Authorization to Proceed (ATP)
Jordon Road Landslide High Priority
Abandoned Mine Land (AML) Reclamation Project
based on Categorical Exclusion (CX)
Perry County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the preliminary March 8, 2011, and final March 10, 2011, request for ATP with construction activity on the Jordon Road Landslide High Priority AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML) of the Kentucky Department for Natural Resources. OSM found that the appropriate request documents were submitted and/or referenced in the ATP documents of previously approved projects and support the need for the proposed construction activity. The information to update AMLIS Problem Area (PA) # KY-003907-SGA was submitted by DAML for OSM review with submission of the ATP request package. The AMLIS system is not operative at this time for input of new data by DAML or the OSM LFO. DAML noted that they will input this update data when the AMLIS is once again operative.

OSM reviewed the categorical exclusion (CX) certification prepared by DAML for this project. OSM determined that the construction activity requested under this project conforms to the exclusion criteria in 516 DM 2 and 13, does not involve any of the general exceptions in 516 DM 13.5(A)(33) or extraordinary circumstances listed in 516 DM 2, Appendix 2, and is excluded from further NEPA environmental review.

Please ensure compliance with the following provisions in the ATP request documents noted here for emphasis as follows:

• The DAML project notes that no tree removal is proposed outside the projects delineated unstable AML problem area, but that if tree removal is needed it will only take place between October 15 and March 31, or a habitat assessment or a presence/absence survey will be required. Please note that tree removal restrictions only pertain to the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height.

• As noted in the DAML ATP request letter, please ensure the abandoned house demolition debris is placed in a certified county landfill.

• Kentucky Design Branch staff determined that a Kentucky Division of Water (DOW) floodplain encroachment permit, DOW 401 Water Quality Certification, nor a U.S. Army Corps of Engineers (COE) 404 Nationwide Permit is necessary for the main project area or the waste area located southeast of Bulan, Kentucky, as long as long as waste area disturbance is kept over 150 feet from the stream bank. As noted in your request letter,

please adhere to this 150 foot restriction, or apply and obtain the necessary permits/authorizations and notify OSM of the change.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this ATP notification document, as verbally authorized by my staff on March 8 and 11, 2011, DAML is authorized to proceed with construction activity for this project as described in the ATP request documents submitted by DAML for this project and further conditioned in this notification, and expend Federal funds in accordance with AML grant terms and conditions.

Acting FOD 3/16/11

Joseph L. Blackburn, Field Office Director
OSM Lexington Field Office

Date

Memorandum

Date: March 16, 2011 3-16-11

To: Jordon Road Landslide High Priority Abandoned Mine Land (AML) Reclamation Project File ID# 99.09740000

From: Steve Cassel, Sr., AML Program Specialist
Lexington Field Office (LFO), Program Support Branch (PSB)

Subject: Review of "Authorization to Proceed" (ATP) Request

The Branch recommends that the Field Office Director (FOD) confirm the previous verbal authorizations given to the State of Kentucky to proceed with the construction activity proposed on the Jordon Road Landslide High Priority AML Reclamation Project. This is the first "high priority" non-emergency project in Kentucky that would previously be handled as an AML emergency project. This resulted from OSM terminating the Federal AML emergency program and Kentucky being in the process of determining if it will choose to administer an AML emergency program.

On March 7, 2011, OSM LFO and DAML met to formulate general procedures for processing "high priority" projects. Kentucky and OSM agreed to a process to expedite the ATP and NEPA review, so that the public would be protected as expeditiously as possible, while still complying with the OSM and grants rules pertaining to State non-emergency AML programs.

This first project was requested on the evening of March 8, 2011, just before about 4:00 PM. It included a very serious situation needing immediate response and involved a construction activity, building demolition, which presented new considerations. As a result, LFO used verbal ATP to keep response time to a minimum, while some additional procedures were worked out to make written authorizations in further projects more fluid and timely, so the State has written documentation of each step of project authorization.

Due to the extreme nature of this high priority AML problem, using authority delegated earlier in the day by the LFOD, the LFO AML Program Specialist Steve Cassel, authorized DAML Director Steve Hohmann during a phone conversation at about 4:10 PM on March 8, 2011, to proceed with the abandoned building demolition construction activity of this project. This authorization and justification is documented in the email sent from DAML dated March 8, 2011, at 4:19 PM, that is made part of the DAML ATP request package. DAML Director Hohmann noted that the abandoned building was being destabilized by AML landslide conditions, and threatened to move downslope into an occupied dwelling on George Street below.

AML Program Specialist Cassel provided a second verbal authorization to DAML Director Hohmann during a phone conversation on March 11, 2011, at about 12:24 PM.

DAML Director Hohmann explained that additional landslide debris was moving downslope from the Jordon Road level to property on the Anita Smith Landslide AML Project on George Street. The nearby waste area for the Anita Smith project was nearly full, and could not be used for this material. Director Hohmann indicated that they needed to haul the material to the waste area described in the full Jordon Road Landslide ATP proposal submitted on March 10, 2011.

Using the same authority described earlier, AML Program Specialist Cassel verbally authorized DAML Director Hohmann during the phone conversation to proceed with the full project construction activity requested in the ATP proposal and documented this in an email to DAML Director Hohmann dated March 11, 2011 at 4:29 PM, and reaffirmed the verbal ATP in an email dated March 14, 2011 at 11:00 AM. Copies are made part of this ATP package. The formal written authorization was finalized on Monday March 15, 2011, documenting the verbal authorizations for the record. The following documents LFO's reviews and findings that support the reasoning and verbal ATP's provided to DAML for the project.

The Branch prepared an ATP notice for the LFOD review. The Branch recommends that the FOD sign the Categorical Exclusion Determination (CX) and ATP notice in the space provided on each document for confirmation of the verbal authorizations to proceed on this project. The original signed ATP notice will be filed in the LFO AML project construction files and a copy will be sent to the Division of Abandoned Mine Lands (DAML) Director attached to a transmittal email, with an attachment of associated approval documents, consisting of a copy of the LFO review memorandum and signed CX. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

DAML did not designate a funding source for the construction work under the budget category entitled Project Costs (Non-Water Supply) of any of Kentucky's AML Annual Construction Grants (AG). In previous discussions, DNR indicated they would assign projects to a grant before they go to construction. Until a final AG and DAML accounting Location Code are assigned the LFO Project/Site ID # 99.097400000 was assigned to the project file for LFO tracking purposes until actual AG and Location Code numbers are assigned by DAML and can be inserted in the appropriate positions at the beginning and end of the LFO Project #. The demolition phase of this project was bided, awarded and completed on the night of March 8, 2011. The remaining work was bided and awarded on March 14, 2011 to Jackson and Jackson Reclamation, who was low bidder at $617,540.00. They mobilized and began work the next day.

An office review of the current and previously submitted Anita Smith Slide request documents was conducted as received initially on March 8, 2011 @ 4:10 PM for the house demolition activity and the full project ATP request documents on March 10, 2011, from DAML. The documents consisted of; project descriptions, a National

Environmental Policy Act (NEPA) review documented in a CX with agency consultation response letters attached; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost for PA# KY-003907-SGA.

A pre-approval field inspection of the proposed project was conducted on March 10, 2011, to review the earlier demolition activity and review the remaining proposed construction activity. The proposal was recommended for approval with no concerns or recommendations. Refer to report findings and photos in the LFO State AML Project Database.

The CX submitted for the construction activity at the site tiered off the NEPA review consultations and review for the previously authorized Anita Smith Slide project, located directly below and adjacent to the proposed project. The current and previous documents were reviewed and found to adequately evaluate the environmental concerns and impacts of the currently proposed construction activity within the current NEPA review guidance, except for asbestos, lead paint, or other considerations associated with the house demolition portion of the project. Due to the immediate need to take action to protect occupied homes below the abandoned house to be demolished; the asbestos, lead paint, etc. considerations were reviewed after the fact on March 9th through March14th, to determine if any compliance issues exist or after the fact mitigation measure were needed, and for DAML and OSM information purposes for similar considerations in future projects. In summary, no compliance or mitigation issues exist. These issues are further discussed later in the NEPA consultation summary areas of this memorandum.

The use of a CX is acceptable for the construction activity proposed in this project because all items on the CX have a response of "No." The project type does not meet any of the ten general exceptions, in 516 DM 13.5(B)(33), that would require preparation of an Environmental Assessment. The project involves: no more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, noncommercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. In addition, none of the twelve extraordinary circumstances listed in 516 DM 2, Appendix 2, exist on the project.

No significant impacts have been reported to this office or identified by the Branch. The Branch recommends that the Office of Surface Mining Reclamation and Enforcement (OSM) accept the CX submitted by the Kentucky DAML. The State's ATP request email, letter, and attachments summarized the responses from agencies consulted for the

NEPA review and discussed appropriate resolution of all their concerns and recommendations. The responses from agencies consulted for the NEPA review include the following comments and/or recommendations.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified no known state or federally threatened/endangered fish and wildlife in close proximity of the project area or the waste area. KDFWR does not anticipate any significant impacts on wildlife.

The designated DAML biological review staff reviewed the Kentucky State Nature Preserves Commission's (KSNPC) endangered, threatened and special concern reference databases in lieu of direct consultation. The findings are noted in the ATP request letter and an attached biological review memorandum for the main project area and in the Roy Gilbert Project NEPA review of the Carol Walters/Margaret Brown waste of that project, which is also to be used as the primary waste area of the Jordan Road Landslide project as noted in LFO AML Program Specialist Steve Cassel's email dated March 11, 2011. In both areas, DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and no species of State concern is known to occur within a 1-mile radius of the project.

In a meeting held in February 2010 between the OSM Lexington Field Office (LFO) LFO, Kentucky Field Office (KFO) in Frankfort, Kentucky, of the U.S. Fish and Wildlife Service (USFWS) and DAML; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the KFO, utilizing the agreements in the September 18, 2009, Memorandum of Agreement (MOA) signed by the OSM, LFO and USFWS KFO. This document outlined the acceptable conditions that the projects potential impacts can have where the KFO will not need to be further contacted for comment. When the conditions within the agreement are present, processing of the ATP may proceed with the confidence that the biological environment is being protected and provisions of Section 7 of the Endangered Species Act have been fulfilled. It was agreed to by all parties, acknowledging that LFO would retain the final review to determine if the NEPA documentation is complete.

The project activities meet the following conditions noted in the MOA to ensure protection of federally listed species; specifically the Indiana bat, Gray bat, and freshwater fishes and mussels:

- With the exception of trees directly impacted by the AML problem, the project does not include the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing snags with loose bark that are 9 inch or greater diameter at breast height and at least 10 feet in height, during the period of April 1 to October 15 (specifically the area above and below Jordan Road within the delineated project limits

are within an AML problem impacted unstable area and the designated waste area has already had all trees removed during previous disposal activities and AML projects);

- The project activity does not occur in "Known Indiana Bat Habitat" identified on the map attached to the MOA and the GIS files provided by USFWS KFO on November 2, 2009, used to generate the map (a copy of a section of the MOA GIS layer map on which the project coordinates are located is attached to the DAML biological review memorandum as proof of this determination);

- No caves or clifflines will be disturbed;

- No mine portal/shaft closures are proposed, i.e. mine portal/shafts are to be left undisturbed or;

- No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, upper Cumberland, Green, and Licking River basins;

- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

- The DAML ATP request letter and biological review memorandum also note that if any tree removal is later found to be necessary outside the exempt AML problem area between October 15 and March 31, a habitat assessment or mist-net survey will be required.

With the specifics of the proposal meeting the criteria set out in the MOA, OSM agrees with DAML's determination that the proposed project would not adversely impact the species if these conditions are present. With this information, it is concluded that the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records did not indicate any known archaeological sites directly in the project area and past disturbance to the project area make it unlikely that archaeological sites will be preserved, i.e. the project area does not appear to have any potential for adversely affecting archaeological sites. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) determined that the proposed project will not impact any National Register Properties or sites, no properties currently listed in the National Register of Historic Places are within the project areas, and an archaeological survey will not be necessary, since all reclamation activities are restricted to previously disturbed areas or areas with low site potential, which fulfills the

responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

Environmental and Public Protection Cabinet (EPPC) (changed to the Environment and Energy Cabinet (EEC) in July 2008) Secretary order dated December 12, 2006, transferred authority for issuance of Clean Water Act (CWA) Section 401 Water Quality Certifications (WQC) associated with surface coal mine operations, to include any reclamation projects proposed by the DAML, to the Kentucky Department for Natural Resources (DNR). DNR assigned this responsibility to the DAML Design Branch. In a meeting held in February 2010 between the OSM Lexington Field Office (LFO), Kentucky Field Office (KFO) in Frankfort, Kentucky, of the U.S. Fish and Wildlife Service (USFWS) and DAML to primarily discuss fish and wildlife issues; Steve Hohmann, Director of DAML, offered to coordinate NEPA consultation with the U.S. Army Corps of Engineers (COE) to assess the need for and compliance with the permit requirements of Section 404 of the Clean Water Act (CWA) by application of criteria provided by the COE. This was beneficial to both offices since these issues are inter-related.

Under a 2005 agreement with the DOW Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set of Federal Emergency Management Agency (FEMA) floodplain maps that include the project area.

As a result, DAML applies each responsible agency's criteria by agreement or physically consults with the DMP and DOW concerning CWA 401 WQC and floodplain permits to "Construct Across or Along a Stream", and with the COE concerning CWA 404 permits. This review has been centralized with DAML's Design Branch, whose staff has previous experience in this area and with the Kentucky DOW. DAML determined from the written description that the project does not impact a stream, wetland, or floodplain that requires a 401 WQC, a 404 CWA permit, or a DOW floodplain permit.

The Design Branch only cautioned that the primary waste area, which is the same as and previously authorized by OSM for use as the Carol Walters and Margaret Brown Waste area of the Roy Gilbert Group AML Project and the waste area near the Shirley Combs Site of the Shirley Combs Group AML Project, must be kept over 150 feet from the stream. This is noted in DAML's Jordon Road Slide AML project ATP request letter and will be noted in OSM authorization of this project.

This project involved demolition of an abandoned house, which is a construction activity that Kentucky has not proposed in the past and the LFO has not had cause to evaluate for NEPA compliance. DAML explained verbally on March 8, 2011, that the AML impacts in the area were destabilizing the already dilapidated structure which was

imminently threatening an occupied dwelling below. DAML noted that local authorities indicated the abandoned house was a danger and needed to be removed. In addition, the abandoned building would need to be removed in order to construct abatement measures to stabilize the AML impacted area. LFO decided to act to protect the occupied dwelling and then perform NEPA evaluation afterwards. DAML was verbally authorized to proceed that evening with demolition of the abandoned house.

Initially, LFO was concerned that compliance with asbestos and lead paint requirements should be investigated. LFO Program Specialist Steve Cassel met with Riley Stucker, Environmental Inspector for the Division for Air Quality (DAQ), Frankfort Regional Office of the Kentucky Department of Environmental Protection at 200 Fair Oaks Lane, 3rd Floor, Frankfort, Kentucky, 502-564-3358. Mr. Stucker noted that the Environmental Inspector for the Hazard, KY area was Eli Caudell, Hazard Regional Office, however, he agreed to answer my questions about asbestos concerns in demolition of buildings. Mr. Stucker also recommended I contact Parker Moore in the same building, however he is in the central office of the Division of Air Quality.

Both informed me that for demolition of buildings, the DAQ must be notified 10 working days prior to demolition and a survey of the building must be made to determine characteristics of any asbestos present in the building. However, upon further description of the type of situation encountered in emergency or high priority AML situations, they noted there were exceptions and alternate requirements for specialized circumstances. They explained that if a house/building is ready to fall down (could be by impacts from an AML problem) or there was an ordered demolition for safety reasons by a local or State government agency/official, then the 10 working day notification is eliminated, the DAQ should be notified within a day after demolition, no survey is needed (due to personal safety concerns for surveyors), and once the house is on the ground, a certified person must determine if the debris needs special handling and whether the debris must be disposed by a certified handler to a waste disposal landfill that is certified to handle asbestos waste (noted there were about 40 landfills certified in Kentucky).

Upon further questioning, I was informed that these requirements only applied to disposal of two or more building in a project. If only one building is being demolished during a project, the demolition does not need to be reported to DAQ and the noted rules do not apply. In addition, the debris waste may be disposed at any landfill certified to handle household waste. Since this project only involved the demolition of one abandoned structure, the DAQ was not required to be notified. However, it was documented that local authorities did authorize the demolition of the abandoned building and DAML noted in their ATP request letter that the demolition debris would be placed in a certified county landfill.

Mr. Stucker and Mr. Moore both recommended that I contact Jenifer Bell of the Public Safety Commission at 502-564-4537 to discuss compliance with lead paint requirements. Prior to getting in contact I reviewed internet sites pertaining to lead paint requirements. It became obvious that the laws governing this issue are primarily concerned with protection of children six years old and younger from lead paint exposure from repair and renovation activity of buildings and demolition specifically pertaining to these activities, where it might be expected that children could be present during or after the activity. Jenifer Bell, confirmed this assessment and further commented that the total demolition of a building is not regulated by lead paint rules, as children are not expected to be present and the building will be totally removed. She also added that she is not aware of any restrictions on the debris from a total demolition activity, as it pertains to lead paint, and the debris may be disposed of at any certified landfill.

Since these individuals are routinely involved with this type activity, I asked if they were aware of any other agency or laws that would govern environmental concerns pertaining to building demolition. They were unaware of any and just referred me to each other. As a result, LFO determined that no further NEPA review or requirements are need for the building demolition issue at this project and this information will be applied to possible demolition activities in future AML projects.

The comments from the Kentucky State Clearinghouse, Kentucky's "Single Point of Contact" (SPOC) pertaining to AML Non-Water Supply projects included no comments that affect this proposal. The information to update PA # KY-003907-SGA was prepared by DAML for OSM review with the ATP request. Currently the AMLIS is not operational for data input. DAML states in their ATP request letter that they will input this information at a later date in the future when the AMLIS is once again operational. This information reflects the changes in units and costs based upon the design and classification of the funded category. The PAD submitted for this ATP does not represent a "new Problem Area" after December 20, 2006, requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007); therefore, no FOD approval forms were prepared for FOD signature.

The Area Office AML staff were notified of the verbal authorizations of this project and will be further notified of this project authorization by cc'd copy of the email transmitting the signed ATP to DAML of this project or email of an updated State AML Project List and availability of the project documents on the LFO State AML reclamation project tracking database.

UNITED STATES DEPARTMENT OF THE INTERIOR
Office Of Surface Mining Reclamation And Enforcement
ABANDONED MINE LANDS
CATEGORICAL EXCLUSION CERTIFICATION AND DETERMINATION

State: KY PA: KY 3907 SGA
Project Name: Jordan Street Slide High Priority AML Reclamation Project
Project Description: Stabilization of a large landslide that affects a residential street (Jordan Street in Hazard, Perry County) and threatens several homes below.

I. GENERAL EXCEPTIONS

Does the project type specifically require an EA in 516 DM 6, Appendix 8, as specified in Item I of the attached instructions?	No [x]	Yes [ ]

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety?	No [x]	Yes [ ]
An adverse effect on any of the following unique geographic characteristics? If 'yes,' check the ones that apply:	No [x]	Yes [ ]

[ ] Parks (state, local or National)
[ ] Recreation or Refuge Lands
[ ] Wilderness Areas
[ ] Ecologically Significant or Critical Areas
[ ] Prime Farmlands
[ ] Wild or Scenic Rivers
[ ] Wetlands
[ ] Floodplains
[ ] Sole or Principal Drinking Water Aquifers

Highly controversial environmental effects?	No [x]	Yes [ ]
Highly uncertain and potentially significant environmental effects or unique or unknown environmental risks?	No [x]	Yes [ ]
A precedent for future action or a decision in principle about future actions with potentially significant environmental effects?	No [x]	Yes [ ]
Directly related to other actions with individually insignificant but cumulatively significant environmental effects?	No [x]	Yes [ ]
Adverse effects on properties listed or eligible for listing on the National Register of Historic Places?	No [x]	Yes [ ]
Adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species?	No [x]	Yes [ ]

Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Wetlands Protection) or The Fish and Wildlife Coordination Act? No [x] Yes [ ]

Threaten to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment? No [x] Yes [ ]

III. RESOURCE IMPACT EXCEPTIONS

Are there any unresolved issues or adverse effects requiring specialized mitigation for any of the following resources? If yes, check the ones that apply. No [x] Yes [ ]

[ ] Topography
[ ] Land Use (includes prime farmland)
[ ] Soils
[ ] Vegetation (includes wetlands)
[ ] Hydrology
[ ] Fish and Wildlife
[ ] Historic and Cultural
[ ] Recreation
[ ] Air Quality
[ ] Noise
[ ] Other (includes socio-economics)

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann Date: 3/8/11

Name and Title: Steve Hohmann, Director – Kentucky Division of Abandoned Mine Lands

VI. OSM DETERMINATION

3-16-11

[✓] This project conforms with the exclusion criteria in 516 Dm 6, Appendix 8, and is excluded from further NEPA compliance.

[ ] This project does not conform with the exclusion criteria in 516 DM 6, Appendix 8, and requires an environmental assessment.

Signature: [illegible] Date: 3/16/11

Name and Title: Acting Field Office Director