

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

CNX Gas Company LLC	:	The Clean Streams Law
1000 Consol Energy Drive	:	The 2012 Oil and Gas Act
Canonsburg, PA 15317	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 6th day of April, 2020, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and CNX Gas Company, LLC (“CNX”).

Findings

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce Chapter 32 of Title 58 of the Pennsylvania Consolidated Statutes, 58 Pa. C.S. §§ 3201 – 3274 (“2012 Oil and Gas Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations (“Regulations”) promulgated thereunder.

B. CNX is a Virginia limited liability company engaged in various oil and gas exploration, production, and midstream activities in Pennsylvania. CNX maintains a local business address at 1000 Consol Energy Drive, Canonsburg, PA 15317.

C. CNX owns and operates the MOR40 Well Site (“MOR40”), located in Richhill Township, Greene County.

D. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with MOR40, number ESG16-059-0018 ("MOR40 ESCGP"). The MOR40 ESCGP includes limits on the earth disturbance that may occur in constructing MOR40 ("MOR40 LOD").

E. On July 17, 2018, sediment laden water from unstabilized portions of MOR40 overtopped several Erosion and Sedimentation Control Best Management Practices ("E & S BMPs") beyond the MOR40 LOD. Specifically, a slide originating from the topsoil stockpile, causing erosion rills, and several sections of compost filter sock ("CFS") were not maintained.

F. As of August 10, 2018, the slide had been stabilized, and all E & S BMPs had been maintained or replaced, thus correcting the conditions described in Paragraph E, above.

G. CNX owns and operates the MOR30 Well Site ("MOR30"), located in East Finely Township, Washington County.

H. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with MOR30, number ESX13-125-0082 ("MOR30 ESCGP"). The MOR30 ESCGP includes limits on the earth disturbance that may occur in constructing MOR30 ("MOR30 LOD").

I. On September 6, 2018, sediment laden water from unstabilized portions of MOR30 overtopped several E & S BMPs beyond the MOR30 LOD. Specifically, a slide originating downslope of an infiltration berm overwhelmed several sections of CFS.

J. As of September 25, 2018, the slide had been stabilized, and all E & S BMPs had been maintained or replaced, thus correcting the conditions described in Paragraph I, above.

K. On the dates and at the locations set forth in Paragraphs E and I, CNX:

1. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1), and 102.11(a)(1) by failing to adequately design and implement effective E & S BMPs to minimize accelerated erosion and sedimentation; and

2. Violated 25 Pa. Code §§ 78a.53 and 102.22(b)(1) by failing to implement and maintain temporary stabilization of MOR 30 and MOR40.

L. CNX owns and operates the MOR31 Well Site (“MOR31”), located in East Finely Township, Washington County.

M. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with MOR31, number ESX14-125-0033 (“MOR31 ESCGP”). The MOR31 ESCGP includes limits on the earth disturbance that may occur in constructing MOR31 (“MOR31 LOD”).

N. On July 26, 2017, sediment laden water from an unstabilized portion of MOR31 overtopped E & S BMPs beyond the MOR31 LOD, and discharged into an unnamed tributary to Long Run, a water of the Commonwealth.

O. Sediment is an “industrial waste” as that term is defined in Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

P. On the dates and at the locations set forth in Paragraph N, CNX:

1. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1), and 102.11(a)(1) by failing to adequately design and implement effective E & S BMPs to minimize accelerated erosion and sedimentation;

2. Violated 25 Pa. Code §§ 78a.53 and 102.22(b)(1) by failing to implement and maintain temporary stabilization of MOR31; and

3. Violated Sections 301 and 307 of the Clean Streams Law, 35 P.S. §§ 691.301 and 691.307, by discharging industrial wastes to waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department.

Q. As of August 15, 2017, all E & S BMPs had been maintained or replaced, thus correcting the conditions described in Paragraph N, above.

R. CNX owns and operates the RHL28 Well Site ("RHL28"), located in Richhill Township, Greene County.

S. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with RHL28, number ESX17-059-0011 ("RHL28 ESCGP"). The RHL28 ESCGP includes limits on the earth disturbance that may occur in constructing RHL28 ("RHL28 LOD").

T. On June 14, 2018, sediment laden water from an unstabilized portion of RHL28 overtopped E & S BMPs beyond the RHL28 LOD, and discharged into a stormwater channel, a water of the Commonwealth. CNX did not notify the Department of these inoperable or ineffective E & S BMPs, contrary to condition 8.e. of the RHL28 ESCGP. CNX had also placed a section of CFS outside of the LOD and constructed a wet pond and stormwater channel prior to completion of the construction of the well pad, contrary to the construction sequence in the RHL28 ESCGP.

U. On the dates and at the locations set forth in Paragraph T, CNX:

1. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1), and 102.11(a)(1) by failing to adequately design and implement effective E & S BMPs to minimize accelerated erosion and sedimentation;

2. Violated 25 Pa. Code §§ 78a.53 and 102.5(m)(4) by failing to notify the Department of inoperative or ineffective E & S BMPs;

3. Violated 25 Pa. Code §§ 78a.53 and 102.5(m)(4) by failing to follow the approved construction sequence contained within the RHL28 ESCGP;

4. Violated 25 Pa. Code §§ 78a.53 and 102.22(b)(1) by failing to implement and maintain temporary stabilization of MOR31; and

5. Violated Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307, by discharging industrial wastes to waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department.

V. As of July 6, 2018, all E & S BMPs described in Paragraph T, above, had been maintained or replaced, thus correcting those conditions.

W. CNX owns and operates the RHL27 Well Site (“RHL27”), located in Richhill Township, Greene County.

X. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with RHL27, number ESX17-059-0015 (“RHL27 ESCGP”). The RHL27 ESCGP includes limits on the earth disturbance that may occur in constructing RHL27 (“RHL27 LOD”).

Y. On June 14, 2018, sediment laden water from an unstabilized portion of RHL27 overtopped E & S BMPs beyond the RHL27 LOD. CNX did not notify the Department of these inoperable or ineffective E & S BMPs, contrary to condition 8.e. of the RHL27 ESCGP.

Z. On the dates and at the locations set forth in Paragraph Y, CNX:

1. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1), and 102.11(a)(1) by failing to adequately design and implement effective E & S BMPs to minimize accelerated erosion and sedimentation;
2. Violated 25 Pa. Code §§ 78a.53 and 102.5(m)(4) by failing to notify the Department of inoperative or ineffective E & S BMPs; and
3. Violated 25 Pa. Code §§ 78a.53 and 102.22(b)(1) by failing to implement and maintain temporary stabilization of RHL27.

AA. As of July 6, 2018, all E & S BMPs had been maintained or replaced, thus correcting the conditions described in Paragraph Y, above.

BB. CNX owns and operates the RHL22 Well Site ("RHL22"), located in Richhill Township, Greene County.

CC. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with RHL22, number ESX14-059-0069 ("RHL22 ESCGP"). The RHL22 ESCGP includes limits on the earth disturbance that may occur in constructing RHL22 ("RHL22 LOD").

DD. As of September 15, 2017, an infiltration berm was not constructed as approved in the RHL22 ESCGP. Specifically, the infiltration berm had been constructed with a rock drain, contrary to the RHL22 ESCGP.

EE. On the dates and at the locations set forth in Paragraph DD, CNX violated 25 Pa. Code §§ 78a.53 and 102.5(m)(4) by failing to follow the approved RHL22 ESCGP.

FF. As of October 24, 2017, the drain had been removed from the infiltration berm, thus correcting the conditions described in Paragraph DD, above.

GG. CNX owns and operates the NV35 Well Site (“NV35”), located in South Franklin Township, Washington County.

HH. CNX is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with NV35, number ESX13-125-0023 (“NV35 ESCGP”). The NV35 ESCGP includes limits on the earth disturbance that may occur in constructing NV35 (“NV35 LOD”).

II. The NV35 ESCGP was issued on February 26, 2013 and expired on February 25, 2018. NV35 was not permanently stabilized prior to the expiration of the NV35 ESCGP-1. The ESCGP was not terminated or renewed prior to its expiration.

JJ. On the dates and at the locations set forth in Paragraph II, CNX violated the NV35 ESCGP-1, and thereby 25 Pa. Code § 102.5(m)(4), by failing to permanently stabilize the site and submit a Notice of Termination (“NOT”) pursuant to 25 Pa. Code § 102.7 to the Department prior to the expiration of the NV35 ESCGP-1.

KK. As of December 12, 2018, NV35 was permanently stabilized, and the Department terminated the NV35 ESCGP, thus correcting the conditions described in Paragraph II, above.

LL. The violations described in Paragraphs K, P, U, Z, EE, and JJ, above, constitute unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611, and Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259; constitute a nuisance under Sections 402(b) and 610 of The Clean Streams Law, 35 P.S. §§ 691.402(b) and 691.610; and subject CNX to a claim for civil penalties under Section 605 of The Clean Streams Law, 35 P.S. § 691.605 and Section 3256 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3256.

MM. Pursuant to the Department’s “Policy for the Consideration of Community Environmental Projects in Conjunction with Assessment of Civil Penalty” (Document No. 012-

4180-001), CNX submitted a written proposal to provide funding for over 2,500 linear feet of streambank stabilization and fish habitat structures in Mingo Creek in Nottingham Township, Washington County ("Community Environmental Project," "CEP," or "Project"). This section of Mingo Creek is a high-quality trout stocked fishery, and this section of Mingo Creek flows through a county park. The Project is proposed to be performed by the Western Pennsylvania Conservancy. The total estimated cost of the Project is ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000), which CNX has agreed to fully fund, and CNX has asked the Department to accept the Project in lieu of a civil penalty. The proposal for the Project is attached as Exhibit A. The third-parties identified in the proposal have a *bona fide* interest in participating in the Project.

NN. The Department has determined that the Project will provide a substantial environmental benefit and that the Project is not something that CNX is otherwise legally required to do. The Department has agreed that the value of the Project is not less than ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000), and that, in consideration of the Project, it will accept the Project in lieu of a civil penalty payment of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00).

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by CNX as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, and 610 of The Clean Streams Law, 35 P.S.

§§ 691.5, 691.316, and 691.610; Section 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. CNX agrees that the Findings in Paragraphs A through J, L through O, Q through T, V through Y, AA through DD, FF through II, KK, MM, and NN, above, are true and correct, and, in any matter or proceeding involving CNX and the Department, CNX shall not challenge the accuracy or validity of these Findings.

b. The Parties do not authorize any other persons to use the Findings in this Consent Order and Agreement in any matter or proceeding.

3. Civil Penalty Assessment. In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 3256 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3256, and Section 605 of The Clean Streams Law, 35 P.S. § 691.605, the Department hereby assesses a civil penalty of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00), which shall be satisfied by CNX's funding of and the completion of the CEP described in Paragraph MM, above.

4. Community Environmental Project.

a. CEP Funding. Within **thirty (30) days** of signing this Consent Order and Agreement, CNX shall make a payment in the amount of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) to the Western Pennsylvania Conservancy for costs associated with the Project.

b. Completion of Project. The project shall be fully constructed by **December 31, 2021**. Within 20 days of the completion of the Project, CNX shall submit to the Department an affidavit of the corporate official responsible for overseeing the Project. The

affidavit shall contain a certification that the Project is complete and a statement setting forth all costs incurred in completing the Project.

5. **Tax Deductibility.** CNX shall not deduct any costs incurred in connection with or in any way associated with the Community Environmental Project described in Paragraph MM, above, for any tax purpose or otherwise obtain favorable tax treatment for those costs. If requested to do so by the Department, CNX shall submit an affidavit of the corporate officer responsible for the financial affairs of CNX certifying that CNX has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Community Environmental Project.

6. **Publicity About the Project.** CNX agrees that whenever it publicizes, in any way, the Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the Department.

7. **Remedies.** In the event CNX fails to complete the Community Environmental Project required by Paragraph 4, CNX shall pay a stipulated penalty in the amount of \$150,000.00. The Department also may pursue any remedy available for failure to pay a civil penalty, including the filing of this Agreement as a lien in any county in this Commonwealth.

8. **Stipulated Civil Penalties.**

a. If CNX fails to comply with any applicable term or provision of this Consent Order and Agreement, CNX shall be in violation of this Consent Order and Agreement. In addition to other applicable remedies, CNX shall pay the following civil penalty: \$1,000 for each day for failing to complete the obligation set forth in Paragraphs 4.a. and 4.b., above.

b. Stipulated civil penalty payments shall be payable monthly on or before the 15th day of each succeeding month. Stipulated civil penalty payments shall be made by

corporate check or the like made payable to “Commonwealth of Pennsylvania” and sent to the address set forth in Paragraph 13 (Correspondence with the Department).

c. Any payment under this Paragraph shall neither waive CNX’s duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel CNX’s compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only CNX’s liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalty payments shall be due automatically and without notice.

9. Additional Remedies.

a. If CNX fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this Paragraph and Paragraph 8 (Stipulated Civil Penalties), above, are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

10 Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. CNX reserves the right to challenge any action which the Department may take to require those measures.

11. **Liability of Operator.** CNX shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. CNX also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

12. **Transfer of Sites.**

a. CNX's duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the well sites, or any part thereof.

b. If CNX intends to transfer any legal or equitable interest in the well sites described herein which is affected by this Consent Order and Agreement, CNX shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Southwest District Office of the Department of such intent.

13. **Correspondence with the Department.** All correspondence with the Department concerning this consent Order and Agreement and documents submitted in compliance with this Consent Order and Agreement shall be addressed to:

Attn. David McDermott
Oil and Gas Operations
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone 412-442-5866
Email: davmcdermo@pa.gov

14. **Correspondence with CNX.** All correspondence with CNX concerning this Consent Order and Agreement shall be addressed to:

Attn. Carrie Crumpton
CNX Gas Company, LLC
1000 CONSOL Energy Drive
Canonsburg, PA 15317
Phone: 724-485-4164
Email: carriecrumpton@cnx.com

CNX shall notify the Department in writing whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

15. **Decisions Under Consent Order and Agreement.** Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that the civil penalty and/or the stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa. C.S.A. § 101. Any objection that CNX may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

16. **Severability.** The Paragraphs of this Consent Order and Agreement shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

17. **Entire Agreement.**

a. This Consent Order and Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

b. This Consent Order and Agreement constitutes settlement only of the civil liabilities for the violations set forth herein.

18. **Attorney Fees.** The Parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters arising prior to execution of this Consent Order and Agreement.

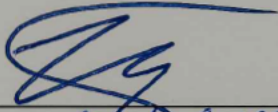
19. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the Parties.

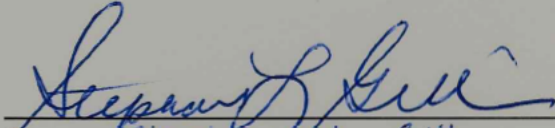
20. **Titles.** A title used at the beginning of any Paragraph of this Consent Order and Agreement may be used to aid in the construction of that Paragraph, but shall not be treated as controlling.

21. **Termination of Consent Order and Agreement.** CNX's obligations, but not the Findings, of this Consent Order and Agreement shall terminate when: 1) CNX has completed all the requirements of this Consent Order and Agreement including completion of the Project; and 2) CNX has paid any outstanding stipulated civil penalties due under Paragraph 8 (Stipulated Civil Penalties), above. In all cases, CNX shall complete all obligations set forth under this Consent Order and Agreement no later than **December 31, 2021.**

IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. CNX certifies under penalty of law, as provided by 18 Pa. C.S.A. § 4904, that it consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that it hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S.A. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by CNX's attorney certifies only that the agreement has been signed after consulting with counsel.


FOR CNX GAS COMPANY LLC:


Name: Chad Griffith
Title: [President or Vice President]


Name: Stephanie L. Gill
Title: [Secretary or Treasurer]

waived
Name
Attorney for CNX Gas Company LLC

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


Daniel F. Counahan
District Oil and Gas Manager
Southwest District Oil and Gas Operations

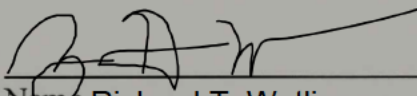

Name Richard T. Watling
Assistant Counsel
Southwest Regional Office

Exhibit A

Mingo Creek –Funding Need: \$180,000

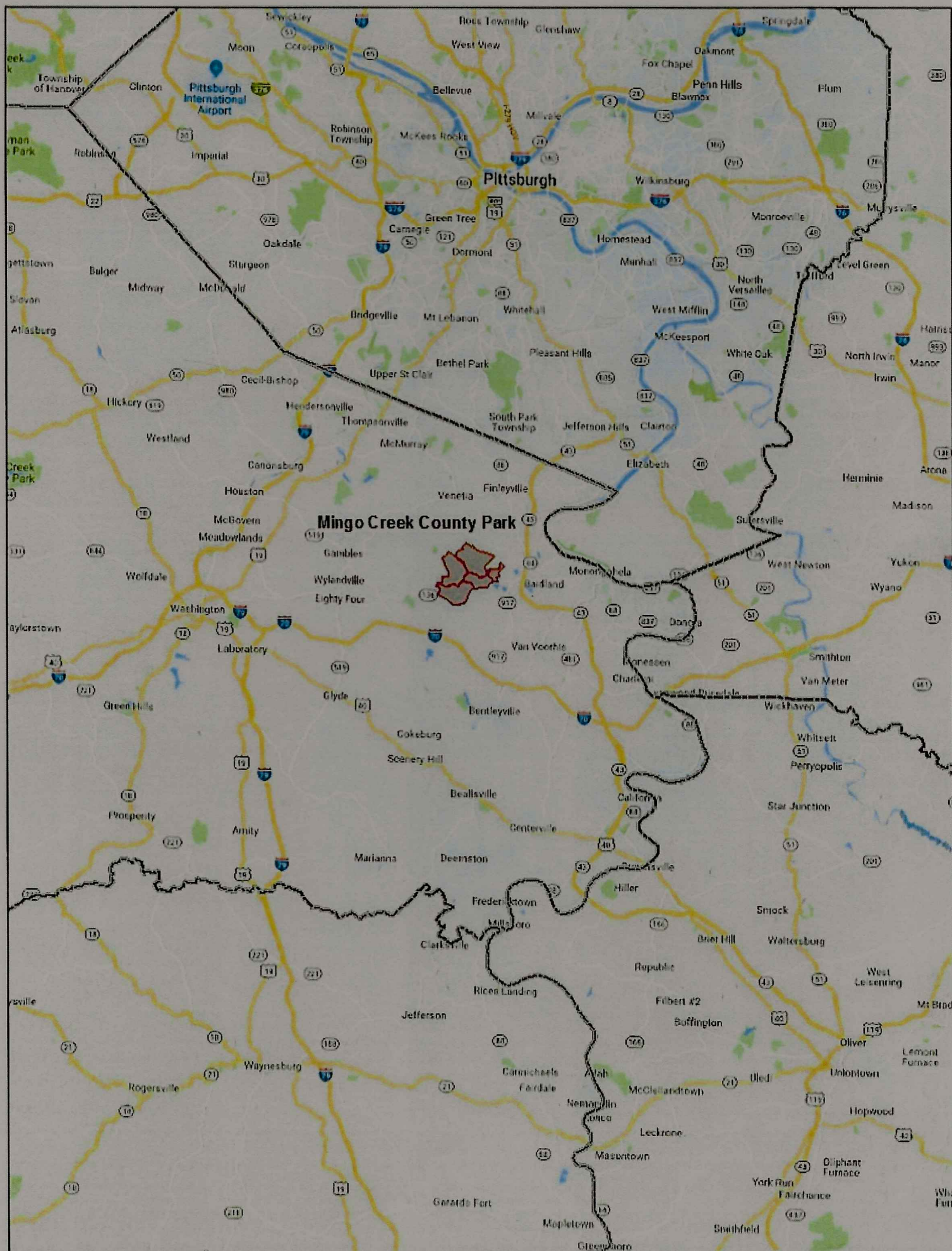
Mingo Creek County Park is a 2,600 acre park located in Finleyville, PA (Nottingham Township, Washington County), about 30 miles south of Pittsburgh. Efforts are underway to implement the Mingo Creek Comprehensive Recreation Park and Open Space Plan, and to collectively focus on water quality improvements. The plan's goals are to preserve the special qualities of the stream valley, and to provide opportunities for special events, fishing, passive recreation, group activities, trail use and interpretation of Washington County's history. The county maintains an environmental conscious mindset while encouraging public use and education. Additionally, Mingo Creek is the number two priority stream in southwestern Pennsylvania for angler use, and is one of only eight stocked streams in Washington County. DEP lists the stream as a High Quality Trout Stocked Fishery (HQ-TSF).

Project partners have conducted site visits and developed sediment and nutrient reduction plans for permanent repair and restoration of three areas in the county park which contribute significant amounts of sediment to Mingo Creek. These three areas were selected due to active bank failure, lack of riparian vegetation, high recreational use, lack of instream habitat. Improving these three areas would have the highest environmental benefit to protect and enhance the aquatic life and to improve water quality within the stream.

For this project approximately 2,500 linear feet of Mingo Creek has been designed for restoration activities which include the installation of multiple instream habitat devices, which function to stabilize eroding banks and add valuable woody material and debris back to the stream. Project designs were provided by PA Fish & Boat Habitat Management staff and will include approximately 26 structures that will re-direct the stream velocities back to the center of the stream and offer protection and stabilization for the eroding banks. The addition of in-stream structures will provide habitat to the streams aquatic life too. After the streambanks are regraded, trees will be planted to create a riparian buffer and offer long-term sediment reductions and water quality improvements. By combining multiple, proven best management practices, this project will be a win-win for water quality, recreation, and the long term sustainability of this wonderful public resource.



Figure 1: Public use area along eroded bank along Mingo Creek in Washington County



Mingo Creek County Park Stream Restoration



Figure 1: Large failing streambank at Last Walking Bridge, along Mingo Creek.

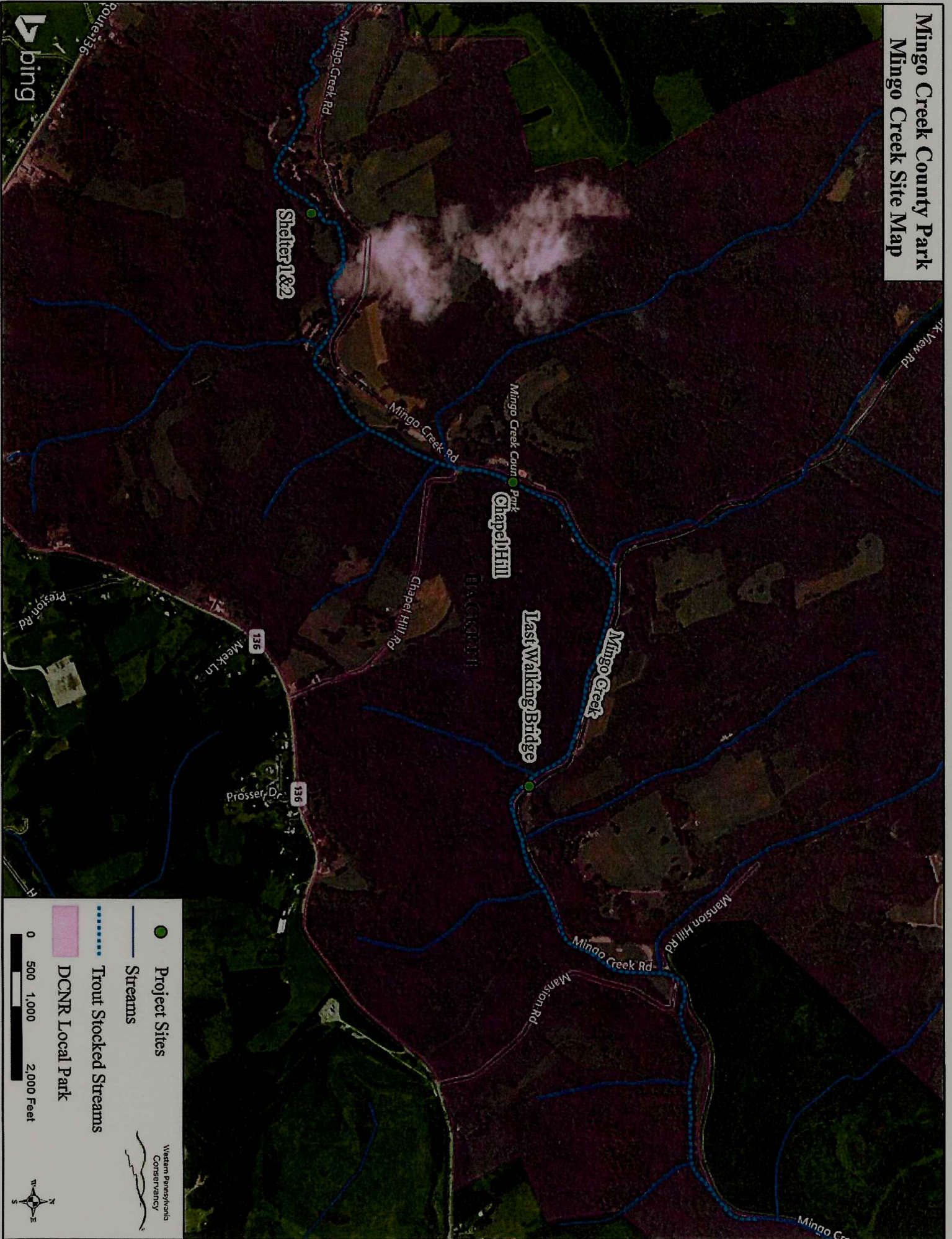


Figure 2: Eroding streambank with no riparian zone within Shelters 1&2 of Mingo Creek Park.



Figure 3: Lack of instream habitat and excess sedimentation from unstable banks along Mingo Creek at Chapel Hill Road.

Mingo Creek County Park Mingo Creek Site Map



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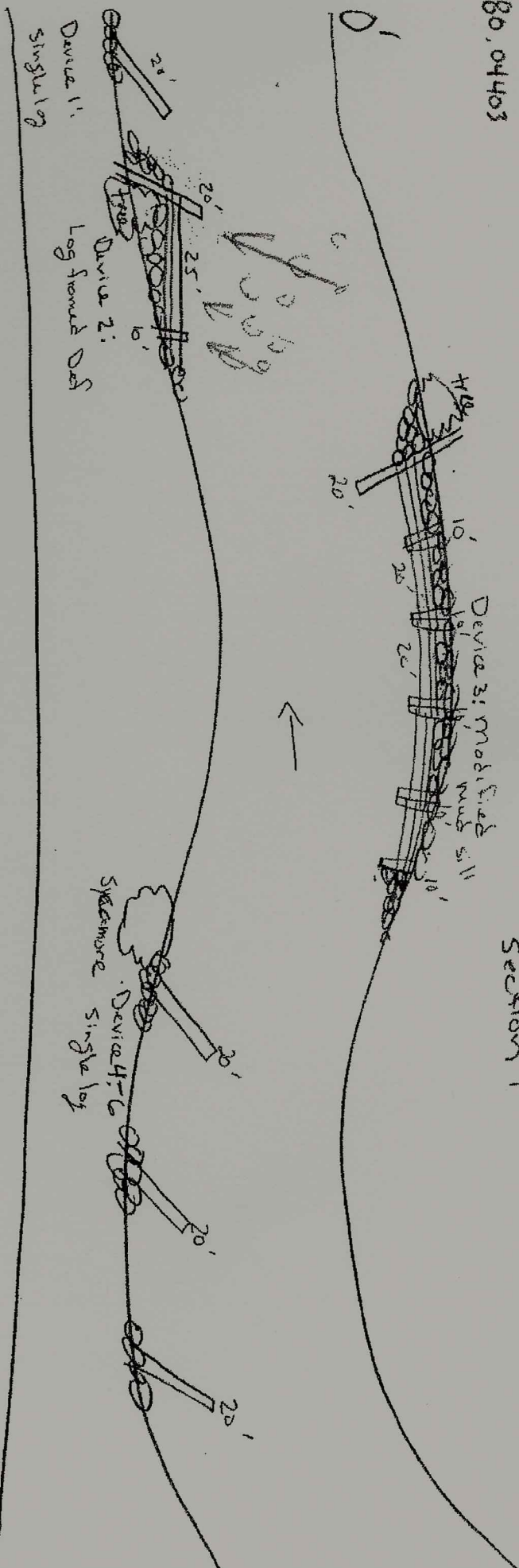
7 Days

Mingo Creek

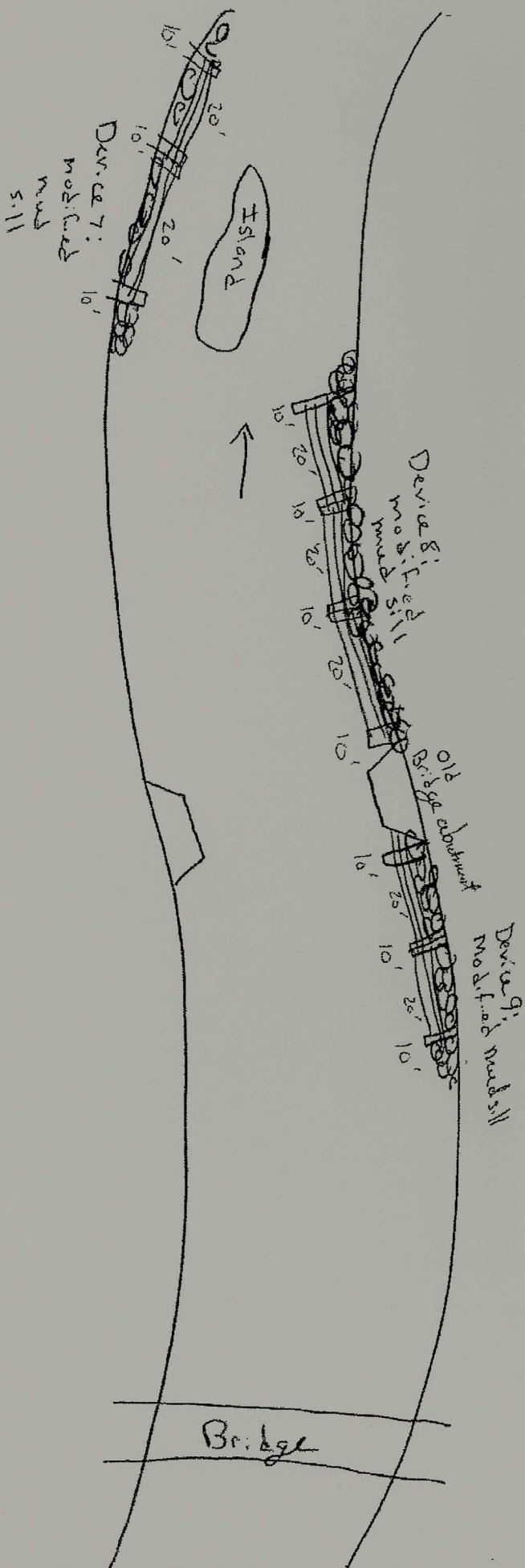
Shelter 1 + 2

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Section 1



Section 2



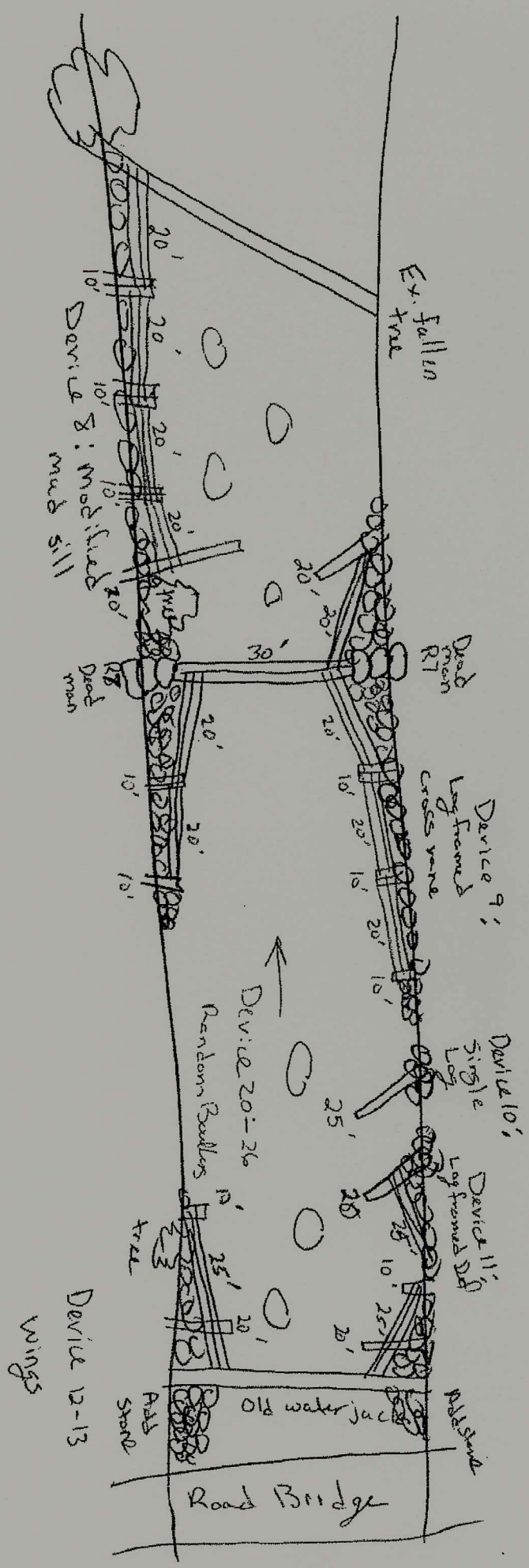
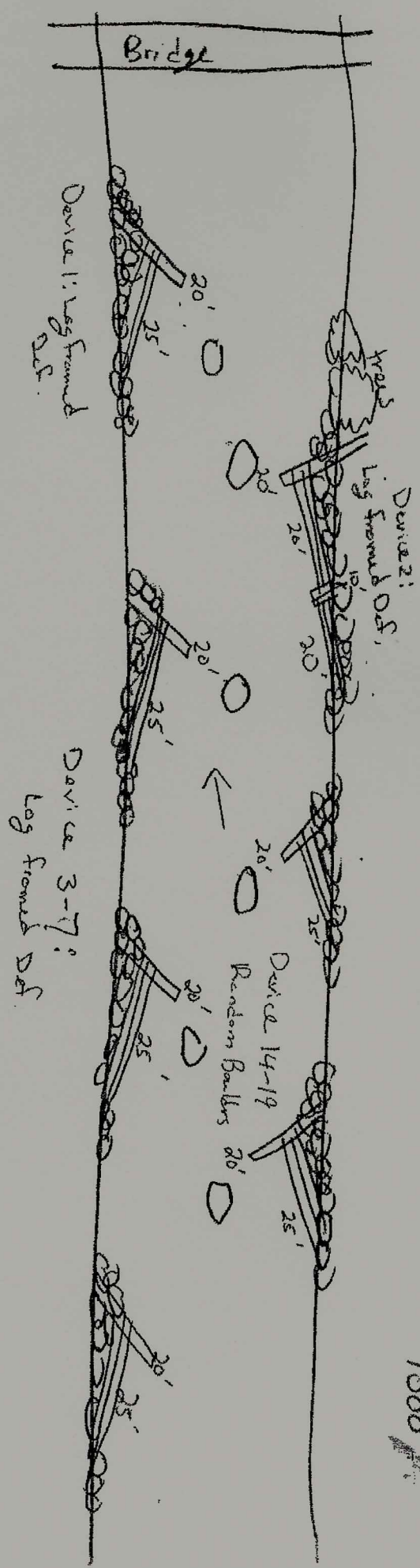
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4 Days

Mingo Creek

Chapel Hill Site

1000'



2035

Mingo Creek

Last walking Bridge

