
Privileged Inter/Intra Agency Document

Specific Privilege: Deliberative Process Privilege



Forwarded by Jim Giattina / R4/USEPA/US@EPA
GHOUSE@brookspierce.com

05/14/2009 01:49 PM

To jefferson.ryscavage@usace.army.mil,
brooke.lamson@usace.army.mil, Jim
Giattina/R4/USEPA/US@EPA,
mancusi-ungaro.phillip@epamail.epa.com

cc

Subject Fw: Proposal to Address ASA and EPA Concerns

Colonel Jefferson M. Ryscavage
District Engineer
Wilmington District
U.S. Army Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403

Mr. Jim Giattina
Director
Water Protection Division
U. S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center

61 Forsyth Street, SW
Atlanta, GA 30303-8960

Re: PCS Phosphate Company, Inc.
Mine Continuation Permit

Dear Col. Ryscavage and Mr. Giattina:

On behalf of PCS Phosphate Company, Inc. I am transmitting the attached proposal to address the concerns raised by the ASA and EPA to the issuance of a Permit to the Company for continued mining. The Company has paid particular attention to the comments made by Mr. Pace Wilber of the National Marine Fisheries during our May 12, 2009 meeting regarding what avoidance could be taken to add further protection to nursery area streams on the NCPC and Bonnerton tracts .

Preliminary graphics will follow in the next email.

Calculations of the precise acreages of vegetation types will be delivered early next week.

(See attached file:

GREENSBORO-#620475-v1-Final_Proposed_Additional_Avoidance_to_Respond_to_EPA_and_ASA_Concerns.DOC)

George W. House
Brooks, Pierce, McLendon, Humphrey & Leonard
Attorneys and Counsellors at Law
P.O. Box 26000
Greensboro, N.C. 27420
Direct Dial: 336-271-3114
Direct Fax: 336-232-9114

--
Confidentiality Notice

The information contained in this e-mail transmittal is privileged and confidential intended for the addressee only. If you are neither the intended recipient nor the employee or agent responsible for delivering this e-mail to the intended recipient, any disclosure of this information in any way or taking of any action in reliance on this information is strictly prohibited. If you have received this e-mail in error, please notify the person transmitting the information immediately.

This e-mail message has been scanned and cleared by NetIQ MailMarshal



GREENSBORO-#620475-v1-Final_Proposed_Additional_Avoidance_to_Respond_to_EPA_and_ASA_Concerns.DOC

PROPOSED ADDITIONAL AVOIDANCE TO RESPOND TO EPA AND ASA CONCERNS

Summary of Avoidance (in addition to Modified Alt L)

1. **Total additional avoidance 89.6 acres**
2. **Total additional mining reserves lost. 104.0 acres
(0.52 years and 2.58 million tons of phosphate rock concentrate)**
3. **Total stream and buffer preserved by conservation easement. . . TBD acres**
4. **Total linear feet of stream avoided TBD LF**
5. **Avoidance of high value PNA headwaters areas in NCPC and Bonnerton.**
6. **Permanent conservation easement around Drinkwater Creek and PNA streams Jacks, Jacobs and Tooley Creeks from 100 yards upstream from their mouths on South Creek to the Modified Alternative L Boundary and Porter Creek from 100 yards upstream from its mouth on Durham Creek to the Modified Alternative L Boundary.**

Specific Areas

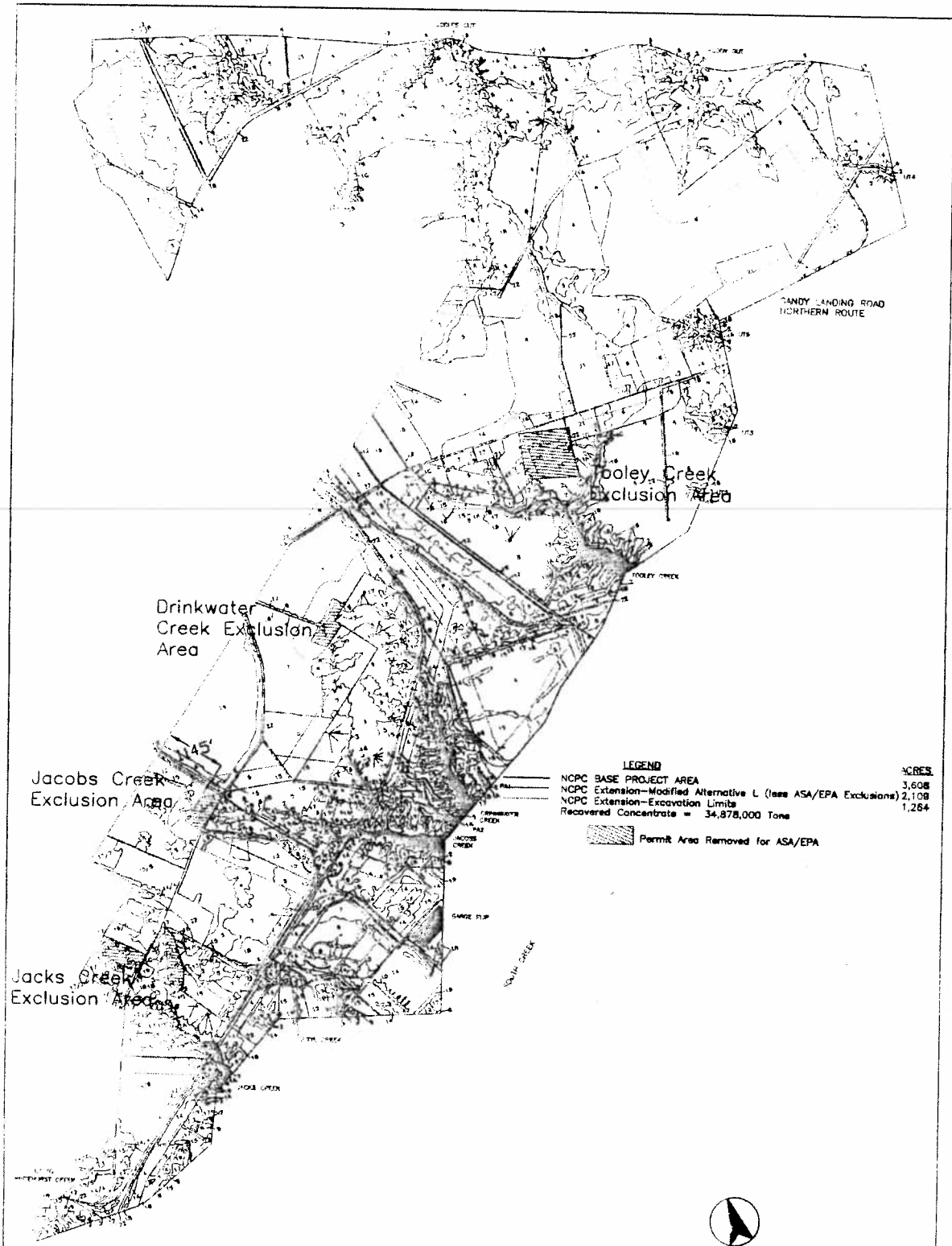
1. **The attached mine plans provide for the avoidance of an additional 81.7 acres north of Highway 33:**
 - a. **6.0 acres on the NCPC Tract at the headwaters of Jacobs Creek (ASA, EPA & modified NMFS exclusion area 1):**
 - i. **TBD acres of bottomland hardwood forest**
 - ii. **TBD acres of shrub-scrub**
 - iii. **TBD acres of hardwood forest**
 - iv. **TBD acres of stream**
 - v. **TBD linear feet of stream**
 - vi. **TBD acres of associated uplands**
 - b. **14.1 acres on the NCPC Tract at the headwaters of Jacks Creek (ASA & EPA exclusion area):**
 - i. **TBD acres of bottomland hardwood forest**
 - ii. **TBD acres of shrub-scrub**
 - iii. **TBD acres of hardwood forest**
 - iv. **TBD acres of stream**
 - v. **TBD linear feet of stream**
 - vi. **TBD acres of associated uplands**
 - c. **6.6 acres on the NCPC Tract at the headwaters of Drinkwater Creek (EPA & NMFS exclusion area 2):**
 - i. **TBD acres of bottomland hardwood forest**
 - ii. **TBD acres of shrub-scrub**
 - iii. **TBD acres of hardwood forest**
 - iv. **TBD acres of stream**

- v. TBD linear feet of stream
 - vi. TBD acres of associated uplands
 - d. 21.2 acres on the NCPC Tract at the headwaters of Tooley Creek (EPA & NMFS exclusion area 5):
 - i. TBD acres of bottomland hardwood forest
 - ii. TBD acres of shrub-scrub
 - iii. TBD acres of hardwood forest
 - iv. TBD acres of stream
 - v. TBD linear feet of stream
 - vi. TBD acres of associated uplands
 - e. 33.8 acres on the Bonnerton Tract along Porter Creek (ASA, EPA & NMFS exclusion areas 3 and 6 and associated connector):
 - i. TBD acres of bottomland hardwood forest
 - ii. TBD acres of herbaceous assemblage
 - iii. TBD acres of hardwood forest
 - iv. TBD acres mixed pine/hardwood forest
 - v. TBD acres of pine forest
 - vi. TBD acres of stream
 - vii. TBD linear feet of stream
 - viii. TBD acres of associated uplands
 - ix. In addition to the water quality protective functions of the wetlands, the combination of NMFS exclusion areas 3 and 6 and a connector between them provides for a significant expansion of watershed draining to Porter Creek.
- 2. The attached mine plans provide for the avoidance of an additional 7.9 acres non-riverine wet hardwoods South of Highway 33 near Cypress Run shown as Cypress Run Creek exclusion area:
 - a. TBD acres of wet hardwood forest
 - b. TBD acres of mixed pine/hardwood forest
- 3. To accomplish avoidance of the areas identified in paragraphs 1 and 2, PCS will be prevented from mining 104.0 acres (2.58 million tons of phosphate rock concentrate) currently available in Modified Alternative L. The surface area of an additional TBD acres that surround the avoidance areas will be impacted by roadways and utilities, but will not be mined.
- 4. PCS will further agree to place a conservation easement permanently preventing development along the following streams on the NCPC and Bonnerton Tracts beginning 100 yards upstream of their mouths running to

the Modified Alternative L Boundary (see attached maps). This restriction will provide a 100 foot buffer from the back edge of the brackish marsh, or from the bank of the stream where no marsh exists, on either side of each of these streams. This will result in permanent protection of these streams and the permanent protection of TBD acres in their natural state:

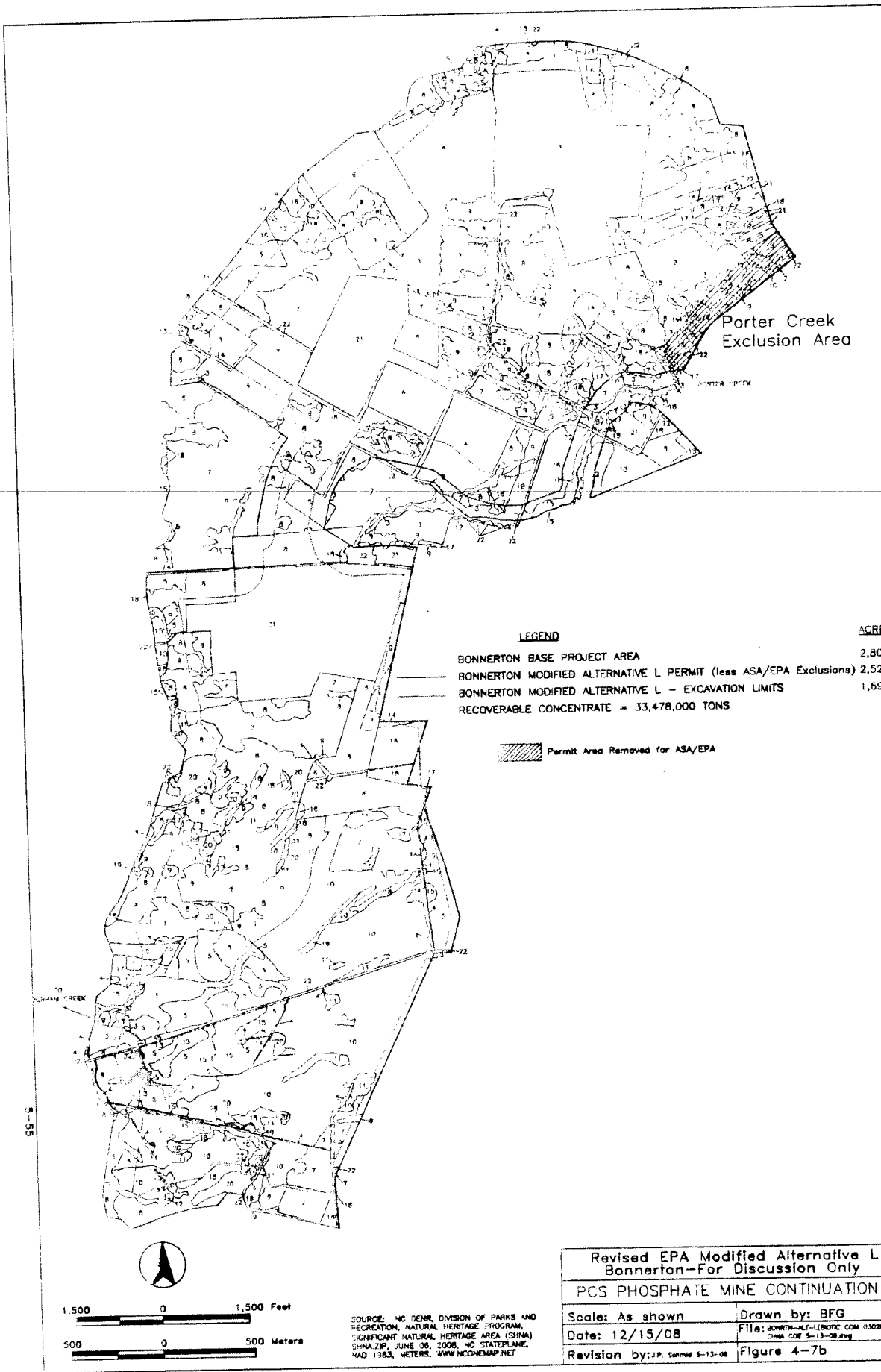
- a. Jacks Creek TBD acres**
- b. Jacobs Creek TBD acres**
- c. Tooley Creek TBD acres**
- d. Drinkwater Creek TBD acres**
- e. Porter CreekTBD acres (subject to the limited, temporary surface impacts related to carrying out and supporting mining activities on the Bonnerton Tract and the inability to place restrictions on non-owned properties)**

- 5. The offer above is conditioned upon the COE appropriately revising mitigation requirements for the wetlands and streams avoided.**
-



5-64

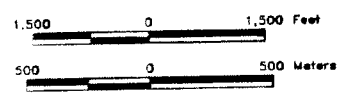
Revised EPA Modified Alternative L NCPC - For Discussion Only	
PCS PHOSPHATE MINE CONTINUATION	
Scale: As shown	Drawn by: BFG/TLJ
Date: 12/5/08	File: FIGURE-7-(NCPC) (2010) (081208) enr_1_COE 8-13-09.dwg
Approved by: JPS 5-13-09	Figure 4-7a



LEGEND		ACRES
BONNERTON BASE PROJECT AREA		2,808
BONNERTON MODIFIED ALTERNATIVE L PERMIT (less ASA/EPA Exclusions)		2,526
BONNERTON MODIFIED ALTERNATIVE L - EXCAVATION LIMITS		1,698
RECOVERABLE CONCENTRATE = 33,478,000 TONS		

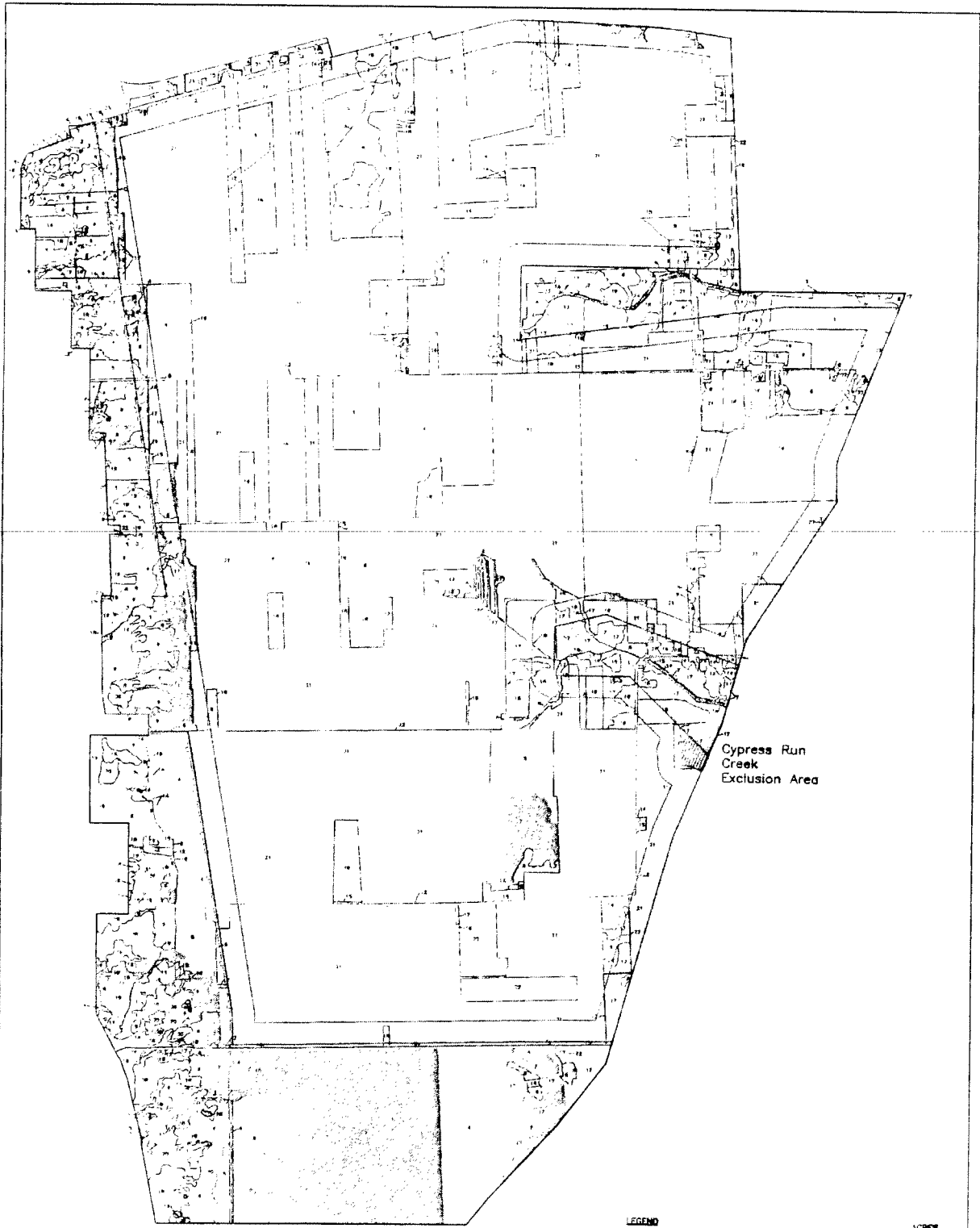
Permit Area Removed for ASA/EPA

5-55



SOURCE: NC DEPT. DIVISION OF PARKS AND RECREATION, NATURAL HERITAGE PROGRAM, SIGNIFICANT NATURAL HERITAGE AREA (SHNA) SHNA ZIP, JUNE 06, 2008, NC STATEPLANE, NAD 1983, METERS, WWW.NCDEMARP.NET

Revised EPA Modified Alternative L Bonnerton—For Discussion Only	
PCS PHOSPHATE MINE CONTINUATION	
Scale: As shown	Drawn by: BFG
Date: 12/15/08	File: BONNERTON-ALT-L (BOTTIC COM) (3/30/08) TMA COE 5-13-08.dwg
Revision by: J.P. Schmid 5-13-08	Figure 4-7b



LEGEND		ACRES
	SOUTH RT 33 STUDY AREA	5,656
	S. RT 33-Modified Alt. L (less ASA/EPA Exclusions)	6,730
	SOUTH RT 33 EXCAVATIONS LIMITS	5,169
RECOVERED CONCENTRATE(EPA Min.)=104,717,000 TONS		
	Permit Area Removed for ASA/EPA	

Revised EPA Modified Alternative L South of Route 33-For Discussion Only PCS PHOSPHATE MINE CONTINUATION		
SCALE: AS SHOWN	REVISED: JPS 5-13-09	DRAWN BY: TLJ
DATE: 07/01/04	<small>FILED 8:33 AM 7/1/04 in Charleston, West Virginia EPA 8-13-09-004</small>	
		CP#1745.62.13
		Fig.: L-S_33