

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
2017 JAN 5 AM 11:17

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRIAD MINING, INC.,

Defendant.

Civil Action No. _____

1 : 12 -cv- 0026 TWP -MJD

NOTICE OF LODGING OF PROPOSED CONSENT DECREE

PLEASE TAKE NOTICE that Plaintiff, United States of America, submits for lodging only a proposed Consent Decree that is designed to resolve all issues in this case. The proposed Consent Decree should not be entered by the Court unless the United States subsequently moves the Court to do so. In conjunction with this Notice, the United States hereby states the following:

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Triad Mining, Inc. ("Defendant" or "Triad"), for the discharge of pollutants into waters of the United States in Knox and Sullivan County, Indiana, without authorization by the United States Department of the Army Corps of Engineers ("COE"), in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. The United States and Triad have resolved all claims in this case and have set forth their agreement in the proposed Consent Decree. That proposed Consent Decree is submitted herewith at Attachment A for lodging only.

3. This case, among other things, seeks to enjoin the Defendant from discharging pollutants into waters of the United States. In such cases, federal regulations require that non-parties to the litigation be afforded an opportunity to comment on the proposed judgment. 28 C.F.R. § 50.7(a). The relevant regulations provide that the proposed Consent Decree or judgment be lodged with the Court at least 30 days before the judgment is entered by the Court. *Id.* § 50.7(b).

4. In accordance with this process, the Department of Justice will publish notice of the proposed Consent Decree in the Federal Register and solicit comments on said decree, to be submitted within thirty days of said publication.

5. Pursuant to 28 C.F.R. § 50.7(b), the Department of Justice, as appropriate, may withdraw or withhold consent to the proposed Consent Decree if comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. If consent is not withdrawn or withheld, the United States will execute the Consent Decree and submit it for approval by the Court and entry into the docket as a final Order.

Accordingly, the United States respectfully requests that this Court lodge the proposed Consent Decree, but not sign it or otherwise enter it as an Order. The United States will, promptly after evaluating any public comments received during the public comment period, make an appropriate motion for the Court to enter the Consent Decree (unless it is determined that consent should be withheld) and will affix its signature and submit a final, fully executed version of the Consent Decree at that time for such final entry.

Respectfully submitted,


DATE: January 9, 2012

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

OF COUNSEL:

Melissa Raack, Attorney
United States Environmental Protection
Agency
Office of Compliance and Enforcement
Assurance
401 M Street, S.W.
Washington, D.C. 20460

Thomas J. Martin, Attorney
Associate Regional Counsel
United States Environmental Protection
Agency
Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604


PERRY M. ROSEN
United States Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 23986
Washington D.C. 20026-3986
Tel: 202-353-7792
Fax: 202-514-8865
perry.rosen@usdoj.gov

JOSEPH H. HOGSETT
United States Attorney

JILL Z. JULIAN
Assistant United States Attorney
Southern District of Indiana
10 Market Street
Suite 2100
Indianapolis, IN
317-226-6333

CERTIFICATE OF SERVICE

I hereby certify that the Notice of Lodging of Proposed Consent Decree was served, along with the Complaint in this action, on counsel for Defendant Triad Mining Co.

Date: Jan. 9, 2012



PERRY M. ROSEN
United States Department of Justice

Attachment A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
TRIAD MINING, INC.,)	
)	
Defendant.)	
)	

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the U.S. Environmental Protection Agency ("EPA"), filed the Complaint herein against Triad Mining, Inc. ("Defendant"), alleging that Defendant violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that the Defendant violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into "waters of the United States" at surface mining sites in the Freelandville, Freelandville East, and Center Pit project areas (SMCRA Permits S-311, S-351, and S-358) located in and around Knox, Pike and Sullivan Counties, Indiana (the "Site") and more fully described in the Complaint, without authorization by the United States Department of the Army Corps of Engineers ("Corps"), and otherwise failed to comply with a Cease and Desist Order ("CDO") issued to it by the Corps, as more fully described in the Complaint;

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendant, at its own expense and at the direction of EPA and the Corps, to restore and/or mitigate the damages caused by its unlawful activities; and (3) to require Defendant to pay civil penalties to the United States as provided in Section 319(d) of the CWA, 33 U.S.C. § 1319(d);

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Site;

WHEREAS, the United States and Defendant agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendant in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendant in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over Defendant pursuant to CWA sections 309(b) and (d) and 404(s), 33 U.S.C. §§ 1319(b) and (d) and 1344(s), and 28 U.S.C. §§ 1331, 1345, and 1355.

2. Venue is proper in the Southern District of Indiana pursuant to CWA sections 309(b) and 404(s), 33 U.S.C. §§ 1319(b) and 1344(s), and 28 U.S.C. § 1391(b) and (c), because

the Defendant conducts business in this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to CWA sections 301, 309 and 404, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendant, its officers, directors, agents, employees and servants, and its successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the Defendant, whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against the Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions hereof.

5. Any transfer of ownership or other interest in a Restoration and/or Mitigation Site associated with this Consent Decree shall not alter or relieve Defendant of its obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in a Restoration and/or Mitigation Site subject to this Consent Decree, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the party making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendant under CWA Section 301 concerning the Site. Defendant waives any right to seek termination or modification of this Consent Decree based upon future decisions of any court in any case unrelated to the Defendant or this Consent Decree or the Site, with respect to the regulatory jurisdiction under the CWA.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Except as in accordance with this Consent Decree, Defendant and Defendant's agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States at the Site, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This Consent Decree in no way affects or relieves Defendant of its responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

11. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

12. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

13. This Consent Decree is the result of a compromise of disputed law and facts and nothing herein shall constitute an admission of fact or law by any party.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

14. Defendant shall pay a civil penalty of eight hundred ten thousand, one hundred and seventy one dollars and no cents (\$810,171.00) in resolution of this matter, as specified in paragraph 15, below.

15. Defendant shall make all payments that are due and owing under the terms of this Consent Decree, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the U.S.A.O. file number to be supplied by the United States, EPA Region 5, and the DOJ case number 90-5-1-1-18796. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

16. Upon payment of any penalties required by this Consent Decree, Defendant shall provide written notice, at the addresses specified in Section X of this Consent Decree, that such payment was made in accordance with paragraph 15 of this Consent Decree.

17. Penalty payments pursuant to this Consent Decree (including stipulated penalties provided for herein) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

RESTORATION, MITIGATION AND PRESERVATION
COMPLIANCE ORDER REQUIREMENTS

18. Defendant immediately shall cease any discharges of dredged or fill material into "waters of the United States" at the Site that are not authorized by a Section 404 permit.

19. Upon the lodging of this Consent Decree, or within thirty (30) days thereafter, Defendant shall have applied to the Louisville District of the U.S. Army Corps of Engineers for an after-the-fact ("ATF") permit for the discharges described in paragraph 24 of the Complaint. Defendant shall send EPA a copy of the application.

20. As mitigation for the stream impacts at the Site, Defendant shall propose, in its ATF permit application described in paragraph 19 above, to implement a restoration/mitigation plan that is consistent with the minimum requirements set out in Appendix A, attached hereto. In the course of the ATF permit review process, the Corps reserves its right to supplement requirements associated with the restoration/mitigation plan required to be submitted as part of this Consent Decree.

21. Defendant must commence implementation of the restoration/mitigation plan no later than one year after the issuance of any ATF permit by the Corps for the Site.

22. Defendant shall perform the restoration/mitigation projects submitted pursuant to Appendix A, appended hereto, consistent with the terms and conditions stated in any ATF permit issued by the Corps.

23. To ensure that all parcels of land on which the restoration or mitigation activities take place under an ATF permit for the Site remain preserved, Defendant shall, within sixty (60) days after the completion of restoration or mitigation activities on each parcel of land pursuant to any ATF permit issued for the Site, record for each such parcel a Declaration of Restrictive Covenant for Conservation with the Recorder of Deeds Office, in Knox, Pike or Sullivan Counties, Indiana, as appropriate. (The Declaration shall be filed in the County or Counties where the parcel of land is located). Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Appendix A shall contain a notice stating that the property is subject to the Declaration of Restrictive Covenant for Conservation and shall reference the recorded location of the Declaration and any restrictions applicable to the property under the Declaration. For purposes of this paragraph 23 and subsequent paragraph 24, "completion of restoration or mitigation activities" shall mean completion of all construction, grading, seeding, and planting activities, but shall not include subsequent water or other monitoring requirements.

24. Within sixty (60) days after the completion of restoration or mitigation activities for the entire Site as required by an ATF permit issued for the Site, Defendant shall certify to the United States and EPA the completion of such activities. Defendant's certification shall include photographs and/or videotape and "as built" drawings with topographic information showing the completed ATF permit restoration/mitigation implementation activities throughout the entire Site.

V. NOTICES AND OTHER SUBMISSIONS

25. Within thirty (30) days after the deadline for completing any task set forth in this Consent Decree or in Defendant's ATF permit, Defendant shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

26. If the required task has been completed late, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

27. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendant shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

28. Until ten years after entry of this Consent Decree, Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks conducted under this Consent Decree and/or done pursuant to the ATF permit to be issued in this matter, regardless of any corporate retention policy to the contrary. Until ten years after entry of this Consent Decree, Defendant shall also instruct its contractors and agents to preserve all

documents, records, and information of whatever kind, nature or description relating to the performance of the tasks done pursuant to this Consent Decree.

29. At the conclusion of the document retention period, Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendant shall deliver any such records or documents to EPA. The Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

30.

A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Defendant's premises to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;
- 4) Inspect and evaluate Defendant's restoration and/or mitigation activities; and

- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

In conducting any on-site monitoring or inspection, representatives and contractors of the United States shall take care to comport with safety or other requirements established for the site by other agencies of the United States.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

VII. DISPUTE RESOLUTION

31. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and the Defendant affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and the Defendant cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this

Consent Decree and the CWA, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

32. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendant shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

33. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in paragraph 41 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

34. Defendant shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendant, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of

title or ownership or possession of a site, or failure to obtain federal, state or local permits, except for Defendant's failure to obtain the ATF permit that is referenced at paragraph 19 in this Consent Decree.

35. If Defendant believes that a Force Majeure event has affected Defendant's ability to perform any action required under this Consent Decree, Defendant shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States any additional information that it deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

36. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

37. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at

issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

38. Defendant shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendant and any entity controlled by Defendant, including their contractors and consultants; (2) that Defendant or any entity controlled by Defendant could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

39. After entry of this Consent Decree, if Defendant fails to timely fulfill any requirement or obligation of the Consent Decree, including any of the requirements, tasks or obligations set forth in Appendix A, Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|---|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$1,000.00 per day |
| B. | For Day 31 up to and including
60 of non-compliance | \$2,000.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$3,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

40. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in paragraphs 32 and 33.

41. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section.

42. To the extent Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in paragraph 34 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

43. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the date the payment is due until the date the payment is made. The interest shall also be compounded annually.

44. Defendant shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the U.S.A.O. file number to be supplied by the United States, EPA Region 5, and the DOJ case number 90-5-1-1-18796.

Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendant shall provide written notice, at the addresses specified in Section X of this Decree.

X. ADDRESSES

45. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

(1) THOMAS J. MARTIN
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Mail Code: C-14J
Chicago, IL 60604-3590

(2) MELANIE HAVEMAN (WW-16J)
United States Environmental Protection Agency
77 West Jackson Blvd.
Chicago, IL 60604-3590

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

PERRY M. ROSEN
United States Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 23986
Washington D.C. 20026-3986

C. TO DEFENDANT:

(1) Triad Mining, Inc.
Attention: Tommy Sutton, Vice President
P.O. Box 316
Freelandville, Indiana 47535

(2) Kevin M. McGuire
Jackson Kelly PLLC
175 East Main Street, Suite 500

Lexington, KY 40507

XI. COSTS OF SUIT

46. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendant for noncompliance with or enforcement of this Consent Decree.

XII. PUBLIC COMMENT

47. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendant in writing that it no longer supports entry of the Consent Decree.

XIII. CONTINUING JURISDICTION OF THE COURT

48. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIV. MODIFICATION

49. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendant and approved by the Court.

XV. TERMINATION

50. Except for paragraph 28, this Consent Decree may be terminated by either of the following:

A. Defendant and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendant may make a unilateral motion to the Court to terminate this Decree after each and all of the following has occurred:

1. Defendant has obtained and maintained compliance at the Site with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;

2. Defendant has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendant has certified compliance pursuant to subparagraphs B.1. and B.2., above, to the Court and all Parties; and

4. Within forty-five (45) days of receiving such certification from the Defendant, the United States has not contested in writing that such compliance has been achieved. If the United States disputes Defendant's full compliance, this

Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 20__.

United States District Judge

Consented and agreed to by:

ON BEHALF OF THE UNITED STATES:

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

Date: _____

PERRY M. ROSEN
United States Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 23986
Washington D.C. 20026-3986
Tel: (202) 353-7792
Fax: (202) 514-8865
perry.rosen@usdoj.gov

JOSEPH H. HOGSETT
United States Attorney

JILL Z. JULIAN
Assistant United States Attorney
Southern District of Indiana
10 Market Street
Suite 2100
Indianapolis, IN

ON BEHALF OF U.S. ENVIRONMENTAL PROTECTION AGENCY:

SUSAN HEDMAN
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Date: 12/12/11

THOMAS J. MARTIN
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3507
(312) 886-4273

Date: 12/12/11

ON BEHALF OF THE OFFICE OF ENFORCEMENT AND COMPLIANCE
ASSURANCE

12-29-11

Date

jm

CYNTHIA GILES, Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

12.27.11

Date

PAMELA J. MAZAKAS, Acting Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

12.21.11

Date

MARK POLLINS, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 11/30/11

MELISSA K. RAACK, Attorney Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

ON BEHALF OF DEFENDANT TRIAD MINING, INC.:

Date: 11/17/11

TOMMY SUTTON, Vice President
Triad Mining, Inc.
P.O. Box 316
Freelandville, Indiana 47535

Date: 11/21/11

CHAD J. SULLIVAN
Jackson Kelly PLLC
21 S.E. Third Street, Suite 900
Evansville, IN 47708-1412
(812) 401-6770

Date: 11/17/11

KEVIN M. McGUIRE
Jackson Kelly PLLC
175 East Main Street, Suite 500
Lexington, Kentucky 40507

DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION

11 DEC -9 13:08

APPENDIX A

This Appendix and all exhibits thereto are part of the Consent Decree executed by Triad Mining Inc. (Triad) and by the United States and is specifically incorporated as part of the Consent Decree. All actions and obligations set forth below shall be governed by the terms of the Consent Decree (which is also referred to herein as the "Agreement"). This Appendix describes the general minimum requirements of the CWA Section 404 After the Fact (ATF) permit application that Triad must propose to the Louisville District of U.S. Corps of Engineers to address the Section 404 violations alleged in the United States' complaint in this matter.

I. GENERAL PROVISIONS

1. Definitions. For the purposes of Appendix A and the Consent Decree, the terms set forth below are defined as follows:

- A. Freelandville Mitigation Complex: A 4,446.8-acre stream and wetland mitigation complex, which was the location of the impacts to Waters of the United States alleged in the United States' complaint. The complex is split into multiple sites undergoing stream and wetland restoration. The complex is located north and east of Freelandville, Indiana, largely within contiguous Sections 2 –15, 24, 25, and 26, Township 9 South, Range 8 East, in Knox County and Sections 33 and 34, Township 6 North, Range 8 West, in Sullivan County. See Exhibit 1, attached hereto, for an illustration of the complex (i.e., all land within Surface Mining Control and Reclamation Act ("SMCRA") Permits S-311, S-351, S-358, and subsequent amendments and revisions).
- B. Carnahan Mitigation Site: An approximately 50-acre stream restoration site within the Freelandville Complex. It is located within Sections 25 and 36,

Township 5 North, Range 8 West, in Knox County. See Exhibit 2, attached hereto, for an illustration of the Carnahan Mitigation Site.

- C. Log Creek Mitigation Site: An approximately 50-acre stream restoration site within the Log Creek Mine Site. It is located within Sections 2 and 11, Township 3 South, Range 8 West, in Pike County. See Exhibit 3, attached hereto, for an illustration of the Log Creek Mitigation Site
- D. Freelandville Complex After the Fact Mitigation Plan (“Mitigation Plan”) attached hereto as Exhibit 4: This is the Plan submitted by Triad to EPA on July, 25, 2011. The document describes details and design criteria of the stream restoration and enhancement and wetland restoration at the Freelandville Mitigation Complex and Log Creek Mitigation Site described above, and contains the minimum requirements that Triad must incorporate into its CWA Section 404 After the Fact (“ATF”) permit application to be submitted to the Louisville District of U.S. Corps of Engineers to address the Section 404 violations alleged in the United States’ complaint in this matter.
- E. Declaration of Restrictive Covenants for Conservation (“Restrictive Covenant”): Each Restrictive Covenant shall provide permanent protection for all lands subject to it and each shall be secured as a separate legally binding document in the form generally set forth in Exhibit 5 to this Appendix. All Restrictive Covenants described herein shall be recorded by Triad in the Office of the Recorder for Sullivan, Pike or Knox Counties, Indiana, as appropriate. Each Restrictive Covenant shall reference the deeds for all properties to which the Restrictive Covenant attaches under the terms

of this Agreement. Triad shall, as set forth herein, be responsible for obtaining surveys of all properties for which a Restrictive Covenant is declared under this Consent Decree.

F. The Wetland and Stream Restoration Areas: The areas outlined in yellow on the Site Maps attached hereto as Exhibits 1, 2, and 3 (defined below at paragraph 2).

2. Use of the Maps Attached at Exhibits 1, 2 and 3 (referred to herein as the "Site Maps"):

A map is attached hereto at Exhibit 1, entitled "Freelandville Mitigation Complex", Exhibit 2 entitled "Carnahan Mitigation Site" and Exhibit 3 entitled "Log Creek Mitigation Site." These Site Maps depict the areas described in the Consent Decree and Appendix A. All obligations with regard to Wetland and Stream Restoration Areas shall be governed by the written descriptions set forth herein and by the Site Maps. To the extent there is any conflict between a written description of land referred to herein and its depiction on any of the Site Maps, the written description shall govern.

II. WETLAND RESTORATION AT THE FREELANDVILLE COMPLEX

3. Richter Wetland Restoration (see Exhibit 1):

Consistent with Exhibit 4 (the Freelandville Complex After the Fact Mitigation Plan), Triad shall propose in its ATF permit application to restore 4.5 acres of forested wetlands at the Mitigation Richter Wetland Restoration Site as compensation for impacts to streams on the Site. Triad shall also propose that the restored wetland shall meet all performance standards, monitoring, and recording requirements outlined in the Mitigation Plan.

4. Buescher Wetland Restoration (see Exhibit 1):

Consistent with the Mitigation Plan, Triad shall propose in its ATF permit application to restore 5.5 acres of forested wetlands at the Mitigation Buescher Wetland Restoration Site as compensation for impacts to streams on the Site. Triad shall also propose that the restored wetland shall meet all performance standards, monitoring, and recording requirements outlined in the Mitigation Plan.

III. STREAM RESTORATION AND ENHANCEMENT

5. Freelandville Complex Stream Restoration (see Exhibits 1 and 2):

As described in the Mitigation Plan, Triad shall propose in its ATF permit application to restore 17,117 linear feet of ephemeral and 16,323 linear feet of intermittent stream and shall enhance 1,330 linear feet of ephemeral stream. Freelandville Complex Stream Restoration also includes the Carnahan Site. Triad shall also propose that the restored and enhanced streams shall meet all performance standards, monitoring, and recording requirements outlined in the Mitigation Plan.

6. Log Creek Mitigation Site Stream Restoration (see Exhibit 3):

As described in the Mitigation Plan, Triad shall propose in its ATF permit application to restore 1,466 linear feet of ephemeral intermittent stream and shall enhance 3,000 linear feet of intermittent stream. Triad shall also propose that the restored and enhanced streams shall meet all performance standards, monitoring, and recording requirements outlined in the Mitigation Plan.

7. Forested Riparian Buffers:

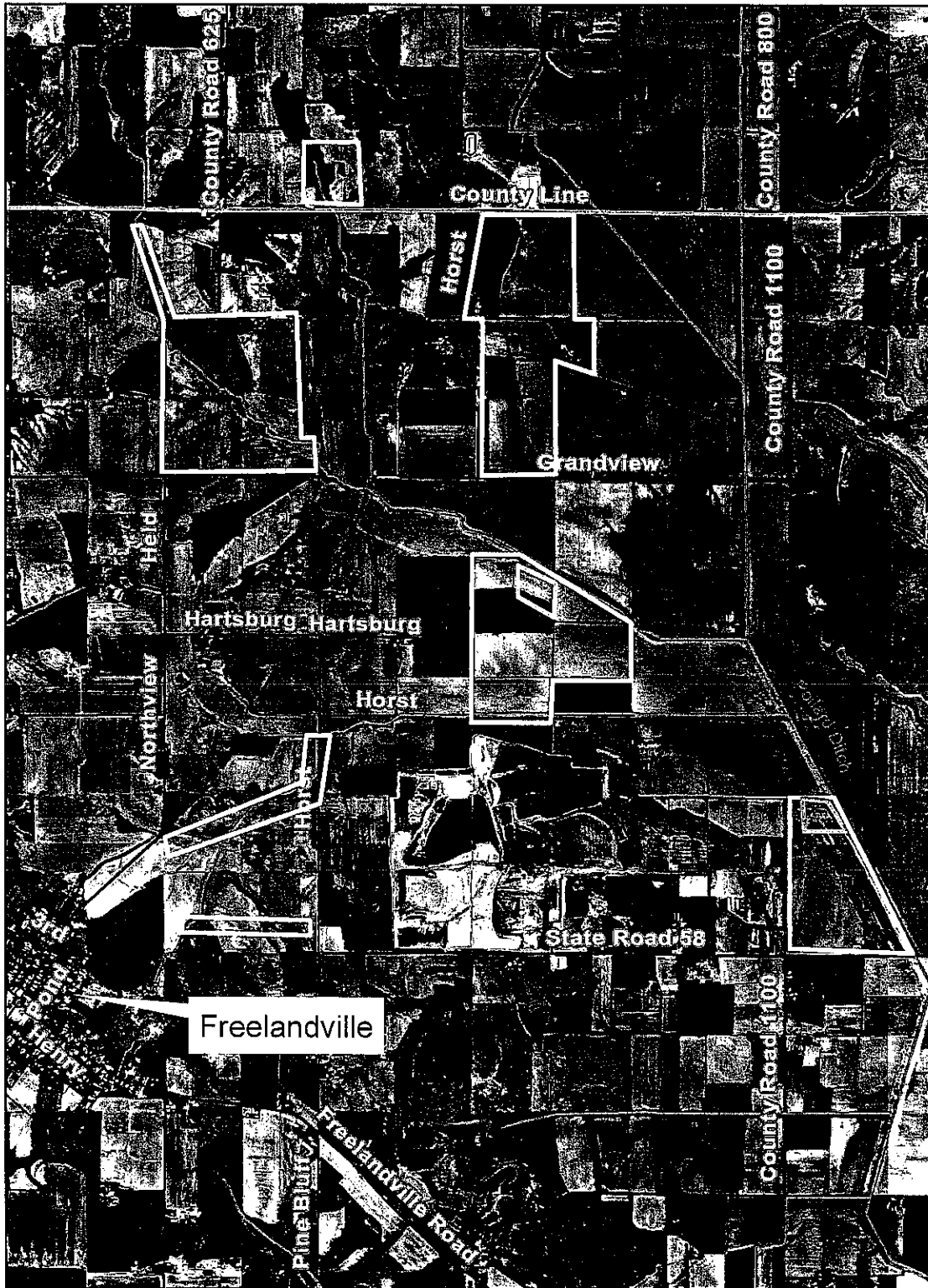
As described in the Mitigation Plan, Triad shall propose in its ATF permit application to establish forested riparian buffer zones of varying widths on each side of the restored

streams at the Freelandville Complex and Log Creek Mitigation Site described in paragraph 5 and 6 above. Triad shall also propose that the forested riparian buffer zones shall meet all performance standards, monitoring, and recording requirements outlined in the Mitigation Plan.


8. Declaration of Site Protection Instrument

Defendant shall propose in its ATF permit application to execute a Declaration of Restrictive Covenants for Conservation to run with the land on all parcels of property within the Ritcher and Beuscher wetland restoration project areas and the Freelandville Complex and Log Creek Mitigation Site stream restoration project areas described in paragraphs 3-6 above.

Exhibit 1: Freelandville Mitigation Complex



Legend

 Mitigation Buescher Wetland

 Mitigation Richter Wetland

Stream Restoration Sites

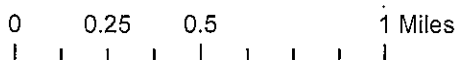
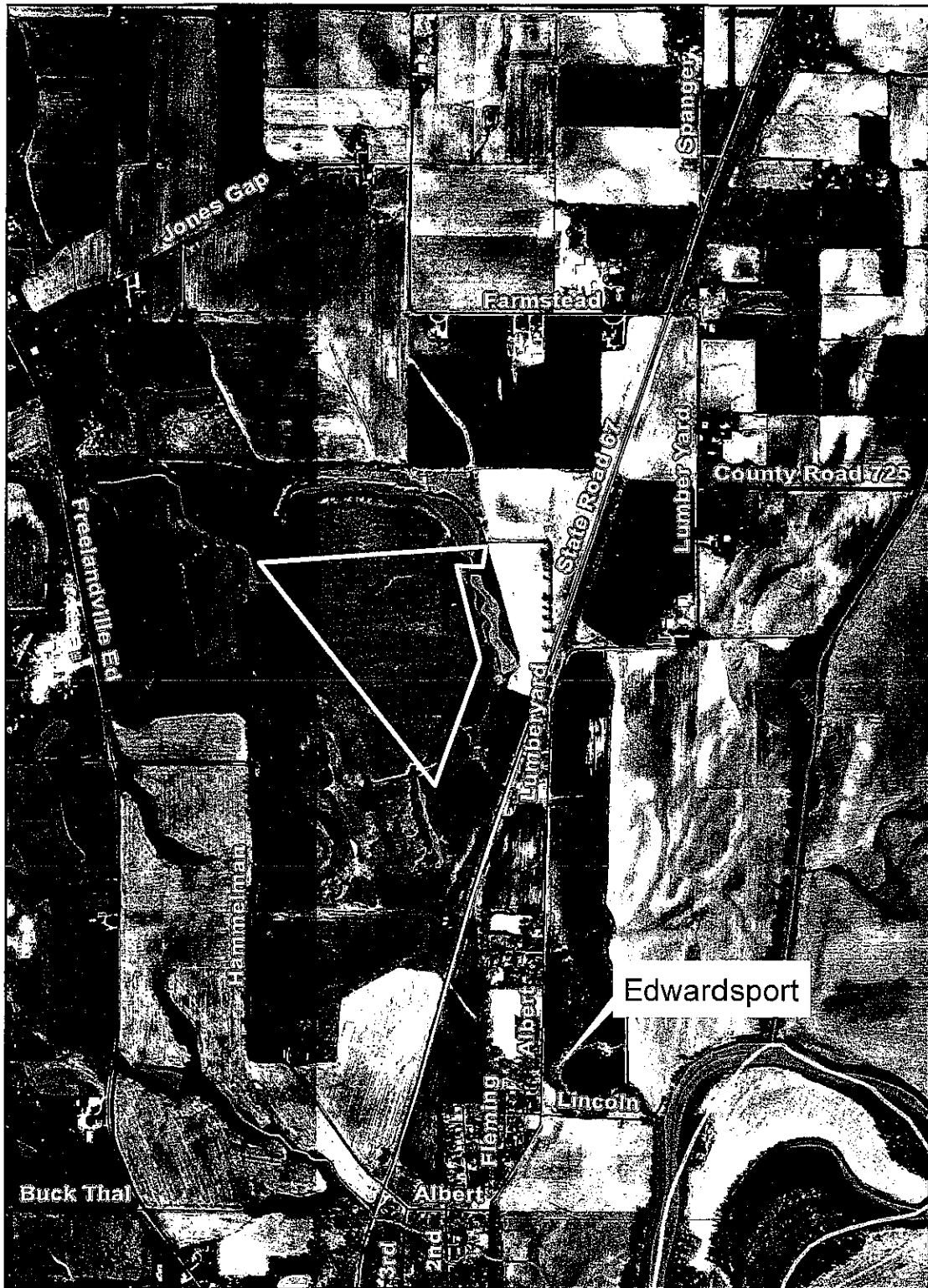


Exhibit 2: Carnahan Mitigation Site



Legend

Stream Restoration Site

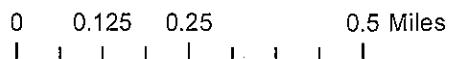
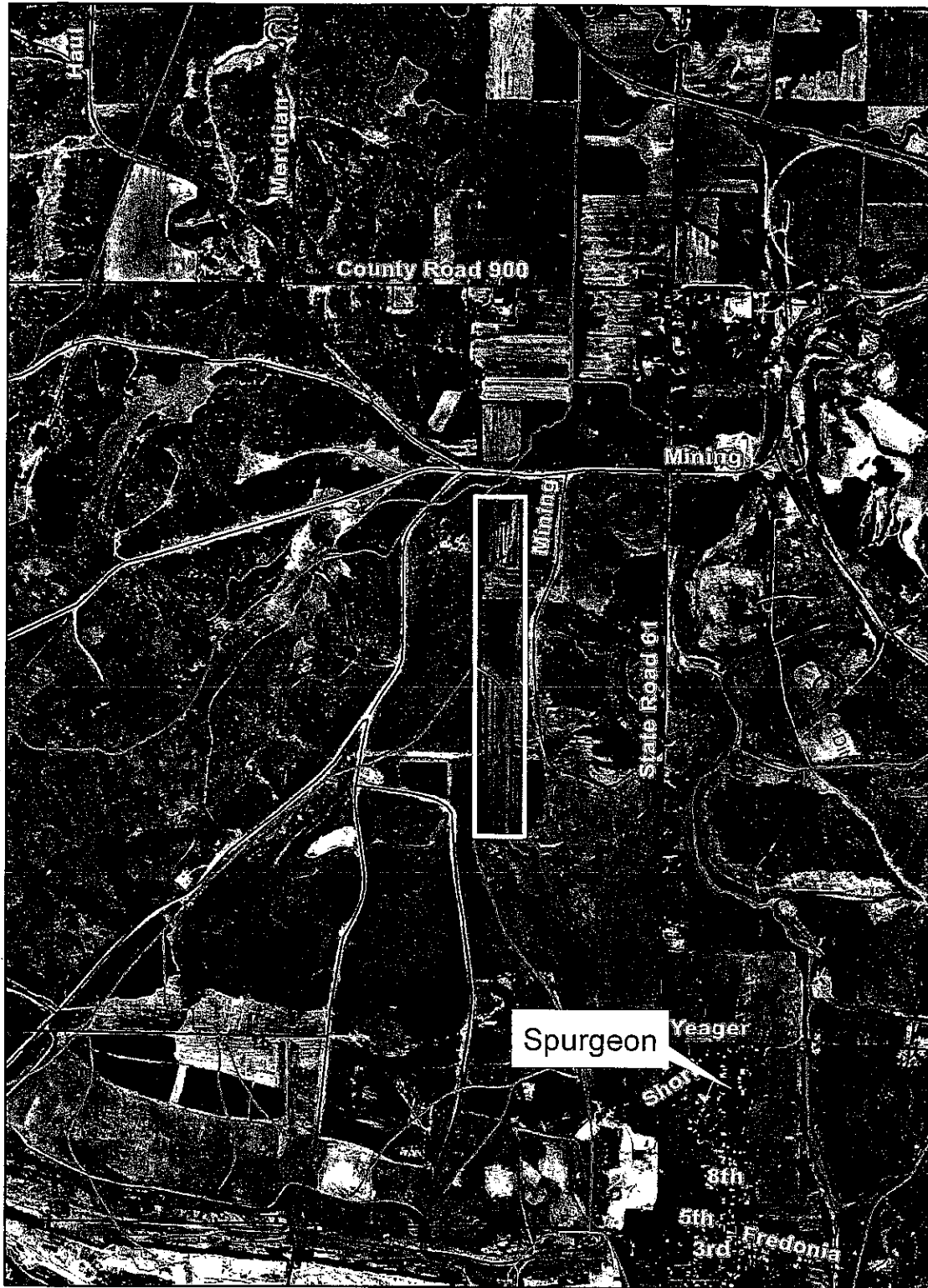


Exhibit 3: Log Creek Mitigation Site



Legend

Stream Restoration Site

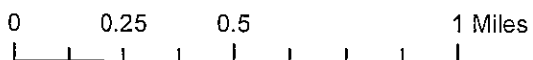


Exhibit 4

Part I: Mitigation Goals and Objectives

The Freelandville Complex is a surface coal mine (owned and operated by Triad Mining, Inc.) Coal mining regulations require the mine disturbed areas to be regraded and reclaimed to drain surface runoff properly while not impeding surface runoff from upstream areas. The mine operator, has extensive mining and reclamation experience and will reclaim all mine affected areas to: meet mine grading regulations, replace soil materials, restore adequate drainage, return reclaimed areas to productive land uses (for continued use by landowners) and restore wildlife habitat to approximate original values.

The stream habitat values for pre- and the post-disturbance streams are based on the EPA RBP stream scoring methodology. The average EPA RBP score of all post-mine streams will be equal to or greater than the average pre-mine RBP score. The pre-mine average RBP score for ephemeral streams was 64. The pre-mine RBP score for intermittent streams was 103. Triad's average goal RBP scores for post-mine ephemeral and intermittent streams are 70 and 110 respectively. See the "Freelandville Complex – Mitigation Summary" spreadsheet for individual goal RBP scores.

The majority of the disturbed post-mine site will have an upland landscape setting similar to pre-disturbance conditions. The mined area will have restored ephemeral streams and intermittent channels that will drain to existing streams and lakes around the fringe of the mine permit area. The stream restoration plan will place wood debris and local durable non-toxic, non-acidic rock in restored floodplains and channels whenever possible.

Post-mine streams will continue to function as conduits for surface water runoff from the upland areas to lower streams. The restored streams will also function to provide short term aquatic habitat and to transport water, sediment, wood and leaf detritus materials to larger streams.

In addition to streams, forested wetlands will also be established as part of the A.T.F. Mitigation Plan. The wetland areas will provide excellent habitat for numerous animals and aquatic life. They will also reduce soil erosion, filter pollutants and improve overall water quality at the site.

Pre-disturbance Freelandville Complex streams (functions and habitat values) are tabulated in the attached "Freelandville Complex – Stream Assessments" as well as the "Freelandville Complex – Impacts Report."

Part II: Baseline Information for Impact and Proposed Mitigation Sites

The Freelandville Complex is composed of mostly upland areas used for farming and agricultural purposes. Upland areas are drained via small ephemeral stream channels in a natural channel or channelized drainage pattern. Lower streams are intermittent streams flowing to relatively permanent waters such as Pollard Ditch and Maria Creek thence to local rivers.

Most streams within the site have been channelized and lack significant accumulations of roots, wood and leaf debris. See attached "Freelandville Complex – Stream Assessments" for images of streams as well as EPA RBP Scores and Rosgen assessment data.

Local streams function as conduits for surface water runoff from the upland areas to lower streams. Local intermittent streams provide a permanent aquatic habitat in lower reaches where stream flow is long term. Lack of riparian canopy shading along many intermittent streams significantly reduces the level of aquatic habitat. The headwater ephemeral streams function to provide short term aquatic habitat and to transport water, sediment, wood and leaf detritus materials to larger streams.

Part II: Baseline Information for Impact and Proposed Mitigation Sites**Land Use Information (From Approved SMCRA Permit)**

<u>Land Use (LU)</u>	<u>Permitted Surface</u>		<u>Permitted Surface</u>	
	<u>Pre-mine Acreage</u>	<u>Pre-mine Percentage</u>	<u>Post-mine Acreage</u>	<u>Post-mine Percentage</u>
Cropland	3422.1	76.96 %	3506.8	78.86 %
Pasture & Hayland	384.5	8.65 %	294.9	6.63 %
Forest	277.9	6.25 %	262.0	5.89 %
Water	40.9	0.92 %	85.5	1.92 %
Residential	90.4	2.03 %	73.5	1.65 %
Wildlife	50.5	1.14 %	182.1	4.10 %
Permanent Road	36.9	0.83 %	35.9	0.81 %
Commercial	8.0	0.18 %	6.1	0.14 %
Previously Disturbed By Mining	135.6	3.05 %	0.0	0.00 %
Total Surface Mine Permit	4446.8 acres		4446.8 acres	

* Areas adjacent to the mine permitted areas have land uses in similar percentages to the above pre-mine land uses.

From "Hydrology of Area 32" (Published 1981) Knox & Sullivan Counties had the following land uses:

<u>Knox County</u>		<u>Sullivan County</u>
80.7 %	Agriculture Use	83.8 %
11.5 %	Forested Use	10.0 %
4.8 %	Urban Use	1.5 %
0.6 %	Water Use	0.1 %
2.3 %	Other Use	0.0 %
0.1 %	Mined	3.6 %

Part II: Baseline Information for Impact and Proposed Mitigation Sites**Soils Information****Knox County Soils (Published Data)**

Mine Permit #S-311 Soil Series	"A" Horizon Thickness	Soil Capability	Classified as "Hydric" Soil
AlB2- Alford	6"	Ile	No
AlC2- Alford	6"	IIIe	No
AlD3- Alford	6"	Vle	No
Bd - Birds	7"	IIIw	YES
Ha- Haymond	10"	IIIw	No
HkF- Hickory	5"	Vle	No
HoA- Hosmer	6"	lls	No
HoB2- Hosmer	6"	Ile	No
HoC3- Hosmer	6"	Ive	No
HoD3- Hosmer	6"	Vle	No
IvA- Iva	12"	llw	No
Kn- Kings	14"	IIIw	YES
Wa- Wakeland	7"	lllw	YES
Zp - Zipp	5"	lllw	YES

Mine Permit #S-351 Soil Series	"A" Horizon Thickness	Soil Capability	Classified as "Hydric" Soil
HeA - Henshaw	10"	llw	No
HoA - Hosmer	15"	lls	No
HoB2 - Hosmer	06"	Ile	No
IoA - Iona	10"	I	No
IvA - Iva	12"	llw	No
Kn - Kings	14"	IIIw	YES
Pb - Patton	17"	llw	YES
Ra - Ragsdale	18"	llw	YES
ReA - Reesville	13"	llw	No
Sa - Selma	15"	llw	YES
Sc - Selma	16"	llw	YES
SyB2 - Sylvan	07"	Ile	No
SyC3 - Sylvan	06"	IVe	No
SyF - Sylvan	07"	Vle	No
Wa - Wakeland	07"	lllw	YES
Zp - Zipp	05"	lllw	YES
Du - Dumps, Mine	00"		No

Part II: Baseline Information for Impact and Proposed Mitigation Sites**Soils Information (Continued)**

Mine Permit #S-358 Soil Series	"A" Horizon Thickness	Soil Capability	Classified as "Hydric" Soil
AIB2 - Alford	06"	Ile	No
AIC2 - Alford	06"	Ile	No
AID3 - Alford	04"	VIe	No
Bd - Birds	07"	IIIw	YES
FaB - Fairpoint	01"	VIe	No
FbG - Fairpoint	02"	VIIe	No
HeA - Henshaw	10"	IIw	No
HoA - Hosmer	15"	IIe	No
HoB2 - Hosmer	06"	Ile	No
HoC3 - Hosmer	06"	IVe	No
IvA - Iva	12"	IIw	No
Pb - Patton	17"	IIw	YES
Ra - Ragsdale	18"	IIw	YES
ReA - Reesville	13"	IIw	No
Wa - Wakeland	07"	IIw	YES

"NOTE" - FaB and FbG are mined disturbed soils. FaB is graded pre-SMCRA mine spoil; FbG is direct cast overburden from surface coal mining activities.

* Data from Soil Survey of Knox County, Indiana, 1981 & 1993 IN Soil Yield Update

Sullivan County Soils (Published Data)

Mine Permit #S-311 Soil Series	Soil Capability	Classified as "Hydric" Soil
AIA - Ava	2W	No
AfB2 - Alford	2e	No
AfB3 - Alford	3e	No
AfC2 - Alford	3e	No
AfC3 - Alford	4e	No
AfD3 - Alford	6e	No
CnC3 - Cincinnati	4e	No
CnD2 - Cincinnati	4e	No
CnD3 - Cincinnati	6e	No
Cu - Cuba	2w	No
HkF - Hickory	7e	No
MuB2 - Muren	2e	No
Ww - Wilbur	2w	No

* Data from Soil Survey of Sullivan County, Indiana, 2005 CD Version.

Part III: Mitigation Site Selection and Justification

The A.T.F Mitigation Plan requires that Triad restore 28,456 feet of ephemeral stream and 14,602 feet of intermittent stream. Where possible, these streams will be re-constructed in their approximate original location. The EPA has requested that Triad establish 50 ft wide (25ft on each side) buffer zones for restored ephemeral streams and 100 ft wide (50 ft on each side) buffer zones for intermittent streams.

Triad owns only a small portion of the property that makes up the Freelandville Complex, the majority of the area is owned by individual landowners (typically farmers). Most of these landowners object to the addition of stream buffer zones on their property. As a result, forested buffer zones will only be planted on Triad owned properties and/or on privately owned property with landowner permission. With landowner permission, forested buffer zones will have a much greater chance of success. Landowners who object to forested buffers will be much more likely to mow down trees. Forested buffer zones can be increased to 100 ft wide (50ft on each side) for ephemeral streams and 200 ft wide (100 on each side) for intermittent streams for an additional 10% mitigation credit.

Mitigation streams and forested buffer zones are both shown on the attached Mitigation Maps as well as the "Restored Stream Summary."

A total of 10 acres of forested wetland will be constructed within the Freelandville Complex. The wetland areas will be considered out-of-kind mitigation, and will count toward the required stream restoration.

Mitigation streams and wetlands will be constructed at two different sites. The majority will be located within or adjacent to the Freelandville Complex and a portion of the mitigation will be located at Triad's Log Creek Complex, in Pike County Indiana. The attached A.T.F Mitigation Plan Maps show the proposed mitigation work to be constructed at each site.

The operator will provide the Division of Reclamation with a copy of the USACE stream assessment and proposed restoration plan. The restoration of the post-mine using a "natural stream design" with the addition of native rock and wood debris in the floodplain to allow a meandering base flow channel to develop is not in conflict with the SMCRA mining and reclamation requirements.

Problems with stability of restored stream bed and banks can be corrected by additional placement of native rock, rip-rap, wood debris and/or other erosion control measures to problem areas. Any potential problems will be evident in the annual report submitted to the USACE field office. The monitoring period will provide ample time to rectify any failures. All mitigation streams will be monitored for a minimum of 5 years with long-term protection, or a minimum of 7 years if long-term protection is not provided. Mitigation wetlands will be monitored for a minimum of 7 years. The monitoring period may be extended if performance standards are not met.

Part III: Mitigation Site Selection and Justification

Triad has chosen mitigation sites based on several parameters. Soil types, natural drainage patterns, land uses, topography, local climate and Triad's ability to obtain deed restrictions from the landowner have all been taken into consideration. All restored streams and wetlands will be constructed in such a manner as to insure the post-mine aquatic system is restored to a level similar to pre-mine conditions and compatible with un-disturbed adjacent watersheds.

All coal mines have operated since 1978 under the stringent regulations that require restoration of the land surface and soils that allow the mine affected areas to be returned to a productive state. Experience gained in the past 25 years has led to reclamation and maintenance practices that minimize the adverse affects due to flooding, drought, and invasive species. These practices include: thick lift soil placement with end dump trucks (to minimize soil compaction), ripping of compacted areas with bulldozers and/or large farm tractors, deep burial of acidic overburden, deep burial of coal processing waste and timely reclamation of regraded areas.

Triad Mining, Inc. employs a permanent staff familiar with:

- the surface coal mine permit,
- USACE Section 404 permit/authorization,
- coal mining operations,
- surveying activities for mine operation,
- grading and reclamation operations,
- land revegetation restoration of productivity.

Triad Mining, Inc., has received reclamation awards at reclaimed surface coal mines. Triad Mining, Inc., has a crew dedicated to mine reclamation and technical staff employees to implement the proposed stream mitigation.

Triad Mining has a plan to have technical staff and/or field reclamation employees attend training classes by recognized stream restoration professionals. Triad also hires qualified consultants to provide advice on stream construction, wetland construction activities, biological sampling, wetland delineation and stream assessments.

Part IV: Mitigation Work Plan

Please see the attached "A.T.F. Mitigation Maps." These three maps show the location of all restored streams with riparian buffer zones as well as the location of undisturbed streams. Restored wetland areas are shown on the "A.T.F. Mitigation Map – Freelandville Complex."

Streams restored as part of surface coal mining reclamation activities will typically be constructed in regraded mine spoil and replaced soils layers. These post disturbance layers are not natural bed materials and typically have significantly lower resistance to erosion.

Typical plan/profile/cross-section sheets have been developed for proposed restored stream floodplains with stream channels. The restored streams are proposed to be SIMILAR to Rosgen Type B, C or E Stream Channels.

Freelandville Complex – Stream Mitigation Summary**Ephemeral Streams**

Impacted Ephemeral Stream Length 42,183 ft.
Restored Ephemeral Stream Length Required 28,456 ft.

Intermittent Streams

Impacted Intermittent Stream Length 11,324 ft.
Restored Intermittent Stream Length Required 14,602 ft.

Mitigation Ratios**Mitigation Within Lower White River Watershed**

	Channelized Farm or Road Side Stream	Natural Channel Stream
Ephemeral	0.5:1	1:1
Intermittent	1:1	1.5:1

Mitigation Outside of Lower White River Watershed

	Channelized Farm or Road Side Stream	Natural Channel Stream
Ephemeral	0.75:1	1.25:1
Intermittent	1.25:1	1.75:1

Part IV: Mitigation Work Plan**Planting Plan**

All mine disturbed areas, including restored streams and floodplain areas will initially be seeded to a mixed herbaceous seed mix to provide ground cover and protection from erosion. The typical stream construction sequence will be:

- Final grading and seedbed preparation.
- Seed temporary cover crop for spring erosion control as needed.
- Fall seeding of temporary cover crop and permanent grass species.
- Tree & shrub seedling planting
 - Spring planting of bare root seedlings, with strip spraying.
 - or, Fall planting of container seedlings, with strip or spot spraying.
- Mow grass and invasive species control to establish trees & shrubs.
- Planting of sedges, rushes and/or forbes for herbaceous diversity, by planting of "plugs" and/or over seeding of selected areas.

Temporary Cover Crop (USACE Approved)

<u>Common Name</u>	<u>Rate/acre</u>	<u>Species</u>	<u>Scientific Name</u>	<u>USF&W Wetland Indicator</u>
Annual Ryegrass	5 -10 lbs.		Lolium multiflorum	Not Listed
Common Oat	20-30 lbs.		Avena sativa	Not Listed
Common Wheat	20-30 lbs.			

A minimum of 40 lbs/acre of a mixture of: annual ryegrass & common oat, or annual ryegrass & common wheat will be used as a temporary cover crop for erosion control in wetland construction and stream construction areas. Cover crop seeding rates should not exceed 50 lbs/acre to avoid "crowding out" permanent species. Cover crop species to be used for both "Upland" and "Wetland" Seed Mixes. Mulch will be applied as needed in wetland and stream construction areas.

Part IV: Mitigation Work Plan**Non-Wetland Upland Area Ground Cover ("Upland Seed Mix")**

<u>Common Name</u>	<u>Rate/acre</u>	<u>Species Scientific Name</u>	<u>USF&W Wetland Indicator</u>
Timothy	5 lbs.	Phleum praetense	FACU
Red Clover	10 lbs.	Trifolium pratense	FACU+
Orchard Grass	10 lbs.	Dactyllis glomerata	FACU
Perennial Ryegrass	25 lbs.	Lolium perenne	FACU
Alsike Clover	8 lbs.	Trifolium hydridum	FAC-
Alfalfa	20 lbs.	Medicago sativa	No Indication

A minimum of 40 lbs/acre of a mixture of the above grass species will be applied during revegetation operations. A minimum of 10 lbs/acre of legumes will be used in the seed mixture. No fescue, of any type, sweet clover or hairy vetch will be seeded on areas to be returned to forest, or wildlife land uses.

Forest Wetland Areas Ground Cover ("Wetland Seed Mix")

<u>Common Name</u>	<u>Rate/acre</u>	<u>Species Scientific Name</u>	<u>USF&W Wetland Indicator</u>
Red Top	20-50 OZ.	Agrostis alba	FACW
Blue Joint Grass	10-30 OZ.	Calamagrostis canadensis	OBL
Fowl Manna Grass	5-10 OZ.	Glyceria striata	OBL
Deer Tongue Grass	24-48 OZ.	Dichanthelium clandestinum (also known as - Panicum clandestinum)	FACW
Rice Cut Grass	3-10 OZ.	Leersia oryzoides	OBL
Switch Grass	5-10 OZ.	Panicum virgatum	FAC+
Canadian Wild Rye	32-48 OZ.	Elymus canadensis	FAC
Riverbank Wild Rye	32-48 OZ.	Elymus riparus	FACW
Virginia Wild Rye	48-60 OZ.	Elymus virginicus	FACW-
Woolgrass	2 - 4 OZ.	Scirpus cyperinus	OBL
Prairie Cordgrass	5-10 OZ.	Spartina pectinata	FACW+

A minimum of 160-320 OZ./acre (10-20 lbs/acre) of a mixture of the above permanent grass ground cover species (minimum of four species) will be applied with the temporary cover crop species during revegetation operations. No fescue, of any type, sweet clover or hairy vetch will be seeded on areas to be returned to any type wetland area(s). Optimum seeding time for permanent grass species is between October 1 and May 15.

Part IV: Mitigation Work Plan

Bare root Tree/Shrub Planting

Bare root seedlings are typically planted in late winter and early spring, January 1 to May 15. Bare root seedlings are typically set using a tractor drawn tree planter. The tree planter opens a furrow and a bare root seedling is placed (at the proper depth) in the furrow which is then closed with presser wheels. Commercial tree planters will use a suitable herbicide when needed to thin or eliminate ground cover vegetation in a strip on both sides of the seedling row. Replacement tree planting will be by machine or by hand planting as needed.

Bare root tree seedlings for planting in restored stream riparian zones as part of the A.T.F. Mitigation Plan will be a minimum of thirty (30) inches tall. Tree planters will be instructed to mix the species to be planted and avoid planting long rows of a single species.

Rows of tree seedlings are typically spaced a minimum of eight (8) feet apart to allow access to the area for mowing and other maintenance. Bare root seedlings will be planted at a rate of 600 seedlings per acre. 8 foot row spacing requires 9.1 foot seedling spacing to yield 600 per acre.

Container Tree/Shrub Planting

Container tree and shrub seedlings are typically planted in the late fall to early spring, October to May 15. Planting holes sized for the container size are excavated and the tree seedling is placed to the proper depth in the planting hole. The hole is then backfilled and the fill is compacted. Container trees planted on a 27 foot by 27 foot spacing will yield a 60 tree per acre initial planting. Tree planters will be instructed to mix the species to be planted and avoid single species in concentrated areas.

Forrest Keeling Nursery [www.fknursery.com] has developed a four step planting sequence called "Walk-A-Way-Planting System" which utilizes fall/early winter planting. This system requires:

- Ground preparation, plowing, discing and creation of berms (June to July)
- Cover crop establishment (August to September)
- Container grown tree installation (October to December)
- Mat placement (weed barrier & moisture retainer) and fertilization (April to May)

Tree and/or shrub seedlings (both bare root and container types) will not be planted in the late spring, summer and early fall seasons (typically after May 15 and before October 1).

Part IV: Mitigation Work Plan**Permanent Tree Species List**

USACE Approved	Tree Species Common Name	Tree Species Scientific Name	USF&W Wetland Indicator
W & R	Bald Cypress	Taxodium distichum	OBL
URZ	Black Cherry	Prunus serotina	FACU
W & R	Black Gum	Nyssa sylvatica	FAC
URZ	Black Walnut	Juglans nigra	FACU
Not Approved	Green Ash	Fraxinus pennsylvanica	FACW
W & R	Hazelnut	Corylus americana	FAC-
URZ	Hickory, Pignut	Carya glabra	FACU Hard Mast
URZ	Hickory, Shagbark	Carya ovata	FACU Hard Mast
W & R	Hickory, Shellbark	Carya laciniosa	FACW Hard Mast
W & R	Hickory, Water	Carya aquatica	OBL Hard Mast
W & R	Pecan	Carya illinoensis	FACW Hard Mast
W & R	Persimmon	Diospyros virginiana	FAC
URZ	Oak, Black	Quercus velutina	UPL Hard Mast
W & R	Oak, Burr	Quercus macrocarpa	FAC- Hard Mast
W & R	Oak, Cherrybark	Quercus pagoda	FACW-Hard Mast
URZ	Oak, Chestnut	Quercus prinus	FACU- Hard Mast
URZ	Oak, Chinkapin	Quercus muehlenbergii	FACU Hard Mast
W & R	Oak, Overcup	Quercus lyrata	OBL Hard Mast
W & R	Oak, Nuttall	Quercus texana	OBL Hard Mast
W & R	Oak, Pin	Quercus palustris	FAC Hard Mast
URZ	Oak, Red	Quercus rubra	FACU Hard Mast
URZ	Oak, Scarlet	Quercus coccinea	NI Hard Mast
W & R	Oak, Shingle	Quercus imbricaria	FAC- Hard Mast
W & R	Oak, Shumard	Quercus shumardi	FACW-Hard Mast
W & R	Oak, Swamp White	Quercus bicolor	FACW+ Hard Mast
W & R	Oak, Swamp Chestnut	Quercus michauxii	FACW Hard Mast
URZ	Oak, White	Quercus alba	FACU Hard Mast
W & R	Oak, Water	Quercus, nigra	FACW Hard Mast
W & R	Oak, Willow	Quercus, phellos	FACW Hard Mast
Not Approved	Red Maple	Acer rubrium	FACW
Not Approved	River Birch	Betula nigra	FACW
Not Approved	Sugar Maple	Acer saccharum	FACW
Not Approved	Sweetgum	Liquidambar styraciflua	FACW
Not Approved	Sycamore	Plantanus occidentalis	FACW
URZ	Tuliptree	Liriodendron tulipifera	FACU+
Not Approved	White Ash	Fraxinus americana	FACU

W - Approved for USACE Wetland Construction

R - Approved for planting USACE Riparian Zones

URZ - These additional species are approved for USACE approved Upland Riparian Zone Areas

“Not Approved” indicates these tree species and/or shrub species are not to be included in the mixture of woody species to be planted as part of USACE Section 404 mitigation plan(s).

Part IV: Mitigation Work Plan**Permanent Shrub Species**

USACE Approved	Shrub Species Common Name	Shrub Species Scientific Name	USF&W Wetland Indicator
Not Approved	American Plum	<i>Prunus americana</i>	UPL
W & R	Black Chokecherry	<i>Aronia melanocarpa</i>	FACW-
W & R	Buttonbush	<i>Celphalanthus occidentalis</i>	OBL
Not Approved	Callery Pear	<i>Pyrus calleryana</i>	Not Listed
W	Common Chokecherry	<i>Prunus virginiana</i>	FAC-
W & R	Elderberry	<i>Sambucus canadensis</i>	FACW-
W	Flowering Dogwood	<i>Cornus florida</i>	FACU
Not Approved	Gray Dogwood	<i>Cornus racemosa</i>	NI
W	American Cranberrybush	<i>Viburnum trilobum</i>	FACW
W	Ninebark	<i>Physocarpus opulifolius</i>	FACW-
W	Northern Bayberry	<i>Myrica pennsylvanica</i>	
W		<i>Myrica gale</i>	OBL
W & R	Pawpaw, Common	<i>Asimina triloba</i>	FAC
Not Approved	Red Bud	<i>Ceris canadensis</i>	FACU
W	Red Osier Dogwood	<i>Cornus stolonifera</i>	FACW
W	Silky Dogwood	<i>Cornus amomum</i>	FACW
W	Speckled Alder	<i>Alnus rugosa</i>	OBL
W	Spicebush, Northern	<i>Lindera bensoin</i>	FACW-
W	Spicebush, Southern	<i>Lindera melissifolia</i>	OBL
W	Washington Hawthorn	<i>Crataegus phaenopyrum</i>	FAC

W - Approved for USACE Section 404 Wetland Construction

R - Approved for planting in USACE Section 404 mitigation Riparian Zones

“Not Approved” indicates these tree species and/or shrub species are not to be included in the mixture of woody species to be planted as part of USACE Section 404 mitigation plan(s).

Part IV: Mitigation Work Plan**Permanent Sedges & Rushes (Ground Cover Diversity)**

Common Name	Species Scientific Name	USF&W Wetland Indicator	USACE Forest	Approved Emergent
Bristly (Bearded) Sedge	Carex comosa	OBL	NO	YES
Bottlebrush Sedge	Carex lurida	OBL	YES	YES
Brown Fox Sedge	Carex vulpinoidea	OBL	YES	YES
Fringed Sedge	Carex crinita	FACW+	YES	NO
Common Cattail Sedge	Carex typhina	OBL	YES	NO
Common Hop Sedge	Carex lupulina	OBL	YES	NO
Common Lake Sedge	Carex lacustris	OBL	NO	YES
Narrow-Leaved Cattail Sedge	Carex squarrosa	OBL	YES	YES
Rough-Clustered Sedge	Carex sparganioides	FAC	YES	YES
Blunt Broomsedge	Carex scoparia	FACW	YES	NO
Nodding Sedge	Carex gynandra	NI	NO	YES
Blunt Spike Rush	Eleocharis ovata	OBL	NO	YES
Chairmaker's Rush	Scirpus pungens	NI	NO	YES
Common Rush	Juncus effusus	OBL	NO	YES
Creeping Spike Rush	Eleocharis palustris	OBL	YES	YES
Dark Green Rush	Scirpus atrovirens	OBL	YES	NO
Great Bulrush	Scirpus validus	OBL	NO	YES
Hard-Stemmed Bulrush	Scirpus acutus	OBL	NO	YES

NOTE: Common species names vary, USF&W Wetland Indicator based on Species Scientific Name.

Forest - Approved for Forest Type Wetland Construction & Riparian Zones

Emergent - Approved for Emergent Type Wetland Construction

Additional wetland sedges & rush species may be approved for use in mitigation areas upon application to USACE prior to planting.

Part IV: Mitigation Work Plan**Constructed Bottomland Streams with Planned Riparian Vegetation**

(Streams with riparian zone(s) and/or streams located in restored forest areas.)

<u>Description</u>	<u>Bare Root Seedlings</u>	<u>Container Seedlings</u>
Ground Cover	"Wetland" Seed Mix	"Wetland" Seed Mix
Planting Rate	600 per acre	60 per acre
Mine Permit Land Use	Forest	Wildlife
Species planted	Minimum 5 species	Minimum 5 species
No one species may make up more than 20% of species planted, see "Permanent Tree Species List" of this attachment for USACE approved species. USACE approved "Hard Mast" species will comprise at least 80% of the initial seeded stock in riparian areas. Tree seedlings with a wetland indicator of FACU or UPL will not be planted in stream riparian areas.		
Monitoring period	5 Years (w/ long term protection) 7 Years (w/out long term protection)	5 Years (w/ long term protection) 7 Years (w/out long term protection)
Site Assessments	Biannual (Spring & Fall)	Biannual (Spring & Fall)
Required Reports	Annual	Annual
See "Criteria for Biannual Stream Assessments & Annual Report"		
Species Success	No one species may make up more than 25% of final surviving stock.	
Survival Requirement	80% of Initial Stock	90% of Initial Stock
Tree Indicator Status	Complete community greater than 70% FAC or wetter status.	
Ground Cover	Planted species account for 80% of ground cover at end of monitor period. No one herbaceous species may comprise more than 40% of the ground cover at the end of USACE monitor period.	

Permanent photo stations will be located on maps and used to obtain photographic documentation of stream construction for USACE biannual site evaluations.

Part IV: Mitigation Work Plan**Constructed Upland Streams with Planned Riparian Vegetation**

(Streams with riparian zone(s) and/or streams located in restored forest areas.)

<u>Description</u>	<u>Bare Root Seedlings</u>	<u>Container Seedlings</u>
Ground Cover	"Upland" Seed Mix	"Upland" Seed Mix
Planting Rate	600 per acre	60 per acre
Mine Permit Land Use	Forest	Wildlife
Species planted	Minimum 5 species	Minimum 5 species
No one species may make up more than 20% of species planted, see "Permanent Tree Species List" on page 11 for USACE approved species (approved upland riparian species are identified as "W & R" and "URZ"). USACE approved "Hard Mast" species will comprise at least 80% of the initial seeded stock in upland riparian areas.		
Monitoring period	5 Years (w/ long term protection) 7 Years (w/out long term protection)	5 Years (w/ long term protection) 7 Years (w/out long term protection)
Site Assessments	Biannual (Spring & Fall)	Biannual (Spring & Fall)
Required Reports	Annual	Annual
See "Criteria for Biannual Stream Assessments & Annual Report"		
Species Success	No one species may make up more than 40% of final surviving stock.	
Survival Requirement	80% of Initial Stock	90% of Initial Stock
Ground Cover	Planted species account for 80% of ground cover at end of monitor period. No one herbaceous species may comprise more than 40% of the ground cover at the end of USACE monitor period.	

Permanent photo stations will be located on maps and used to obtain photographic documentation of stream construction for USACE biannual site evaluations.

Part IV: Mitigation Work Plan

Forest Type (PF01A) Constructed Wetlands

<u>Description</u>	<u>Bare Root Seedlings</u>	<u>Container Seedlings</u>
Ground Cover	"Wetland" Seed Mix	"Wetland" Seed Mix
Planting Rate	600 per acre	60 per acre
Mine Permit Land Use	Forest	Wildlife

Species planted Minimum 5 species Minimum 5 species
 No one species may make up more than 20% of species planted, see "Permanent Tree Species List" of this attachment for USACE approved species. USACE approved "Hard Mast" species will comprise at least 80% of the initial seeded stock in riparian areas. Tree seedlings with a wetland indicator of FACU or UPL will not be planted in stream riparian areas.

Monitoring period	7 Years	7 Years
Site Assessments	Biannual (Spring & Fall)	Biannual (Spring & Fall)
Required Reports	Annual	Annual
See "Criteria for Biannual Stream Assessments & Annual Report"		

Species Success No one species may make up more than 25% of final surviving stock.

Survival Requirement 80% of Initial Stock 90% of Initial Stock

Tree Indicator Status Complete community greater than 70% FAC or wetter status.

Ground Cover Planted species account for 80% of ground cover at end of monitor period.
 No one herbaceous species may comprise more than 40% of the ground cover at the end of USACE monitor period.

Permanent photo stations will be located on maps and used to obtain photographic documentation of stream construction for USACE biannual site evaluations.

Part V: Performance Standards

Success Standards for Constructed Streams

A constructed stream reach will be considered successful if the following conditions are met at the end of the USACE required monitor period:

- Mean density of live trees per acre of riparian zone will meet the listed standards for "Species Success" and "Survival Requirement" for the stream type and riparian zone width proposed in the mitigation plan.
- The herbaceous species present and ground cover in the constructed stream and riparian zone will meet the listed standards for "Ground Cover" for the stream type and riparian zone width proposed in the mitigation plan.
- Invasive species will account for no more than 10% of total aerial cover at the end of the monitoring period. Invasive species include: cattails, phragmites, purple loosestrife, multiflora rose and reed canary grass.
- The constructed stream reach contains a stable stream channel (restored channel has defined bed & banks) with minimal channel "head cutting".
- Erosion gullies will not be considered "constructed streams".
- The constructed stream channel epifaunal substrate is suitable for the desired stream type proposed in the mitigation plan.
- The constructed stream channel has sinuosity suitable for the desired stream type proposed in the mitigation plan.
- The constructed stream channel EPA RBP stream "score" meets, or exceeds, the "Goal RBP Score" when proposed as part of the mitigation plan.
- The constructed stream channel length meets, or exceeds, the channel length proposed in the mitigation plan.
- The constructed stream type meets the stream type proposed in the mitigation plan.
- The constructed stream has a restored level of biologic activity that meets, or exceeds, the biologic activity in the pre-disturbance stream.
- The constructed stream will have a surface connection to "Waters of the United States" and therefore be designated as jurisdictional.

Part V: Performance Standards

Success Standards for Constructed Wetlands

A constructed wetland will be considered successful if the following conditions are met at the end of the USACE required monitor period:

- Mean density of live trees per acre of constructed wetland will meet the listed standards for "Species Success" and "Survival Requirement" outlined in the "Mitigation Work Plan."
- The herbaceous species present and ground cover in the constructed wetland will meet the listed standards for "Ground Cover" outlined in the "Mitigation Work Plan."
- Invasive species will account for no more than 10% of total aerial cover at the end of the monitoring period. Invasive species include: cattails, phragmites, purple loosestrife, multiflora rose and reed canary grass.
-
- The soils located in the constructed wetland exhibit anaerobic conditions for a continuous period consisting of a minimum of fourteen (14) consecutive days in the growing season in the local area. Documentation of anaerobic soil conditions will show the constructed wetland will be inundated and/or saturated (soil water table within 12 inches of the ground surface) and will consist of daily wetland site inspection, (documentation with report), or manual monitoring of shallow (typically 1.5 - 2 feet deep from ground surface) soil ground water monitor wells with daily report of soil water levels, or shallow soil ground water wells with dedicated water level recording devices (recording water levels at least four times per day monitored) with a report of recorded water levels.
- The hydroperiod within the restored and mitigation forest type wetland area(s) is restored. At a minimum the forest type wetland site(s) will be inundated and/or saturated (soil water table within 12 inches of the ground surface) for a continuous period consisting of a minimum of fourteen (14) consecutive days of the growing season in the local area. Documentation of the hydroperiod will consist of daily wetland site inspection, (documentation with report), or manual monitoring of shallow (typically 1.5 - 2 feet deep from ground surface) soil ground water monitor wells with daily report of soil water levels, or shallow soil ground water wells with dedicated water level recording devices (recording water levels at least four times per day monitored) with a report of recorded water levels.
- The constructed wetland will have flood storage capacity and allow the accumulation of organic and inorganic materials removed from surface runoff. The constructed stream channel has sinuosity suitable for the desired stream type proposed in the mitigation plan.
- The constructed wetland will have evidence of a return to wetland type biologic activity and habitat typical for the desired wetland classification.

Part V: Performance Standards

Success Standards for Constructed Wetlands (Continued)

- The site is self sustaining after the establishment of approved permanent vegetation and should meet the Cowardin Classification for the USACE Section 404 approved constructed wetland classification.
- The constructed wetland will have a surface connection to "Waters of the United States" and therefore be designated as jurisdictional.
- The constructed wetland type will meet the criteria defined in the 1987 USACE Wetland Manual (TR Y-87-1) and/or USACE Midwest Regional Supplement (ERDC/EL TR-08-27).

Growing Season Data - ("WETS" tables from data provided by USDA-NRCS National Water and Climate Center for: WETS Station: Washington [IN9253], Daviess County, Indiana)

Growing Season Dates (Dates not available for Knox County, IN)

	<u>24d F or Higher</u>	<u>28d F or Higher</u>	<u>32d F or Higher</u>
Spring (5 years out of 10)	March 23	April 2	April 13
Fall (5 years out of 10)	November 12	October 30	October 20
	233 Days	211 Days	191 Days

Growing season is based on Spring and Fall calendar dates with a 50 percent probability of a minimum temperature of at least 28d F. When using shallow soil ground water monitor wells, documentation of anaerobic soil conditions and hydroperiod for Knox County, Indiana will be the measured soil water table above the ground surface and/or no more than 12 inches below the ground surface for a continuous fourteen (14) day period between April 2 and October 30.

Part V: Performance Standards

When a constructed stream segment meets the "Success Standards for Constructed Streams" or a constructed wetland meets the "Success Standards for Constructed Wetlands" the stream segment and/or wetland will be judged a success. After submittal of the documentation of success in the annual report, Triad will petition the USACE for a written determination of successful stream and/or wetland construction and termination of Section 404 permittee site monitoring for the successful stream segment or wetland.

IF, at the end of the USACE required monitoring period, a constructed stream segment or constructed wetland does NOT meet the success standards, Triad will submit a written plan of action to be taken to enhance the restored stream and/or wetland. Alternative plans for other mitigation options may also be submitted to the USACE regulatory office for review. Monitoring of mitigation sites will continue until the USACE approves the mitigation and allows monitoring to be discontinued.

Part VI: Site Protection and Maintenance

Site Protection

Triad controls and exercises its coal mining rights for the Freelandville Complex through leases with several landowners (typically local farmers). Most of these leases were entered into prior to June 9, 2008, the effective date of the new compensatory mitigation guidelines. None of these leases give Triad the right to grant or impose a conservation easement that will restrict the landowner's ability to farm the property after Triad's operations concluded. The imposition of conservation easements under the new compensatory mitigation guidelines to Triad's Freelandville Complex would result in a substantial hardship to Triad. Triad has requested a written determination of "substantial hardship" from USACE District Engineer. Triad understands that the "significant hardship" exemption will not be granted for the A.T.F. permit.

Triad owned property has been clearly marked on the A.T.F. Mitigation Maps. All restored streams and buffer zones restored on Triad owned property will be protected by a deed restriction/ conservation easement. A copy of the USACE approved "Declaration of Restrictive Covenants" has been attached. A copy of the recorded permanent deed restriction\ or conservation easement for mitigation streams will be provided to the USACE. Permanent legal protection for constructed wetlands and/or streams will be recorded in the appropriate County Courthouse no later than 60 days after the USACE determines the stream construction is successful and site monitoring is no longer required.

Streams and buffer zones not located on Triad owned property may not be protected by a deed restriction/ conservation easement. Buffer zones will be planted in these areas with landowner permission. Triad will receive mitigation credit (25% of restored stream length) for streams with a forested buffer zone but without a deed restriction.

Part VI: Site Protection and Maintenance

Maintenance Plan

Restored streams and restored wetlands will be seeded to a temporary ground cover species and permanent vegetation seed mix (as previously described) to provide protection from erosion. Permanent ground cover vegetation will be mowed, or otherwise controlled, to allow planted woody and other herbaceous species to become established.

Soil samples will be obtained annually at representative locations within the mitigation areas(s) and sent to a testing laboratory for analysis. Based on the soil test results various soil amendments will be applied at the recommended rates.

Exotic species are not prevalent at the Freelandville Complex; these species will not be brought to the site by the mine operator or the Division of Reclamation. At least once during the growing season all restored and/or mitigation areas will be inspected for invasive species.

If exotic or undesirable species arrive at the site, control of undesirable vegetation will consist of mowing and/or soil tillage to remove the infestation. Herbicides will be used (as a last resort) to remove persistent exotic and/or undesirable species including: cattails, phragmites, purple loosestrife, multiflora rose and reed canary grass.

In the event of extreme invasive species infestation, or other adverse factors, impacting mine responsible mitigation site(s) that leads to the site(s) not meeting performance standards, the Section 404 party responsible for site mitigation will obtain any required approval(s) from the State and/or Federal Fish and Wildlife agencies or other applicable agencies for permission to:

- Hire professional hunters to reduce/eliminate excessive deer populations.
- Hire professional hunters to reduce/eliminate excessive bird populations.
- Hire professional trappers to remove/reduce beaver and/or muskrats.
- Hire professional exterminators to poison rodents to reduce vermin that gnaw on tree seedlings.
- Hire professional foresters to spray herbicides to eliminate undesirable herbaceous species.
- Have professionals selectively burn areas of undesirable species.

All of the listed activities will be undertaken to comply with Clean Water Act regulations as implemented by the Environmental Protection Agency and the United States Army Corps of Engineers. Triad Mining, Inc. will be responsible for the mitigation site(s) and will obtain all required Federal, State, and/or local permits or authorizations prior to conducting activities to control nuisance wildlife and/or invasive plant species.

Part VII: Monitoring Plan

Criteria for Biannual Stream Assessments & Annual Report

Triad will complete biannual on-site assessments of constructed streams. The spring assessment will occur early in the growing season (April). The fall assessment will occur in the late in the growing season (October). The assessment methods described in EPA 841-B-99-002, Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers will be used during each bi-annual assessment. In addition to the EPA-RBP, The "Rosgen Method" of stream assessment, described in Applied River Morphology by Dave Rosgen, will also be used during the first and final year of monitoring.

Permanent "Photo Station Monitoring Locations" will be shown on the mitigation maps. One permanent photo station/assessment site will be installed per:

- each 500 feet of restored intermittent stream,
- each 1,500 feet of restored ephemeral stream, and
- additional assessment locations should be used to document successful constructed stream segments and/or identify problems encountered.

*At least one permanent photo station/assessment site will be installed for every stream segment.

The biannual on-site restored stream assessments will investigate and document:

- the growth progress and success of the permanent vegetation,
- the permanent vegetation ground and species diversity,
- the progress of restoration of a stable stream channel (restored channel has defined bed & banks) with minimal channel "head cutting",
- the hydrology/flow regime of the restored channel,
- the progress of restoration of stream epifaunal substrate,
- the progress of restoration of stream biologic activity.

Beginning the year after restoration of a stream reach, the restored stream(s) will also be monitored for macroinvertebrate species (B-IBI) and/or fish species (IBI) during the spring biannual site assessments (March 15-July 15). Biologic activity will be documented and included in the USACE Annual Mitigation Reports. Suitable B-IBI and IBI biologic study(ies) will be repeated annually during the Section 404 monitoring period. Biologic studies of constructed streams will be used to provide documentation of restoration of stream biologic activity and stream habitat values.

Macroinvertebrate species (B-IBI) and/or fish species (IBI) biologic studies will be completed by methods described in EPA 841-B-99-002, Rapid Bioassessment protocols for Use in Streams and Wadeable Rivers and/or EPA 905/R-9696/002, Development of Index of Biotic Expectations for the Ecoregions of Indiana, V. Eastern Corn Belt Plain.

Triad will supply the Corps of Engineers field office with the surface water sampling information required by SMCRA (sampled on a quarterly basis). The sampling information will be submitted as part of the annual report. If mitigation streams are still being monitored after surface water sampling is no longer required by SMCRA, the responsible party will continue sampling the same locations and submit sampling information to the Corps.

Part VII: Monitoring Plan**Criteria for Biannual Stream Assessments & Annual Report (Continued)**

Triad will complete an annual report of the biannual site assessments and submit the report with supporting maps, site photos, delineation sheets and other documentation to the Corps of Engineers and to the EPA by January 30 of the year following the biannual assessments. The first annual report will be submitted following the first complete growing season for the constructed stream reach.

Criteria for Biannual Wetland Assessments & Annual Report

Triad will complete biannual on-site assessments of constructed wetland area(s). The spring assessment will occur early in the growing season (April). The fall assessment will occur late in the growing season (October).

Restored/mitigation wetland monitoring data will be obtained at a minimum of 1 assessment location for each three (3) acres of wetland type established and to be monitored. Additional assessment locations should be used to document successful constructed wetland area(s) and/or identify problems encountered.

Permanent "Photo Station Monitoring Locations" for constructed wetlands will be shown on the mitigation map(s).

Site delineation and classification of constructed wetlands will be completed by methods outlined in the USACE 1987 Wetlands Delineation Manual (TR Y-87-1), and/or USACE Midwest Regional Supplement (ERDC/EL TR-08-27) using the USACE approved wetland delineation form.

The biannual on-site wetland assessments will investigate and document:

- the growth progress and success of the permanent vegetation,
- the permanent vegetation ground and species diversity,
- the progress of restoration of anaerobic soil conditions,
- the progress of restoration of the site's hydroperiod,
- evidence of restoration of wetland biologic activity.

Triad will complete an annual report of the biannual site assessments and submit the report with supporting maps, site photos, delineation sheets and other documentation to the Corps of Engineers and the EPA by January 30 of the year following the biannual assessments. The first annual USACE report will be submitted following the first complete growing season for the constructed wetland.

Part VIII: Adaptive Management Plan

As required by 33 CFR 332.6 (b), "... a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs)...." A five (5) year monitoring period has been specified for all mitigation stream segments protected by a deed restriction. A seven (7) year monitoring period has been specified for all mitigation stream segments not protected by a deed restriction and all mitigation wetlands.

If a success criterion is not met for all or any portion of the compensatory mitigation project in any year, and/or if the success criteria are not satisfied, Triad shall prepare an analysis of the cause(s) of failure and, if determined necessary by the USACE, propose remedial action for pre-approval.

As part of the adaptive management plan and the required biannual mitigation site assessments, when particular 404 mitigation site(s) [ie. restored stream reach and/or constructed wetland] meet(s) the suitable success standards PRIOR to the end of the ten year period, Triad can petition the USACE for a written determination of successful mitigation at that site(s). Upon USACE written approval, monitoring of successful mitigation site(s) will be terminated.

In the event the Corps determines the compensatory mitigation cannot be successfully completed at the intended sites, Triad will propose an alternative site. Upon approval of an alternative site, construction activities to complete the needed mitigation will begin within 180 days of alternative site approval.

As required by 33 CFR 332.4 (c) (12), the planting plan includes extensive lists of USACE approved species (trees, shrubs, sedges, rushes and forbes) to give Triad the flexibility to vary the species to be planted to match the species available for a future planting season.

The "Mitigation Work Plan" describes methods that use both bare root seedlings and/or container seedlings. Again this is an adaptive management measure to allow the Triad the flexibility to modify seedling types to match the species that may, or may not, be available for a future planting season. Coal mines are typically multi-year projects with restored streams and/or constructed wetlands being installed over several years. The availability of any particular species in a particular seedling type for purchase several years in the future cannot be guaranteed by the permittee.

Part IX: Financial Assurances

All coal mines are required to provide reclamation bond that is not released until the reclaimed area meets the approved post-mine land uses. Maintenance activities will continue until the site meets the surface coal mine performance standards. The minimum five year responsibility period from initial seeding to final bond release allows sufficient time for Triad to address any adverse challenges that may arise.

As a part of reclamation bond release, reclaimed areas are assessed by: vegetation type surveys, ground cover surveys, tree stem count, trees species survey and soil borings. All vegetation assessment data is part of the permit record and summarized in the report of bond release inspections. The bond release inspection procedure also includes a field investigation of post-mine drainage to insure that post-mine land uses can be achieved.

Exhibit 5

DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION is made this [Insert Numerical Day] day of [Insert Month], [Insert Year], by [Insert Name(s) of Declarant(s) and address] ("Declarant(s)").

RECITALS

WHEREAS, Declarant(s) [is/are] the owner(s) in fee simple of certain real property located in [Insert County Name] County, [Insert State], as described in Deed Book [Insert Number], Page [Insert Number], in the Office of the [Insert County Name] County Clerk, more particularly described in legal description attached hereto as Exhibit A and shown on the [Insert one or more of the following: *platted survey, approved permit drawings, or site plan*] attached hereto as Exhibit B, both of which are incorporated herein by reference ("Property"); and

[Select one of the following two paragraphs. Select the first paragraph if the restrictive covenants will be placed on the entire parcel of property described in the paragraph above. Select the second paragraph if the restrictive covenants will be placed on only a portion of the property described in the paragraph above.]

WHEREAS, as compensatory mitigation under Federal and State law for and in consideration of Department of the Army Permit No. _____ ("Permit") issued by the U.S. Army Corps of Engineers, Louisville District ("Corps" or "Louisville District," to include any successor agency) pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. §403), and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Declarant(s) [has/have] agreed to [Insert one or more of the following: *restore, create, enhance, or preserve*] [insert one or more of the following: *aquatic habitats, riparian areas, buffers, and uplands*] and place certain restrictive covenants on the Property in order that the Property shall remain substantially in its natural condition forever, and to grant a right of access and entry to the Property;

WHEREAS, as compensatory mitigation under Federal and State law for and in consideration of Department of the Army Permit No. _____ ("Permit") issued by the U.S. Army Corps of Engineers, Louisville District ("Corps" or "Louisville District," to include any successor agency) pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. §403), and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Declarant(s) [has/have] agreed to [Insert one or more of the following: *restore, create, enhance, or preserve*] [Insert one or more of the following: *aquatic habitats, riparian areas, buffers, and uplands*] and place certain restrictive covenants on the portion of the Property depicted in [reference recorded Plat (book and page number, county(ies) and date) or approved permit drawings or site plan] attached hereto as Exhibit C and incorporated herein ("Mitigation Property"), in order that the Mitigation Property

shall remain substantially in its natural condition forever, and to grant a right of access and entry to the Property;

NOW THEREFORE, in consideration of the benefits to be derived by the Declarant(s) and each and every subsequent owner and occupant of the [Property/Mitigation Property], and as required mitigation for the discharge of dredged and/or fill material into waters of the United States, as authorized by the DA permit, Declarant(s) hereby [makes/make] this Declaration on the terms and conditions stated below.

1. **Purpose.** The purpose of this Declaration of Restrictive Covenants is to restrict the current and future use of the [Property/Mitigation Property] in perpetuity in order to protect scenic, resource, environmental, and general property values and conservation functions and ecological services; to establish the [Property/Mitigation Property] as open, common, and undeveloped conservation area; and to preserve the natural condition of the [Property/Mitigation Property] in perpetuity.

[Select one of the following two paragraphs. Select the first paragraph 2 if the restrictive covenants apply to the entire parcel of property described in the first whereas clause. Select the second paragraph 2 if the restrictive covenants apply to only a portion of the property described in the first whereas clause.]

2. **Covenant Running with the Land.** Declarant(s) hereby declare(s) that the Property shall be bound by and used subject to the following restrictive covenants, which shall run with the land for the burdened estate and be binding on all the Declarant('s/'s) heirs, executors, administrators, successors, assigns (which are included in the term "Declarant(s)" below), or other occupiers and users.

2. **Covenant Running with the Land.** Declarant(s) hereby declare(s) that the Property shall be bound by and used subject to the rights of access and entry provision and property transfer provision of the following restrictive covenants, which shall run with the land for the burdened estate and be binding on all the Declarant('s/'s) heirs, executors, administrators, successors, assigns, or other occupiers and users; and that the Mitigation Property shall be bound by and used subject to the following restrictive covenants, which shall run with the land and be binding on all the Declarant('s/'s) heirs, executors, administrators, successors, assigns (which are included in the term "Declarant(s)" below) or other occupiers and users.

3. **Definitions.**

3.1 **Natural Condition.** The term "natural condition" shall mean the condition of the [Property/Mitigation Property] at the time of the declaration and as restored, created, enhanced, and preserved pursuant to the Mitigation Plan. The natural condition shall be evidenced in part by [insert either: a surveyed plat of the [Property/Mitigation Property] recorded in the deed records office for each county in which the Property is situated which shows all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States and is attached hereto as Exhibit [Insert Exhibit Reference]; or. the [permit drawing/site plan] which shows all relevant property lines, all existing man-made

improvements and features, and major distinct natural features such as waters of the United States and is attached hereto as Exhibit [*Insert Exhibit Reference*].] The natural condition of the [*Property/Mitigation Property*] may also be evidenced by:

- (a) A current aerial photograph of the [*Property/Mitigation Property*] at an appropriate scale taken as close as possible to the date the declaration is made; [and]
- (b) On-site photographs taken at appropriate locations on the [*Property/Mitigation Property*], including major natural features; [and]
- (c) [*Other methods of documentation can be inserted subject to approval.*];

3.2 Mitigation Plan. The term "Mitigation Plan" shall mean the plan approved by the DA Permit.

4. **Restrictions/Prohibitions.** Any activity on, or use of, the [*Property/Mitigation Property*], which is or may become inconsistent with the purposes of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited except as provided for in the Declarant('s/'s) Reserved Rights:

4.1 General/Topography. There shall be no filling, flooding, cultivating, excavating, earthmoving, grading, mining or drilling; no removal of natural materials; no dumping of materials; and no alteration of topography in any manner.

4.2 Waters and Wetlands. There shall be no draining, ditching, diking, dredging, channelizing, damming, pumping, or impounding; no changing the grade or elevation, impairing or diverting the flow or circulation of waters, or reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.

4.3 Trees/Vegetation. There shall be no clearing, burning, cutting, mowing or destroying of trees or vegetation.

4.4 Non-Native/Exotic Species. There shall be no introduction of non-native or exotic species to the [*Property/Mitigation Property*].

4.5 Uses. There shall be no agricultural, commercial, or industrial activity undertaken or allowed on the [*Property/Mitigation Property*], including but not limited to grazing and mining.

4.6 Structures. There shall be no construction, erection, or placement of buildings, billboards, signs, or any other temporary or permanent structure, nor any additions to existing structures.

4.7 Roads. There shall be no construction or building of new roads, trails, or other rights of way without the prior written approval by the Louisville District.

4.8 Off Road Vehicles. There shall be no use of off road vehicles, 4-wheel drive vehicles, all terrain vehicles, snowmobiles, or other types of motorized recreational vehicles except on existing roads and except as necessary to manage the [*Property/Mitigation Property*].

4.9 Utilities. There shall be no construction or placement of utilities or related facilities without the prior written approval of the Louisville District.

4.10 Waste. There shall be no placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste on the [*Property/Mitigation Property*].

4.11 Pest Control. There shall be no application of pesticides or biological controls, including but not limited to insecticides, fungicides, rodenticides and herbicides, without prior written approval from the Louisville District.

5. Reserved Rights. Notwithstanding the foregoing Restrictions, the Declarant(s) reserve(s) for [*itself/themselves*], [*its/their*] heirs, executors, administrators, successors and assigns the right to use the Mitigation Property for all purposes not inconsistent with the purposes of these restrictive covenants. Further, the Declarant(s) expressly reserve(s) for [*itself/themselves*], [*its/their*] heirs, executors, administrators, successors, and assigns the following rights, which may be exercised upon providing 30 days prior written notice to the Louisville District, except where expressly provided otherwise:

5.1 Wildlife and Forestry Management. Declarant(s) will naturally manage the [*Property/Mitigation Property*] to preserve and improve the existing forest and wildlife resources. Declarant(s) reserve(s) the right to remove or trim vegetation hazardous to persons or property, and harvest and manage timber downed or damaged due to natural forces, such as fire, storms, insects, or infectious organisms, to the extent necessary to protect the environment. Such management activities shall be carried out only after approval by the Louisville District and in accordance with Best Management Practices as set out by the U.S. Forest Service.

5.2 Landscape Management. Declarant(s) reserve(s) the right to undertake landscaping necessary to prevent severe erosion or damage to the [*Property/Mitigation Property*] or portions thereof, or significant detriment to existing or permitted uses, to the extent such landscaping is consistent with preserving the natural condition of the [*Property/Mitigation Property*].

5.3 Recreation. Declarant(s) reserve(s) the right to engage in outdoor, non-commercial recreational activities, including hunting, fishing, and similar recreational or educational activities, consistent with cumulatively very small impacts and with the continuing natural condition of the [*Property/Mitigation Property*], but excluding planting and burning. No prior written notice to the Louisville District is required.

5.4 Road Maintenance. Declarant(s) reserve(s) the right to maintain existing roads, trails, or other rights of way. Maintenance shall be limited to: removal or pruning of dead or

hazardous vegetation; application of permeable materials (e.g., sand, gravel) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and maintenance of roadside ditches.

5.5 Signs. Declarant(s) reserve(s) the right to erect signs on the [*Property/Mitigation Property*] to mark the [*Property/Mitigation Property*] as a protected area and to convey information on restricted use of the [*Property/Mitigation Property*], including no trespassing signs, no mowing signs, temporary signs indicating the [*Property/Mitigation Property*] is for sale, signs identifying the trees, vegetation, wetlands or conservation ecological services of the [*Property/Mitigation Property*], and signs identifying the owner.

5.6 Mitigation Measures. Declarant(s) will undertake restoration and mitigation measures required under the Mitigation Plan or otherwise required under law.

[Select one of the following two paragraphs. Select the first paragraph 5 if the restrictive covenants apply to the entire parcel of property described in the first whereas clause. Select the second paragraph 5 if the restrictive covenants apply the only a portion of the Property described in the first whereas clause.]

6. **Rights of Access and Entry.** The Declarant(s) grant(s) the Corps and its authorized agents an irrevocable and assignable right to enter in, on, over and across the Property to inspect and monitor the Property; to implement the Mitigation Plan or take corrective measures under the Mitigation Plan (if Declarant(s) default(s) on the Bank); to take any actions necessary to maintain or restore the natural condition of the Property; or to take any actions necessary to verify compliance with these restrictive covenants. No rights of access or entry to or use of any portion of the Property is granted or conveyed to members of the general public by these restrictive covenants.

6. **Rights of Access and Entry.** The Declarant(s) grant(s) the Corps and its authorized agents an irrevocable and assignable right to enter in, on, over and across the Mitigation Property to inspect and monitor the Mitigation Property; to implement the Mitigation Plan or take corrective measures under the Mitigation Plan (if Declarant(s) default(s)); to take any actions necessary to maintain or restore the natural condition of the Mitigation Property; or to take any actions necessary to verify compliance with these restrictive covenants. The Declarant(s) also grant(s) the Corps, and its authorized agents an irrevocable and assignable right to enter and exit over and across the Property as necessary to access the Mitigation Property for the purposes listed above. No rights of access or entry to or use of any portion of the Mitigation Property or Property is granted or conveyed to members of the general public by these restrictive covenants.

7. **Enforcement.** The Declarant(s) grant(s) the Corps, as third party beneficiary hereof, a discretionary right to enforce these restrictive covenants in a judicial action against any person or other entity violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in forfeiture or reversion of title. In any enforcement action, the Corps shall be entitled to complete restoration for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties. No omission or delay in acting by the Corps shall bar subsequent

enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit. Nothing herein shall be construed to authorize the Corps to institute proceedings against the Declarant(s) for changes to the [*Property/Mitigation Property*] due to acts of God, natural disasters, or unauthorized acts of third parties outside the control of the Declarant(s), so long as the compensatory mitigation is completed and determined by the Corps to be successful in accordance with the Mitigation Plan.

8. Notice to Government.

8.1 Any permit application, or request for certification or modification, which may affect the [*Property/Mitigation Property*], made to any government entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

8.2 The Declarant(s) shall provide the Corps with written notice of any legal action affecting this Declaration, including but not limited to foreclosure proceedings, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation proceedings, and the exercise of the power of eminent domain. For any action that might result in this Declaration being voided or modified, such notice shall be provided at least 60 days before such action would be taken.

[Select one of the following two paragraphs. Select the first paragraph 8 if the restrictive covenants apply to the entire parcel of property described in the first whereas clause. Select the second paragraph 8 if the restrictive covenants apply the only a portion of the Property described in the first whereas clause.]

9. Property Transfers. The Declarant(s) shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property:

NOTICE: This Property is subject to a Declaration of Restrictive Covenants for Conservation dated [**insert date of Declaration**], recorded in the [**insert County name**] County Clerk's Office on [**insert date recorded**] in Deed Book [**insert number**], Page [**insert number**] and enforceable by the U.S. Army Corps of Engineers.

The Declarant(s) shall provide the Corps with written notice of any transfer 60 days prior to such transfer. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Property being transferred. Failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants.

9. **Property Transfers.** The Declarant(s) shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property and/or Mitigation Property:

NOTICE: This Property is subject to a Declaration of Restrictive Covenants for Conservation dated [insert date of Declaration], recorded in the [insert County name] County Clerk's Office on [insert date recorded] in Deed Book [insert number], Page [insert number] and enforceable by the U.S. Army Corps of Engineers.

The Declarant(s) shall provide the Corps with written notice of any such transfer 60 days prior to the transfer. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Property and/or Mitigation Property being transferred. Failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants.

10. **Notification.** Any notice, request for approval, or other communication require by these restrictive covenants shall be sent by registered mail, pre-paid postage, to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this paragraph):

To Declarant(s): _____

To Corps: _____

11. **Amendment.** After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and Declarant(s). Amendment shall be allowed at the discretion of the Corps, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. There shall be no obligation to allow an amendment.

12. **Termination.** This Declaration is intended to be perpetual in nature and run with the land as set forth in paragraph 1 of this Declaration. However, if the Corps determine(s) that the compensatory mitigation undertaken on the [Property/Mitigation Property] set forth in the Mitigation Plan is not successful and the alternative mitigation identified does not involve the [Property/Mitigation Property] the Declarant(s) and Corps may terminate this Declaration by written agreement.

13. **Recording.** Declarant(s) shall record this Declaration in the official records of the Office of the [Insert County Name] County Clerk within thirty (30) days of execution of this Declaration by the Declarant(s), and shall, within thirty (30) days of recording, provide the Corps

with a copy of the recorded Declaration and exhibits. Declarant(s) may re-record this instrument at any time as may be required to preserve its rights.

14. Successors in Interest. All references to the Corps shall include successor governmental agencies, departments, or divisions, or any other successor entities prescribed by law.

15. Severability Provision. Should any separable part of these restrictive covenants be held contrary to law, unenforceable, or void, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Declarant(s) [*has/have*] duly executed this Declaration effective on the date first written above, but actually on the date set forth below.

DECLARANT(S)

By: _____
[Type name Under Line]

[Type Title]

Date

State of

County of _____

Subscribed and sworn to before me by _____ this the ____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____