

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER:	Cheryl Keen Tucker representing the interest of Mary R. Barnette, ROYALTY & SURFACE OWNER,	)	
		)	
		)	VIRGINIA GAS
	v.	)	AND OIL BOARD
		)	
		)	
RESPONDENT:	Pocahontas Gas LLC (PERMIT APPLICANT	)	
		)	
		)	
RELIEF SOUGHT:	APPEAL OF DECISION BY THE DIRECTOR OF THE DIVISION OF GAS AND OIL DATED August 25, 2020, FOLLOWING INFORMAL FACT FINDING CONFERENCE 1015	)	DOCKET NO. VGOB-20-1020-4234
		)	
		)	

REPORT OF THE BOARD

FINDINGS AND ORDER

1. Hearing Date and Place: This matter came on for final hearing before the Virginia Gas and Oil Board (hereafter "Board") at 9:00 a.m. on October 20, 2020 at the Department of Mines, Minerals and Energy Office, Lebanon, Virginia.

2. Appearances: Cheryl Keen Tucker, daughter of the petitioner representing the interest for the Petitioner, Mary R. Barnett (royalty & surface owner); Mark Swartz, Esq. appeared for the Respondent, Pocahontas Gas LLC; and Jerald Hess, Esq., Assistant Attorney General, was present to advise the Board.

3. Jurisdiction and Notice: Pursuant to Va. Code §§ 45.1-361.1 et seq., the Board finds that it has jurisdiction over the subject matter. The Board also finds that the notices given herein satisfy all statutory requirements, Board rule requirements and the minimum standards of due process. After hearing arguments and considering the Directors' decision and evidence presented, upon motion and vote, the Board denied Petitioner's application on appeal, relying on Va. Code §§ 45.1-361.1, 45.1-361.29, 45.1-361.35 and 45.1-361.36.

4. Relief Requested: Petitioner, Cheryl Keen Tucker, daughter of the petitioner representing the interest for the Petitioner, Mary R. Barnett (royalty & surface owner), appealed the Director's decision in IFFH 1015, requesting:

I. Mary R. Barnett, objects to Pocahontas Gas LLC's application whereas; The proposed operation(s) would directly impinge upon the royalty owner's gas and oil interest.

**II. The only statutory objections to permit applications available to surface owners are set out at § 45.1-361.35. (B) Objections to permits; hearing.**

1. The operations plan for soil erosion and sediment control is not adequate or not effective;
2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;
4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

**III. The only objections to permits or permit modifications that may be raised by Royalty Owners are whether the proposed well work:**

1. The proposed operation(s) would directly impinge upon the royalty owner's gas and oil interest.
2. Relief Denied: The Petitioner's requested relief in this cause is hereby denied:
  - a. The Board found that the proposed development plan by Pocahontas Gas, LLC is undertaken with the intent of minimal damage to the property and environment.
  - b. The Board found the erosion and sediment control plan meets best practice standards for the construction activities proposed for this site under current law.
  - c. The Board found that the location of the well site does not unreasonably infringe on the surface owner's use of the property.
  - d. The Board found that the unit has been pooled by the Virginia Gas and Oil Board (VGOB). The pooling was allowed under Virginia Statute: § 45.1-361.21. Pooling of interests and protecting correlative rights in the drilling unit. The Virginia Gas and Oil Board approved the petition and pooling at their regular monthly hearing on June 16, 2020 (VGOB 20-0421-4230). The Permit Applicant apparently has rights to use surface owner's property. If these concerns are in dispute, it must be contested in a court of proper jurisdiction.
5. Conclusion: The decision of the Director of the Division of Gas and Oil dated August 25, 2020, in IFFH 1015, and attached hereto are hereby affirmed, and the appeal of Cheryl Keen Tucker on behalf of Mary R. Barnette is denied. The Director of the Division of Gas and

Oil is directed to issue the well permit for Application #38515, Gas Well Pipeline CC35B and IT IS SO ORDERED.

6. Appeals: Appeals of this Order may be filed by an adversely affected party within thirty days after service of the Order, pursuant to the provisions of Va. Code Ann. § 45.1-361.9 that provides that any order or decision of the Board may be appealed to the appropriate circuit court where interlocutory relief may also be sought. Any appeal shall be filed in compliance with the provisions of the Administrative Process Act (Va. Code Ann. §§ 2.2-4000 et seq.) and the Rules of the Supreme Court of Virginia.

7. Effective Date: This Order shall be effective as of the date of the Board's decision on October 20, 2020.

DONE AND EXECUTED this 26 day of October, 2020 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

DONE AND PERFORMED this 26 day of October, 2020 by Order of the Virginia Gas and Oil Board.



Rick Cooper  
Principal Executive to the  
staff, Virginia Gas and Oil Board

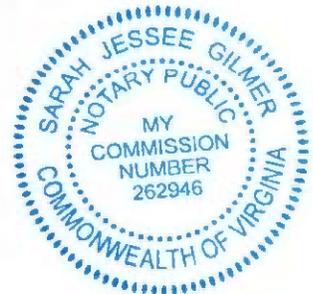
COMMONWEALTH OF VIRGINIA  
COUNTY OF RUSSELL

Acknowledged on this 26<sup>th</sup> day of October, 2020, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the staff of the Virginia Gas and Oil Board, that they executed the same and was authorized to do so.



Sarah Jessee Gilmer, Notary Public  
262946

My Commission expires: July 31, 2021



Virginia Division of Gas and Oil

P.O. Drawer 159  
135 Highland Drive  
Lebanon, VA 24266

Telephone: (276) 415-9700  
Fax: (276) 415-9671

Rick Cooper, Director  
Division of Gas and Oil



By Decision of the Director in

**Informal Fact Finding Conference 1015**

**Cheryl Keen Tucker**

**vs.**

**Pocahontas Gas LLC**

**Permit Application for Gas and Oil operations:**

**Coalbed/Pipeline Operations CBM CC35B W/PL, Application 38515**

## **Background**

Coalbed/Pipeline operations CBM CC35B W/PL, Application 38515, Pocahontas Gas LLC was received at the Virginia Division of Gas and Oil (DGO) on 4/16/2020. The evidence regarding the application and objections filed support the fact that the objections were timely and appropriate under Virginia statute.

The objections filed by **Cheryl Keen Tucker** against the permit application #38515 were in accordance with objections provided by law under §45.1-361.35.

### **§45.1-361.35. Objections to permits; hearing**

B. The only objections to permits or permit modifications that may be raised by Surface Owners are:

4. The location of the coalbed methane well or coalbed methane well pipeline would unreasonably infringe on the surface owner's use of the surface. Note: This is only considered grounds to object, if a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

C. The only objections to permits or permit modifications that may be raised by Royalty Owners are whether the proposed well work:

1. The proposed operation(s) would directly impinge upon the royalty owner's gas and oil interest.

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## **Hearing Date and Place**

IFFH 1015 was convened on Monday, August 24, 2020 at 10:00 AM, at the Department of Mines, Minerals, and Energy Office, Russell County Government Center, 135 Highland Drive, Lebanon, Virginia 24266. All parties with standing to object to Permit Application #38515 were notified of the time and place by United States Postal Service, certified mail, return receipt requested.

## **I. TESTIMONY BY THE APPLICANT**

- Mr. Swartz provided evidence that the well was in a remote area and no structures were close to the well.
- Mr. Swartz provided evidence that the pipeline was approximately 250 feet in length and should not infringe on the use of the property.
- Mr. Swartz presented testimony and exhibits that due to the steep topography, Pocahontas Gas, LLC was not constructing on flat or very usable real estate.
- Mr. Swartz presented testimony and evidence that the well and associated facilities were in a forested area.
- Mr. Swartz stated the location of the well protected correlative rights and degas the mine for mine safety.

- Mr. Swartz stated the interest for the objecting party was pooled in June 2020, at the Virginia Gas and Oil Board meeting (VGOB 20-0421-4230).

## **II. TESTIMONY BY THE SURFACE OWNER**

- Ms. Tucker stated they (Family) had owned this property for over 20 years.
- Ms. Tucker stated they were not objecting to the location of the well.
- Ms. Tucker stated she was disappointed that Pocahontas Gas was not responding to them on requests about their share of royalty interest.
- Ms. Tucker stated she felt that Pocahontas Gas was infringing on her owner interest.
- Ms. Tucker pointed out some items in the permit, such as voluntary or non-voluntary pooling, were incorrectly indicated.
- Ms. Tucker also pointed out that the location exception did not state mine safety, or worker safety as Mr. Swartz stated was one of the reasons for the well and well location.
- Ms. Tucker said she did not feel her correlative rights were protected.

### **Decision of the Director**

After thorough research and consideration:

The Director is satisfied the proposed development plan by Pocahontas Gas, LLC is undertaken with the intent of minimal damage to the property and environment.

The Director is satisfied the erosion and sediment control plan meets best practice standards for the construction activities proposed for this site under current law.

The Director is further satisfied that the location of the well site does not unreasonably infringe on the surface owners' use of the property. (See Attachments 1-6)

The Director is satisfied that the unit has been pooled by the Virginia Gas and Oil Board (VGOB).

The pooling was allowed under Virginia Statute: § 45.1-361.21. Pooling of interests and protecting correlative rights in the drilling unit. The Virginia Gas and Oil Board approved the petition and pooling at their regular monthly hearing on June 16, 2020 (VGOB 20-0421-4230).

Permit Applicant apparently has rights to use surface owner's property. If these concerns are in dispute, it must be contested in a court of proper jurisdiction.

Therefore, after consideration and review of testimony provided and consideration of the objections,

decision and VGOB decision in August 2020, it is the decision of the Director, to rule in favor of the Applicant and to proceed with the review and issuance of the permit for **Application # 38515 Coalbed Methane Gas Well CC35B with Pipeline.**

Based on testimony and the permit application, it is, therefore, the decision of the Director to deny objections to permit Application 38515 for operations CBM CC35B W/PL. The Permit Application for operations CBM CC35B W/PL will be assessed and issued under standard Division of Gas and Oil permit procedures.

#### **Right of Appeal**

**Any person with standing under §45.1-361.30 who is aggrieved by this decision of the Director may appeal the decision to the Virginia Gas and Oil Board by filing a petition with the Board within ten days following the decision (§45.1-361.36). No petition or appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals, or claims made and specified in writing at the informal fact finding conference.**

Signed Tuesday, August 25, 2020

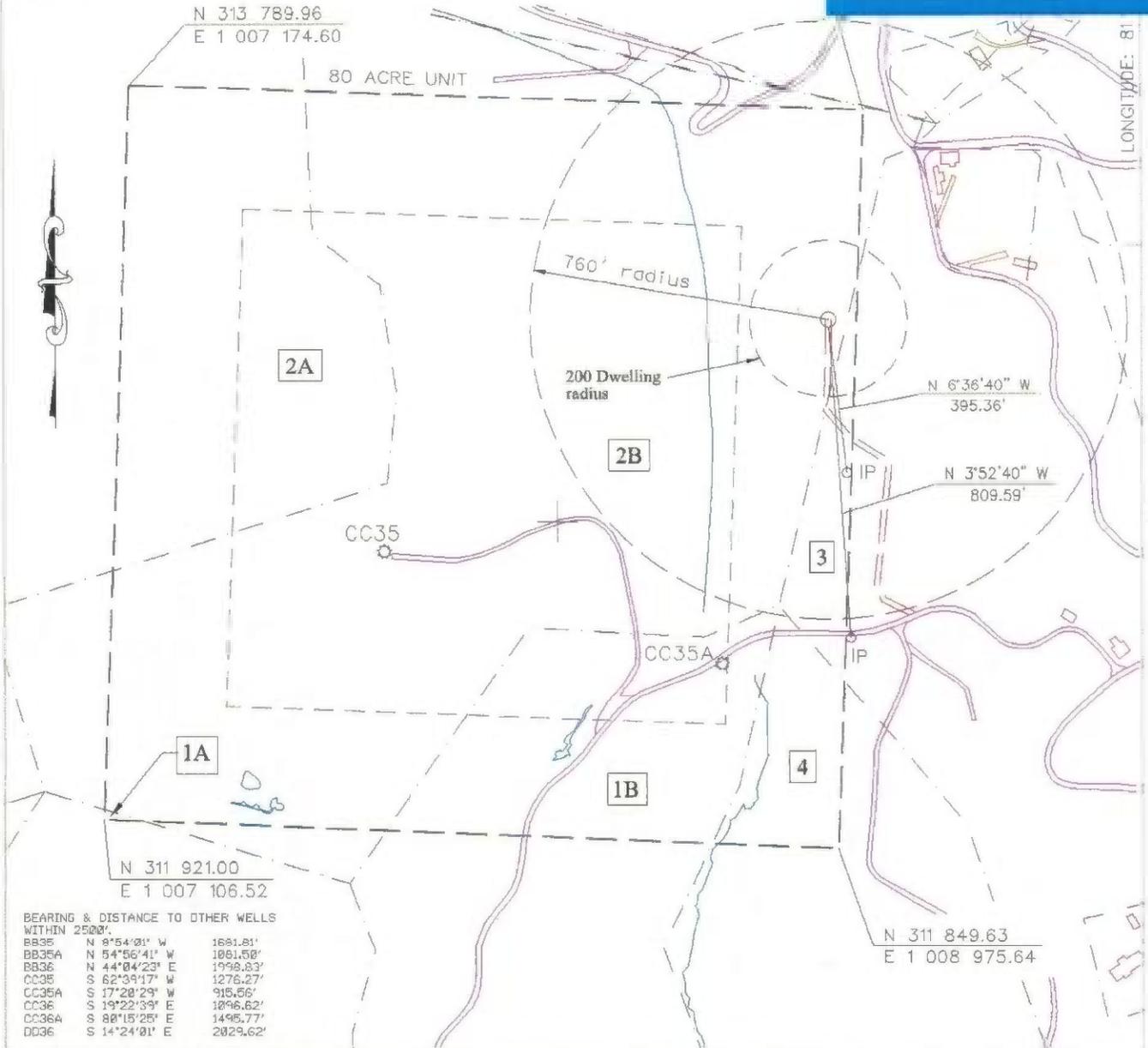
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Rick Cooper, Director  
Virginia Division of Gas and Oil

PROPERTY LINES SHOWN ON THIS PLAT WERE PROVIDED BY POCAHONTAS GAS LLC AND WERE TAKEN FROM DEED DESCRIPTIONS AND CHAIN OF TITLE OF RECORD IT DOES NOT REPRESENT A CURRENT BOUNDARY SURVEY. THE CERTIFICATION HEREON CERTIFIES THE LOCATION OF THE PROPOSED WELL ONLY.

LATITUDE:

N 313 718.72  
E 1 009 043.57



THE ACTUAL WELL LOCATION WILL BE WITHIN 10 FEET OF THE PROPOSED LOCATION ACCORDING TO 4 VAC 25-150-290 AND 45.1-361.30.

### WELL LOCATION PLAT

Company POCAHONTAS GAS LLC Well Name or Number CBM-CC35B

Tract No. COAL MOUNTAIN MINING COMPANY, LLP (160 ACRES TRACT 34) Scale: 1" = 400'

County TAZEWELL District MAIDEN SPRINGS Quadrangle KEEN MOUNTAIN Date \_\_\_\_\_

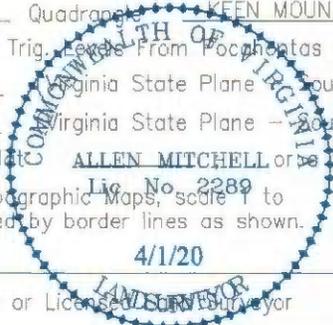
Elevation 2686.70' Well Elevation Determined By Trig. Levels From Pocahontas Gas LLC Benchmarks

Well Coordinates N 313,194.15 E 1,008,952.74 Virginia State Plane - South Zone - NAD' 27)

Well Coordinates N 3 594 073.30 E 1 0 491 940.60 Virginia State Plane - South Zone - NAD' 83)

This plat is a new plat  ; an updated plat  ; or a final plat

+ Denotes the location of a well on United States Topographic Maps, scale 1 to 24,000, latitude and longitude lines being represented by border lines as shown.



Form DGO-60-7  
Rev. 9/91

Licensed Professional Engineer or Licensed Surveyor (Affix Seal)

# Attachment

## 2

CALL OUT SHEET AND DIMENSIONS  
GENERAL PLAN ON FILE WITH THE  
DEPARTMENT OF GAS AND UG

### LEGEND



- BRUSH BARRIER
- SILT FENCE
- PROPOSED DRIP
- PROPOSED PIPELINE
- 2" WATERLINE
- RED ZONE

TOTAL PIPELINE = 220 FEET

PROPOSED  
6" STEEL  
ABOVE  
GROUND  
PIPELINE

Brush Barrier

BB35A DIKE

CC35B

45.5%  
Grade

C35

CC35A

CC36

EXHIBIT 1A  
WELL & PIPELINE LOCATION MAP  
PROPOSED PIPELINE  
CBM-CC35B  
POCAHONTAS GAS LLC

SCALE: 1" = 400'

DATE: 3/31/20

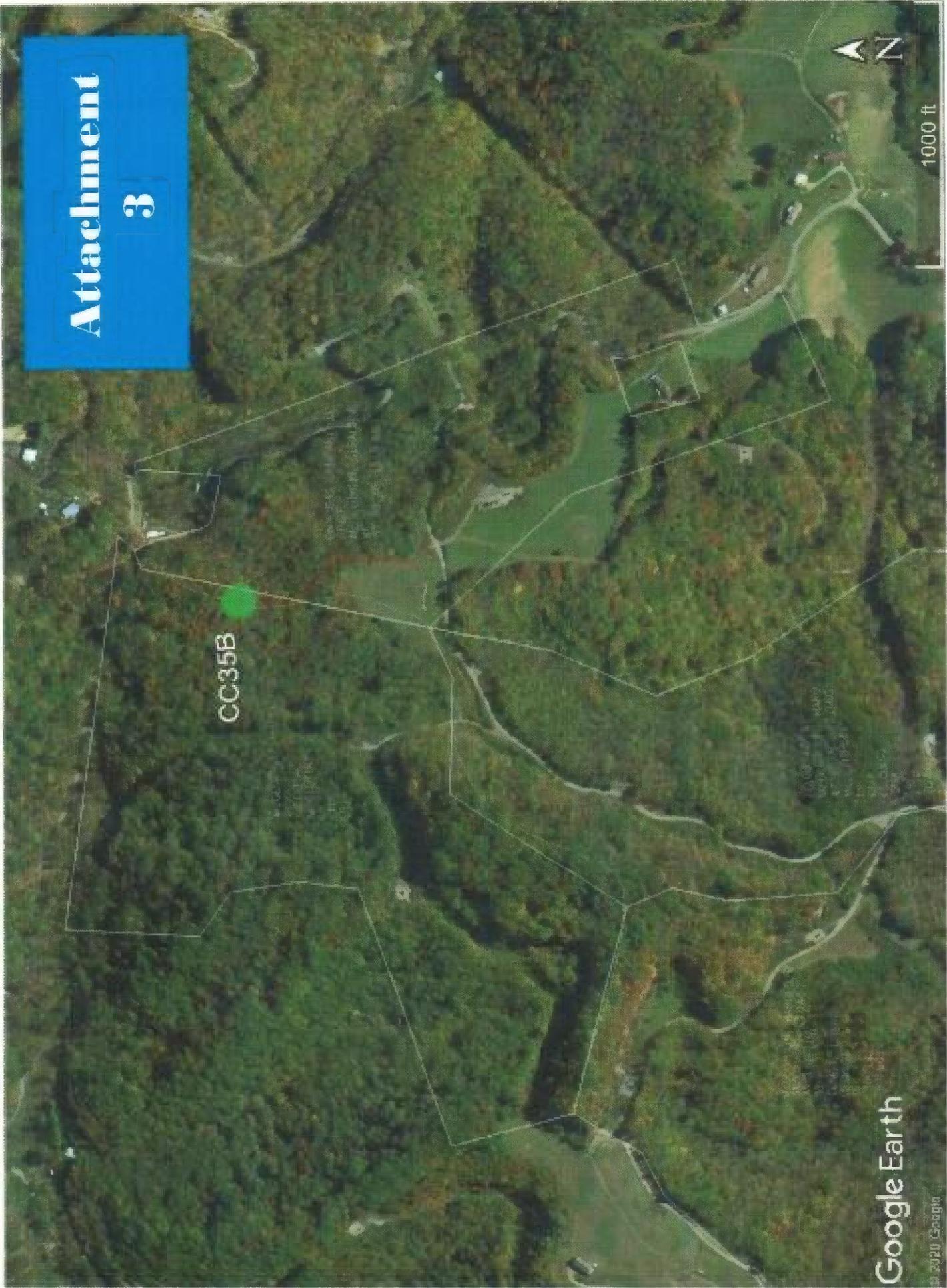
**Attachment  
3**

CC35B

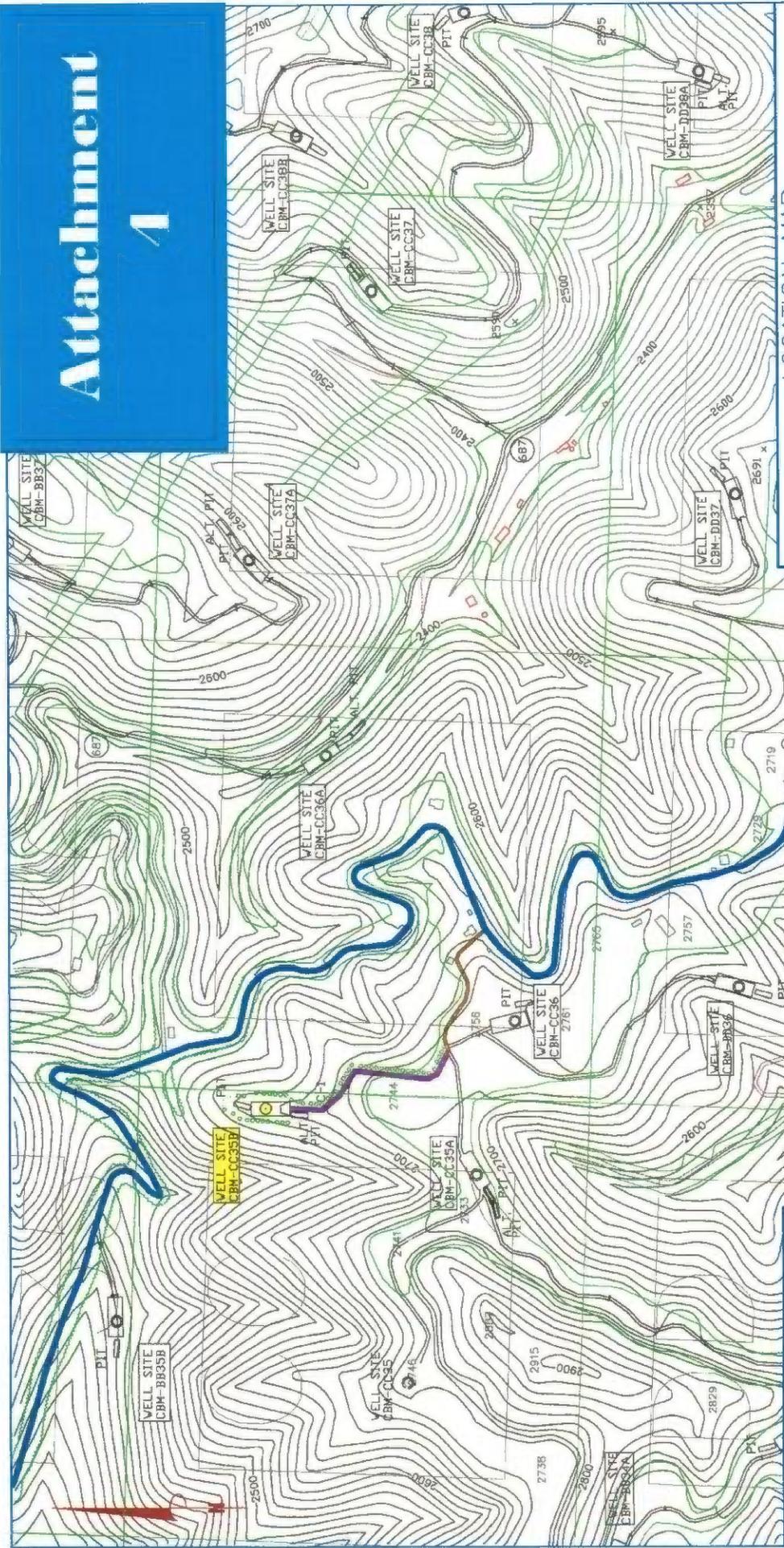
Google Earth

© 2020 Google

1000 ft



# Attachment 1



<b>LOCATION MAP</b>	
<b>WELL NO. CBM-CC35B</b>	
SCALE: 1" = 400'	DRAWN BY: DC
DATE: 1-17-20	FILE: CC35B EXHIBIT 1
POCAHONTAS GAS LLC PO BOX 570 POUNDRING MILL, VA. 24637	
D. R. PRICE ENGINEERING & LAND SURVEYING, INC., PC P. O. BOX 1270, HONAKER, VA 24260 PHONE: (276) 991-9100 FAX: (276) 991-9103	
<b>EXHIBIT 1</b>	

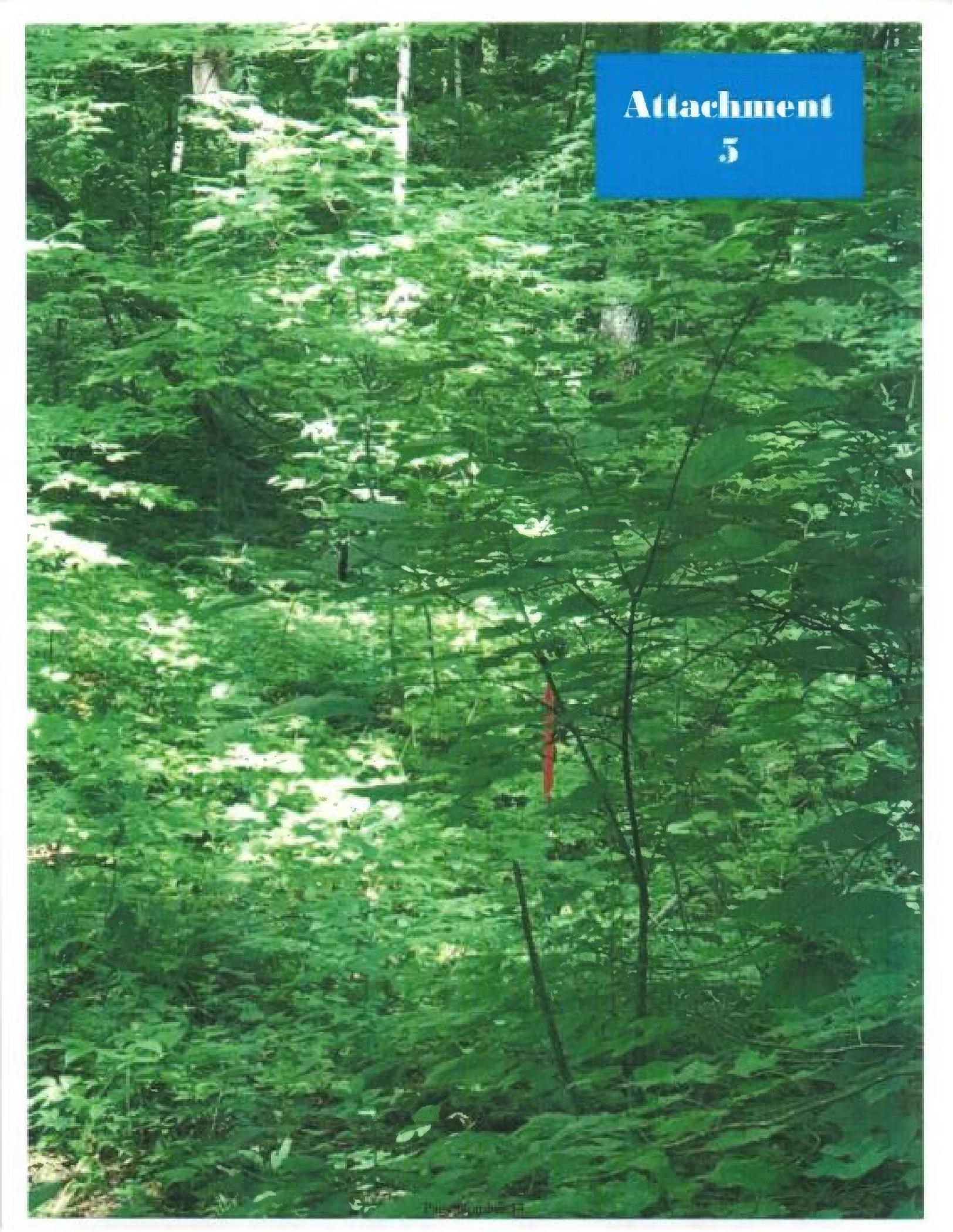
ACCESS ROAD LOCATION FROM  
HANDHELD GPS BY  
POCAHONTAS GAS LLC.

NEW ROAD INFORMATION  
 LENGTH % GRADE  
 1 795' 0-15

LAT: 37° 08' 40.72271"  
 LONG: 81° 54' 02.60236"

NOTE:  
 STRAW BALES SHALL BE INSTALLED  
 & MAINTAINED AT THE INLET AND  
 OUTLET OF ALL CULVERTS AND AT  
 ALL DRAINAGE WINDOWS UNTIL THE  
 DISTURBED AREA IS STABILIZED.  
 NOTE: SILT TO BE CONTROLLED BY  
 BRUSH BARRIERS AND/OR SILT FENCE, ETC.  
 STRAW BALES TO BE PLACED AT INLET/OUTLET  
 END OF ALL CULVERTS AND DRAINAGE WINDOWS.

- STATE ROAD
- COUNTY ROAD
- EXISTING ROAD
- NEW ROAD
- CULVERT
- CULVERT NUMBER
- WELL BORE
- NEW ROAD SEGMENT
- SILT FENCE AND/OR
- BRUSH BARRIERS



**Attachment**

**5**

**POCAHONTAS GAS LLC**



March 24, 2020

Mr. Rick Cooper, Director  
Department of Mines, Minerals and Energy  
Division of Gas and Oil  
135 Highlands Drive  
Lebanon, VA 24266

**Re: CBM CC35B**

Dear Mr. Cooper;

Pocahontas Gas LLC is requesting a location exception for the above referenced proposed well. The proposed well is strategically placed to de-gas the Buchanan Mining Company, 7 South Panel development headings, in the Pocahontas 3 Seam, therefore it cannot be located within the drilling window. This will be the third CBM well within the drilling unit. The proposed well is approximately 232 feet outside of the drilling window. If required, fiberglass casing will be installed across the Pocahontas 3 Seam to facilitate mining. A borehole directional survey will be conducted prior to the completion of the well.

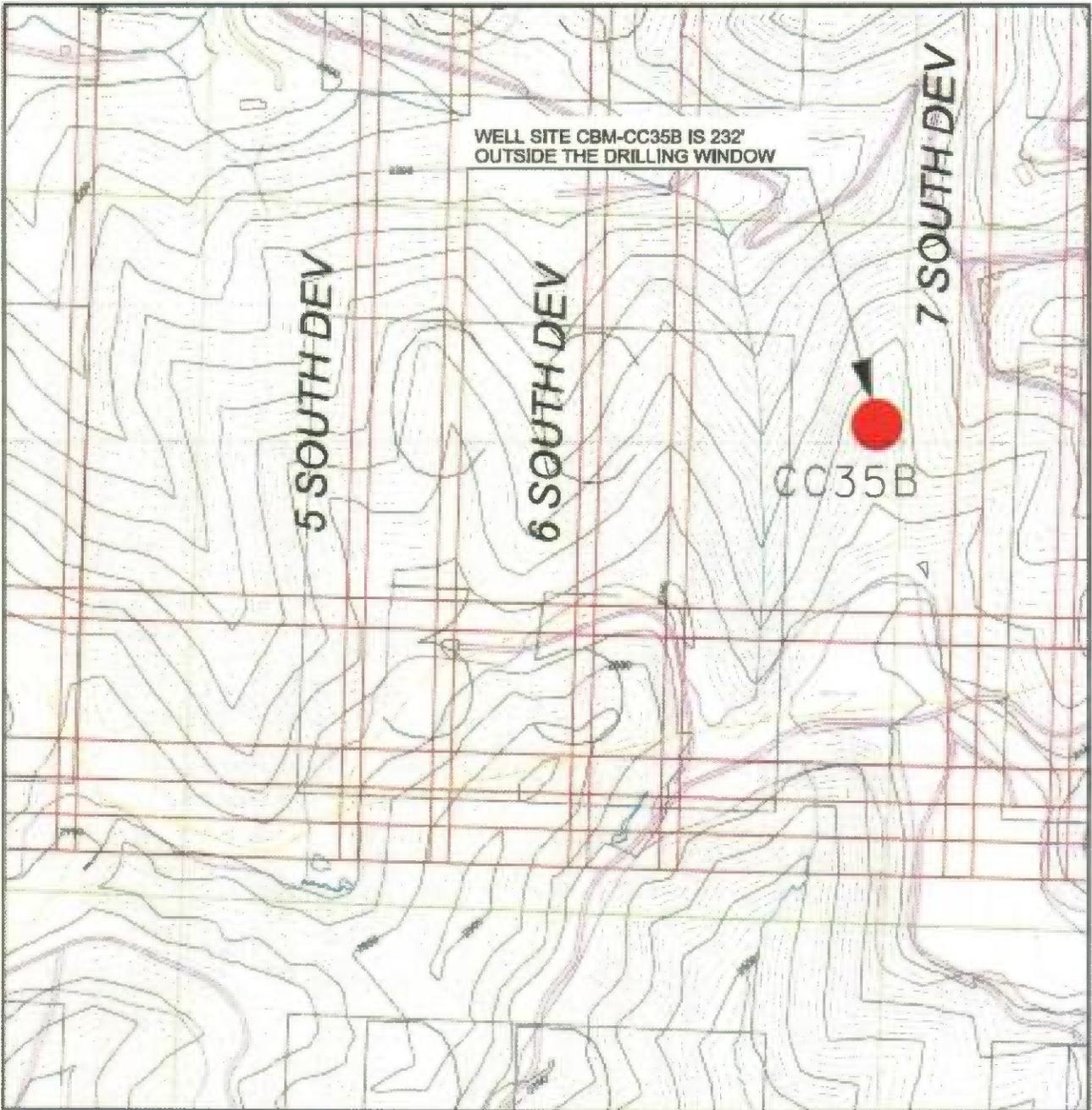
Therefore, based on these conditions, we hereby request a drilling unit location exception be granted for this well; for the prevention of waste of the natural resource, to protect correlative rights of the gas owners, and maximize the recovery of gas reserves beneath the unit. (see attached exhibit).

Sincerely,

*Bob Staton*

Bob Staton, M.S., P.G.  
*Permitting Agent III*

Cc: Sherri Scott, file CC35B



**LOCATION EXCEPTION EXHIBIT  
WELL NO. CBM-CC35B**

SCALE: 1" = 400'

POCAHONTAS GAS LLC  
P.O. BOX 570  
POUNDING MILL, VA 24637

DRAWN BY: PSD

DATE: 03-24-2020

FILE: LOC-EXCEPTION-CC35B

 BUCHANAN MINING COMPANY  
 BUCHANAN NO. 1 MINE 7 SOUTH PANEL - P3 SEAM