

Several Federal environmental laws were enacted to protect or preserve the nation's natural biological resources. One of these laws, the Fish and Wildlife Coordination Act (FWCA), addresses any Federal action that could result in the modification of a stream or body of water that might have effects on the fish and wildlife resources that depend on that that body of water or its associated habitats. If adverse impacts to these resources are identified, then steps must be considered that would minimize or prevent those impacts. The FWCA also requires, when possible, to look for opportunities to improve the resources. If your project is in or near water, FEMA may need to conduct additional consultation with the US Fish and Wildlife Service (USFWS) and state natural heritage program once your project is selected for funding.

In 1973, the Endangered Species Act (ESA) was enacted to specifically address the needs of those species determined to be threatened or in danger of becoming extinct. The ESA prohibits killing, harming or harassing – “taking” of a species that has been designated “threatened or endangered ” by the USFWS or the National Marine Fisheries Service (NMFS). This is one of the few environmental laws where there are criminal penalties associated with a violation, particularly the taking of a threatened or endangered species. Special procedures have been defined in Section 7 of the ESA that are required when a Federal action or funding is involved. It is these procedures along with the responsibilities under the FWCA that require a federal agency to evaluate proposed actions for potential impacts. The questions and guidance in this section are designed to provide information useful in determining if your proposed project is likely to trigger the FWCA or ESA, and if so, steps and costs that might be involved in reducing the potential impacts.

### **C.-1 Determining if there are protected species or designated critical habitat in the area affected by the project.**

To determine if there are protected species or their designated critical habitats in your project area, it is important to contact groups or agencies that are familiar with the species in your project area. This could include the United States Fish and Wildlife Service (USFWS) (<http://offices.fws.gov/statelinks.html>), the National Marine Fisheries Service (NMFS) for ocean-going fish species ([http://www.nmfs.noaa.gov/prot\\_res/overview/regional\\_map.html](http://www.nmfs.noaa.gov/prot_res/overview/regional_map.html)), or your state natural heritage program (which can be identified through the following USFWS site (<http://endangered.fws.gov/contacts.html>)). Other sources of information include local parks and recreation officials, or even a Natural Resources Department at a local college or university.

Applicants should, at a minimum, request information from the USFWS, state natural heritage program and NMFS (if proposed project is near waters that could contain ocean-going species, such as salmon) about the presence of protected species or designated critical habitat. Documented communication from these agencies is the best assurance of the presence or absence of protected species or critical habitat, and should be attached to the project application. In your communications you should:

- Indicate that you are applying for federal aid, and you are requesting information about the presence of protected species and habitat near your project area [click here to see an example letter].
- Include in your request the name of the nearest city and the names of the county and state where the project will occur.
- include a detailed description of the proposed project
- include a 1:24,000 scale USGS map showing the project boundaries, and photos of the project, if available [click here to see an example map]

These agencies typically take at least 30 days to respond, so it is important to initiate contact early. If you have not received an agency response as you are finalizing your application, it is a good idea to follow up with them to find out when you can expect it.

Read the responses from the USFWS, NMFS, and/or your state natural heritage program carefully. If these agencies indicate that there may be threatened or endangered species or their critical habitat in your project area, check “yes” to Section C, Question 1 of the Environmental/Historic Preservation Questions. You should only check “no” to Section C, Question 1 if the USFWS and/or NMFS have definitively confirmed that there are no protected species or critical habitat in the project area and they will not be affected by the proposed project. In all other cases, check “Not known.”

### **C.-2 Determining if your project removes vegetation.**

Except for projects that are completely within existing buildings or the limits of existing pavement, almost all construction activities involve the removal of vegetation.

“Vegetation” refers to any kind of plant in the natural environment or in an area that is landscaped, roadside grasses, and trees or shrubs. If vegetation is part of the scope of work for your project, you must provide documentation in your project application. This is especially important if the vegetation is in a designated critical habitat of a protected species or along a body of water.

If vegetation is being removed during project implementation, indicate the size of the area being cleared and a general description of the type of vegetation being removed in the project application’s scope of work section, and check “yes” to Section C, Question 2 of the Environmental/Historic Preservation questions.

### **C.-3 Determining if your project is near water or in a natural stream or body of water.**

You can determine if your project is in or near, any type of waterway or body of water by walking the entire project area, and all areas within 200 feet of the project site, and by referencing a USGS topographic map. Be sure to use a 1:24,000 scale map [click here to see an example map]; any scale greater than this may not show all of the water body features. Water bodies are represented on USGS topographic maps in blue. Take the map to the field with you. Mark the project area directly on the map, and indicate if there are other water bodies present that are not shown on the map. If your scope of work involves any work in the water, or there are any bodies of water present in the project area, then

check “yes” to Section C, Question 3 of the Environmental/Historic Preservation Questions and provide further documentation as described in Section D-5.

If there are any bodies of water in the project area, you will want to find out if the USFWS or NMFS has any concerns about your project as it relates to the FWCA. The best way to do this is contact the Field Office of the USFWS or NMFS that has jurisdiction in the project area (note that it will be a different division from the ESA Section 7 compliance office that you need to contact for ESA as mentioned above in C-1), as well as the local and state fish and wildlife agencies. Include the same type of information as described in C-1 as well as information about the affected bodies of water.

**C.-4 How to Address Adverse Effects.**

Adverse effects to protected species, their habitat, or habitat located in proximity to water involve the “taking” (killing) or harassment of any federally listed threatened or endangered species, or the removal or degradation of their habitat and habitat in close proximity to water. When considering adverse effects, be aware of ways your project could affect a nearby body of water. These could include: sedimentation or pollution runoff; changes in water flow into a body of water; changes to stream alignment or contouring riparian habitat; and any changes that may affect the normal flow or flood flow of a stream.

When possible, all projects should be designed to avoid adverse effects to protected species, their habitat, and habitat in close proximity to water. If adverse effects cannot be avoided, develop appropriate treatment measures into the scope of work so adverse effects are reduced and minimized. Listed below are some of the possible adverse effects that your project may have, together with possible treatment measures that you may include in your project to avoid, reduce, or minimize adverse effects. The list is illustrative, and does not include all adverse effects that a project may have or all of the ways to potentially treat those effects.

<b>Adverse effects</b>	<b>Treatment Measure</b>
<ul style="list-style-type: none"> <li>• Intentional or accidental take of threatened or endangered animals, ocean going fishes, or marine mammals</li> </ul>	<ul style="list-style-type: none"> <li>• Avoid adverse effects by realigning the project area to avoid protected species.</li> <li>• Avoid adverse impacts by constructing barriers to prevent protected species from entering the project area.</li> <li>• Avoid adverse effects by restricting construction activities to times of the year that protected species are not present in the project area.</li> <li>• Reduce or minimize adverse effects by removing and relocating protected species from the project area before construction activities begin.</li> </ul>

<ul style="list-style-type: none"><li>• Intentional or accidental take of threatened or endangered plants</li> <li>• Reduction in the quantity of quality of riparian habitat, critical habitat, essential fish habitat, or migratory bird flyways</li></ul>	<ul style="list-style-type: none"><li>• Avoid adverse effects by surveying the project area for protected plant species and fence those areas off from construction activities.</li><li>• Reduce and minimize adverse effects by removing and relocating protected species from the project area before construction activities begin.</li><li>• Reduce and minimize adverse effects by fencing the project area to prevent construction equipment from inadvertently straying off site near protected plant species.</li> <li>• Avoid adverse effects by realigning the project area to avoid protected habitat.</li><li>• Avoid, reduce or minimize adverse effects by building culverts that maintain the continuity of streams.</li><li>• Avoid, reduce or minimize adverse effects by restricting construction activities to times of the year that would minimize impacts to habitat (e.g., when the ground is frozen or times of low flow in streams).</li><li>• Avoid, reduce or minimize adverse effects by restricting equipment from operating in or near waterways.</li><li>• Reduce and minimize adverse effects by utilizing BMPs to reduce erosion and sedimentation; using in-stream erosion prevention measures</li><li>• Reduce and minimize adverse effects by surveying the project area for protected habitat and fencing those areas off from construction activities.</li><li>• Utilize equipment that would minimize effects to protected habitat.</li><li>• Compensate for adverse effects by planting trees and shrubs to promote habitat regeneration after construction activities are completed.</li></ul>
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### **C.-5 How to provide relevant and helpful support documentation.**

There are five important things to attach to your application as support documentation.

First, documentation of your contact with USFWS, NMFS, the state natural heritage program or wildlife agency, including:

- scanned and attached copies of response letters, faxes, or emails;
- summaries of relevant telephone conversations; and
- the status of any outstanding correspondence.

Second, provide narrative descriptions of the kinds of vegetation present and the character of nearby bodies of water in the comments section of Question C in the Environmental/Historic Preservation Questions. In the narrative, be sure to describe:

- the amount of vegetation that you will remove - For grasses and mowed areas, provide a unit measure of the area (e.g., 200 square feet). For trees and shrubs you should record how many individual plants you will remove.
- the kind of vegetation that is present in the area and the kind you will remove - If known, give both common and scientific names for the species.
- the setting in which the vegetation is located, for example:

Installing the piping will require the removal of about 40,000 square feet of roadside grasses, about 45 White pine trees (*Pinus strobus*) that are 25-foot tall and located in a small wooded area, and about 15 trees and shrubs (rhododendron and vaccinium) on the lawn of the sewage plant. One of the trees on the lawn is a White oak (*Quercus alba*) about 30 inches in diameter. The rest of the trees and shrubs on the lawn were planted by the city 15 years ago, and are ornamental varieties. About 30,000 square feet of cultivated grasses will also be removed from the lawn of the sewage plant.

- the name of the body of water (if any), the type of water body (e.g., wetland, intermittent stream, stream, river, pond, lake), its dimensions, function, and setting, for example:

In the area of the project, Jones Creek is about 10 feet across and 2 feet deep. Upstream of the culvert, the creek runs through the city park, and the banks are generally covered in mowed grasses. Due to excessive floodwaters during heavy rains, the banks of the creek directly upstream of the culvert have been severely eroded and contain no vegetation. Downstream of the culvert the creek gets much wider where the east fork of the creek joins in. On one side of the creek is the walking trail, the other side of the creek is woods. The bottom of the creek contains some gravel and stones, but is mostly full of sediment. As a result of this project, the severely eroded creek banks will have a chance to stabilize, thus reducing

the amount of sediment build-up that has been such a problem. The culvert upgrade would improve the conveyance of the creek and eliminate the bank erosion that is occurring.

- describe how close the project activities will be to the water body, and if the project could result in any changes to the water body, for example:

The culvert will be installed in Jones Creek where it runs under Main Street. The existing culvert will be removed with a Cat 416 backhoe, which will be operated from the road. In some cases, the backhoe may need to be operated adjacent to the road on the shoulder. The new culvert will be installed on the same day using the backhoe. Fill material will be brought in by dump truck that will not be operated in the creek. No equipment will be staged at the project site; if construction activities continue for more than 1 day, all equipment will be taken from the site and staged at the Road Commission equipment barn.

Third, attach to the application a 1:24,000 USGS topographic map indicating:

- the project site
- the location of construction activities
- the location of bodies of water

Fourth, include digital or scanned photographs of:

- the project site and project area
- any affected vegetation that will be removed. These photographs should be taken to clearly show what kind of vegetation will be removed, and where the vegetation is located in the context of its surroundings. For examples, [click here](#) [click here to see an example photos].
- the areas directly upstream and downstream of the project site
- the project area in the context of its surroundings.

Finally, indicate in your scope of work and as a line item in your cost estimate any actions you are taking to avoid, minimize, or reduce adverse impact to listed threatened or endangered species or their critical habitat that may be in your project area. You should also include this information in the comments box of Section C in the Environmental/Historic Preservation Questions.

Date

Name

United States Fish and Wildlife Service

Address

City State Zip

**Subject:** Request for information about proposed FEMA project; Pre-Disaster Mitigation Competitive (PDM-C) Program, in the Town of Blackrock, Seneca County, State

Dear Name:

The City of Blackrock has applied to the Federal Emergency Management Agency (FEMA) for a grant under FEMA's Pre-Disaster Mitigation-Competitive (PDM-C) program. PDM-C grants provide funding for measures designed to reduce or eliminate future disaster damage and disaster relief expenditures. The Town of Blackrock proposes to make stream improvements including channel straightening and stream bank armoring along Seneca Creek to alleviate flooding damage to Blackrock Road and the bridge over Seneca Creek. The project area is located next to Blackrock Road where it crosses Seneca Creek (see attached map).

One of the requirements for the FEMA PDM-C application is to identify the presence of any regulated resources in the project area. At this time, the city of Blackrock would like to inquire about resources regulated under the Endangered Species Act and the Fish and Wildlife Coordination Act in the proposed project area. Attached to this correspondence is a USGS map indicating the project area, pictures showing the project site and the nearby environment, a narrative describing the proposed scope of work, and site drawings showing the extent of the project activities.

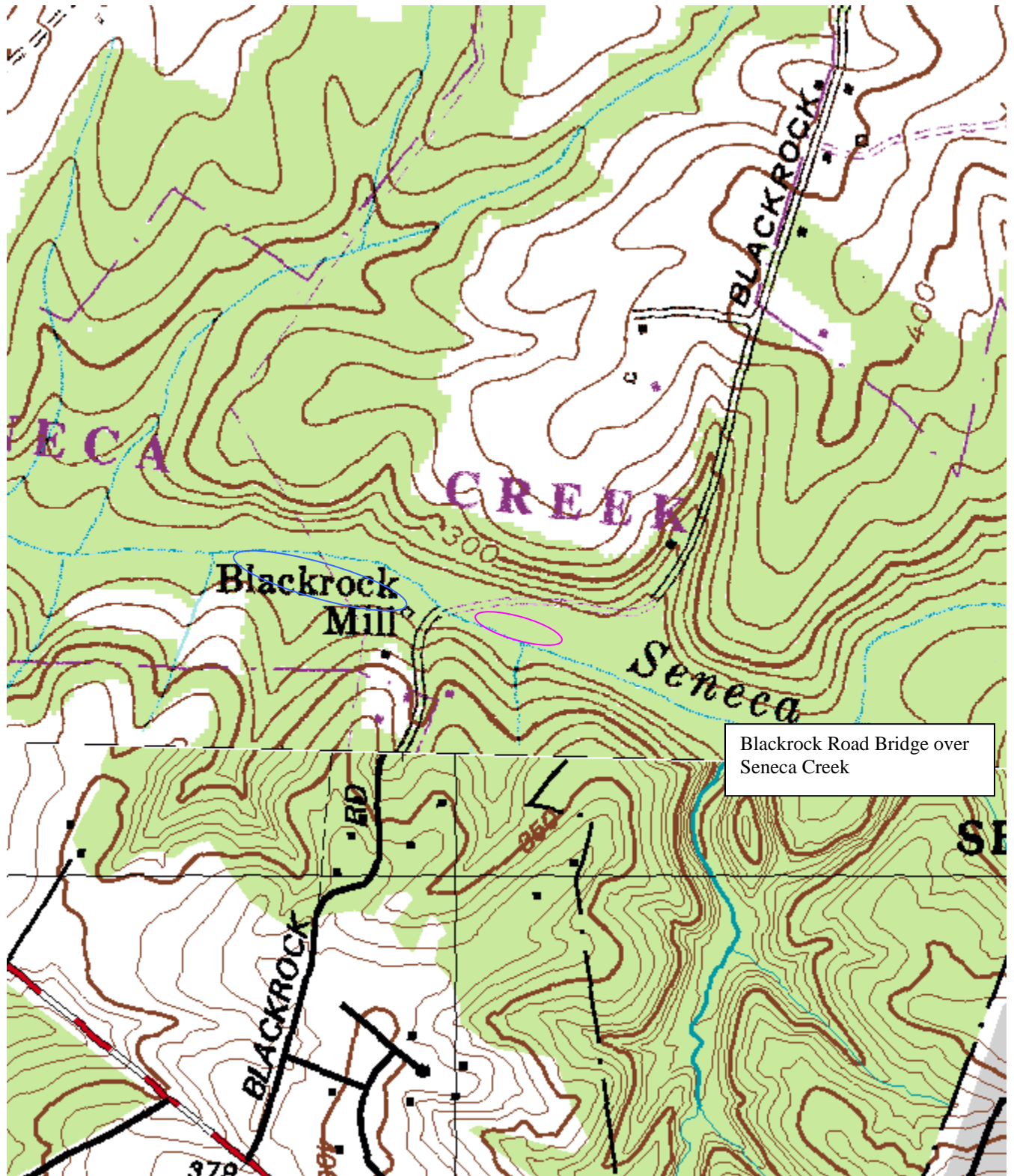
The proposed project involves straightening about 800 linear feet (lf) of the channel of Seneca Creek west of the bridge over Seneca Creek. This would require excavating the existing bank between 0 and 30 feet to the south to allow the stream to follow a straighter path. The excavated bank would be lined with rip-rap to protect it from future erosion. The second element of the project is upstream of the bridge over Seneca Creek, and involves the placement of rip-rap armor on about 400 lf of the north side of the stream (see photos).

The project area is mostly forested streamside. To realign the stream and armor the banks, about 30 sycamore and poplar trees would be removed (see site drawings).

Your assistance in this matter is greatly appreciated. If you have any questions regarding this project, please contact me by phone (xxx) xxx-xxxx, fax (xxx) xxx-xxxx, by email (Blackrock.us.town.state), or by letter at the letterhead address.

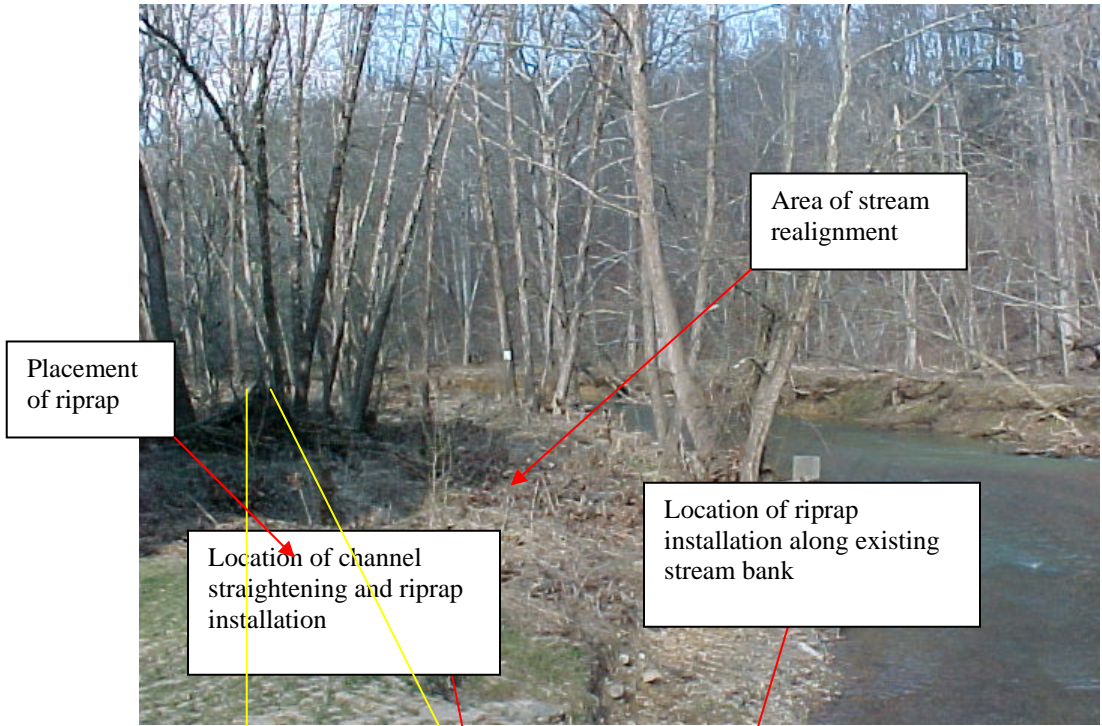
Sincerely,

Topographic maps can be ordered from the USGS directly (<http://topomaps.usgs.gov/>), or can be obtained free of charge online from the United States Department of Agriculture (<http://datagateway.nrcs.usda.gov/>).

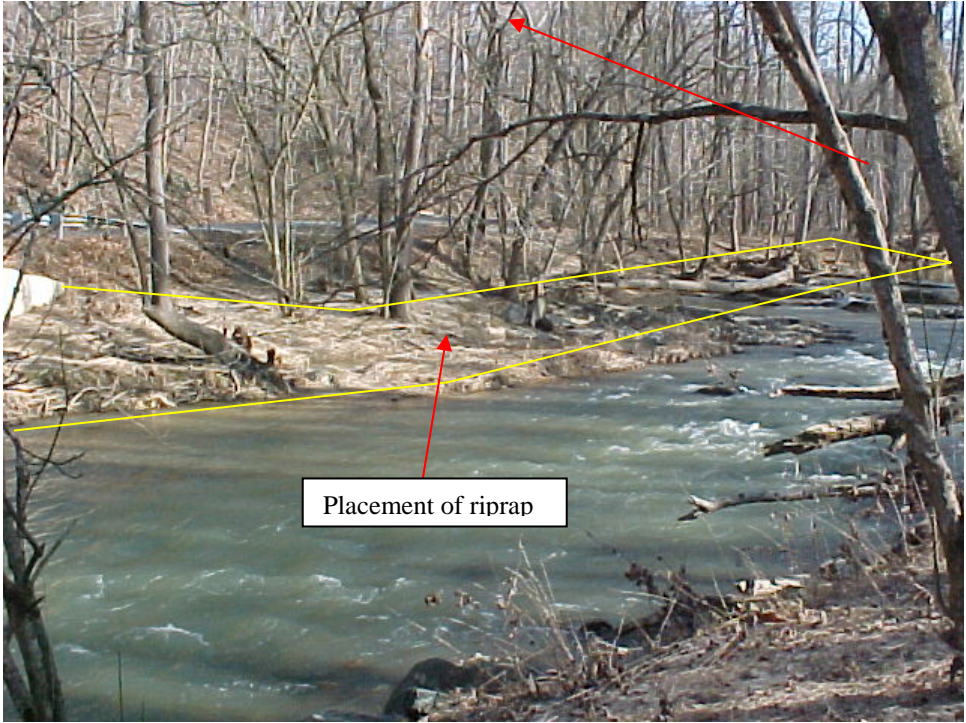


Blackrock Road Bridge over Seneca Creek





View showing approximate area of stream realignment and placement of riprap west of the bridge over Seneca Creek.



View showing approximate area of placement of riprap east of the bridge over Seneca Creek.