Authorization to Proceed (ATP) Amendment

Lynn Leslie Abandoned Mine Land (AML) Reclamation Project
based on Finding of No Significant Impact (FONSI)
Floyd County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the January 12, 2011, request for ATP with construction activity on the Lynn Leslie 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 appear to support the need for the proposed construction activity. The information to enter new AMLIS Problem Area (PA) # KY-004060-SGA was submitted by DAML for OSM review prior to submission of the ATP request package and I approved it on January 11, 2011, in accordance with OSM Directive AML-1-2 (June 22, 2007). 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 new PA data when the AMLIS is once again operative.

OSM thoroughly reviewed the environmental assessment (EA) prepared by DAML for this project. OSM determined that the EA adequately discusses the environmental issues and impacts associated with the construction of the project. Based on the analysis in the EA, I have determined that reclamation of this abandoned mine site would not have significant effects on the quality of the human environment. Therefore, I conclude that no environmental impact statement is necessary.

Please ensure compliance with the following provisions in the ATP request documents noted here for emphasis or the authorization of this project is further conditioned as follows:

- No tree removal is proposed or authorized for this project, except for the trees to be removed within the exempted AML problem landslide; area and the waste area is a field with no trees.

- DAML staff determined that a floodplain encroachment permit to "Construct Across or Along a Stream" should be applied for and obtained for the project. As noted in the ATP request package and EA, construction should not start until the permit has been issued. Construction activity must comply with the requirements of this permit.

Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual and my signature on this ATP notification document, 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.

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

1/25/11
Date

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Lynn Leslie
Abandoned Mine Lands (AML) Project
Floyd County, Kentucky

The Commonwealth of Kentucky submitted an Authorization to Proceed with Construction Activity (ATP) request for Federal AML grant funds to the Office of Surface Mining Reclamation and Enforcement (OSM) for this project. The ATP request consists of a request letter, Environmental Assessment (EA) with consultation correspondence, project description, location map, AML Inventory System (AMLIS) Problem Area (PA) Description forms, and other supporting enclosures. The project area may be centrally located on the Prestonsburg, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 40' 34" North Latitude and 82° 46' 38" West Longitude near the community of Prestonsburg, Kentucky. The project location, AML problems to be addressed and proposed reclamation activity/cost are also available at http://www.osmre.gov in the AMLIS under PA# KY-004060-SGA. The project involves reclamation of AML slide conditions consisting of excavation of an unstable hillside to rock and construction of a concreted wall to replace an existing brick wall, installation of surface and subsurface drains.

OSM has thoroughly reviewed the EA prepared for this project by the Kentucky Division of Abandoned Mine Lands (DAML) and determined that it adequately discusses the environmental issues and impacts as required by the National Environmental Policy Act (NEPA) for OSM abandoned mine lands reclamation grant construction activities for authorization purposes.

Based on the analysis in the EA, I find that the construction activity performed under this project will not have significant impacts on the quality of the human environment. Therefore, I conclude that a detailed Environmental Impact Statement is unnecessary. My specific reasons are as follows:

The alternative to not fund the project would result in no favorable impacts and the adverse impacts would continue unabated. The long-term beneficial impact of the proposed action will result in the protection of the health, safety, general welfare, and property of the local citizens and other persons who may come in contact with these AML conditions. No long-term adverse impacts are anticipated. Short-term environmental impacts are limited to sedimentation, noise, and inconvenience to the local residents while the project is constructed. Sedimentation will be controlled by using silt control and prompt revegetation of the disturbed area. Noise, dust, and other inconveniences to local residents are unavoidable impacts related to construction activities.

All appropriate government agencies were consulted or their review criteria applied by agreement. As a result, it was determined that the project area does not contain or significantly affect threatened or endangered species or their habitat, jurisdictional wetlands, cultural or historic values, prime and unique farmland values, recreational resources, or Class I air quality regions. To reduce impacts from the project, the recommendations made by the agencies consulted were considered and, as appropriate, incorporated into the EA prepared by DAML and/or as an element of their request for ATP with construction submitted for OSM authorization. The responses from agencies consulted for the National Environmental Policy Act (NEPA) review include the following comments and/or recommendations:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified one known federally threatened/endangered fish and wildlife, the Indiana bat, within a 10 mile radius of the project area. They also identified records of three state listed species of concern or threatened within 1 mile radius of the project area. KDFWR does not anticipate any significant impacts on these wildlife, if erosion control measures are implemented and maintained. DAML always included erosion control and sediment control measures as part of their project, including this project, as noted in the project description.

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. DAML found that KSNPC data indicated one federally listed threatened or endangered species, the Indiana bat, within a 10-mile radius and one species of State concern known to occur within a 1-mile radius of the project. DAML listed and discussed each species noted above in the biological review memorandum, the EA, and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

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.

After review of the ATP documents for this project, which included consultation with the KSNPC and the KDFWR, DAML determined that additional consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species (Federal Assistance Manual (FAM) Chapter 5-11-15, A. 3.)

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 (and the waste area is a field with no trees);

- 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.

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, they found 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, no systematic archaeological survey has been conducted in the immediate project area, and past disturbance to the project area make it unlikely that archaeological sites will be preserved. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) determined that the proposed project will not impact any National Register Properties or sites and an archaeological survey will not be necessary, 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. DNR assigned this responsibility to their Division of Mine Permits (DMP).The DMP further delegated this responsibility to DAML, with consultation as needed on a case by case basis. In addition, the DAML Director in a meeting held in February 2010, offered and agreed to coordinate consultation with the U.S. Army Corps of Engineers (COE) concerning CWA 404 (CWA) permits, as DAML had been doing without an agreement in the past. OSM LFO accepted DAML's offer to conduct this consultation.

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 or wetland that

requires a 401 WQC or a 404 CWA permit. However, they did determine that a floodplain permit will be needed. DAML states in their ATP request letter, project description, and EA, they will not fund this project until all required permits and authorizations are issued, prior to the onset of construction. The OSM authorization of this project will be conditioned to reflect this requirement.

1-25-11

OSM Environmental Reviewer
AML Program Specialist

Date

1/25/11

Joseph L. Blackburn
Field Office Director

Date

Memorandum

Date: January 25, 2010

To: Lynn Leslie Abandoned Mine Land (AML) Reclamation Project File ID# 99.089030000

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) authorize the State of Kentucky to proceed with the construction activity proposed on the Lynn Leslie AML Reclamation Project. The Branch prepared an ATP notice and Finding of No Significant Impact (FONSI) for the FOD review. The Branch recommends that the FOD sign the FONSI, and ATP notice in the space provided on each document. 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 FONSI. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated January 12, 2011, was received at LFO January 12, 2011. The ATP was processed within 8 working days; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 13 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

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. The LFO Project/Site ID # 99.089030000 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 #. No specific bid advertisement, bid opening, or construction completion dates were provided by DAML in the ATP request letter, therefore I inserted dates in the database based on the ATP request letter stating a recent phone conversation comment with the DAML Director that these activities will occur as soon as possible. The following proposed dates were assigned and entered by LFO for database tracking purposes: Bid Advertisement Date was entered as March 1, 2011, Contract Award was entered as April 1, 2011, and Contract/Construction Completion was entered as April 1, 2012.

An office review of the request documents was conducted. The documents consisted of; a project description, a location map, a National Environmental Policy Act (NEPA) review documented in an Environmental Assessment (EA) 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 estimates for PA# KY-004060-SGA.

A pre-approval field inspection of the proposed project was deemed unnecessary, since the project area was previously evaluated by OSM under AML emergency complaint investigation Lynn Leslie Landslide LFO# P1994-311B on November 22, 1994. The AML problems were found to meet the seriousness criteria to be declared OSM federal emergency project Lynn Leslie Landslide FRP# KY-1995-012 on Marcy 30 1995. I attached a copy of this investigation file that includes the Kentucky eligibility determination, to the DAML ATP request file. In addition no unique characteristics warranting special field verification were noted and it wasn't selected for field verification under the EY 2011 Oversight Agreement.

The EA submitted for the construction activity at the site was reviewed and found to adequately document the environmental review of the construction activity within the current NEPA review guidance. 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 EA submitted by the Kentucky DAML. The EA prepared by the State and the State's ATP request 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 are summarized in the FONSI prepared by OSM for the EA.

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-004060-SGA was prepared by DAML for OSM review and LFO FOD approval prior to the ATP request. PA # KY-004060-SGA represents a "new Problem Area" requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007). A FOD approval form was prepared for the PA and signed by the LFO FOD on January 11, 2011. The signed form will be kept on file at LFO and a copy was transmitted to DAML by email on January 11, 2011. Currently the AMLIS is not operational for data input. DAML stated in their PA approval request that they will input this information at a later date in the future when the AMLIS is once again operational.

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

Lynn Leslie

Abandoned Mine Lands (AML) Reclamation Project

ENVIRONMENTAL ASSESSMENT

A. Description of the Proposed Action:

The proposed project (2.0 acres total) consists of the construction of drainage ditches and barrier walls, along with the excavation of an unstable area to rock to eliminate problems at the Lynn Leslie residence in the city of Prestonsburg, in Floyd County. This environmental assessment is required because the project requires a floodplain permit. Three state agencies and two state agency databases were consulted; their response letters/emails and a memorandum regarding the KSNPC database search results are enclosed.

B. Need for the Proposed Action:

An active slide behind the Lynn Leslie house and pool continues to slip, which is damaging an existing brick wall installed for support. A busted pipe installed during the previous Lynn Leslie Landslide, KY-95-012, OSM emergency project is also causing drainage problems at the Leslie house seat level. The proposed project will mitigate problems rated as Priority 1. The problems are further described in the description for national AML inventory problem area # KY 4060 SGA.

C. Alternatives Considered:

- Reclaim the unstable slope and correct drainage problems at the Leslie residence in order to alleviate the hazards to human safety and property, caused by pre-law mining features.

- Take no action, allowing the human health hazards to continue.

C.1. Preferred Alternative:

The proposed project (2.0 acres total) consists of the excavation of an unstable hillside to rock and construction a concrete wall to replace an existing brick wall. A subdrain will be placed above the slide to remove water from the area. The water will outlet into a concrete ditch and continue into an existing drop box at the road. A concrete wall will be constructed below the temporary access to prevent any material from sliding after construction.

The waste area is a cleared field to the west of the Leslie residence at 37° 39' 43.6" latitude and 82° 46' 59.5" longitude. No disturbance of any stream reach is planned. Construction disturbances will be kept to a minimum, topsoiled (or alternate topsoiled), seeded and mulched as soon as practical.

C.2. No Action:

Should the Commonwealth take no action, people could be injured and property could be damaged from abandoned mine land problems.

D. Affected Environment:

D.1. General Setting:

The Lynn Leslie project site is located along North Central Avenue, in the city of Prestonsburg, in Floyd County. The predominant land uses in the vicinity are residential, commercial (small businesses), agricultural, and forestland. Second growth, unmanaged upland hardwood forest, coal mines and natural gas wells are on the steep slopes.

D.2. Affected Resources:

Resources that could, but will not, be negatively affected by the proposed project include:

- Historic/Cultural
- Fish and Wildlife/Plants
- Soils
- Agricultural
- Recreation
- Small Business Use
- Air Quality
- Noise
- Topography
- Other (Socioeconomic or Political)

The following agencies and databases were consulted to identify resources that may occur in the project vicinity:

- Kentucky Department of Fish and Wildlife Resources (KDFWR)
- Kentucky Division of Mine Permits (DMP) floodplain database
- Kentucky Heritage Council (KHC)
- Kentucky Office of State Archaeology (OSA)
- Kentucky State Nature Preserves Commission (KSNPC) database
- Kentucky Division of Abandoned Mine Lands- Design Branch (DAML)

E. Environmental Impacts of the Proposed Alternative:

The following resources will not be significantly impacted by reclamation activities using the preferred alternative:

- Historic/Cultural Resources
- Fish and Wildlife/Plants
- Soils
- Agricultural
- Recreation
- Small Business Use
- Air Quality
- Noise
- Topography
- Other (Socioeconomic or Political)

The proposed project will not adversely impact low income or minority persons.

E.1.a. Hydrology:

A formulated erosion, sediment, and drainage control plan will be implemented during construction, to minimize sedimentation of receiving streams. This plan includes hay-bale silt checks, silt fences, road culverts, surface ditches and prompt revegetation of disturbed areas. The completed project will provide non-eroding drainage controls. The project will also provide a vigorous, complete cover of perennial vegetation, which will result in less stream sedimentation after project construction. All drainage controls will be implemented throughout the life of the project. Therefore, the hydrology of the project areas and downstream areas will suffer no long-term negative impacts due to construction of this project.

The Kentucky Division of Abandoned Mine Lands (DAML), Design Branch, reviewed information concerning the proposed project sites, and determined that no WQC/COE permit will be required. However, a floodplain permit is required for the site. This division is applying for all necessary permits and construction will not start until they have been received.

E.1.b. Fish and Wildlife/Plants

The KSNPC database researched by AML staff revealed one species of state concern, monitored by the KSNPC, is known to occur within one mile, and that one species listed as threatened or endangered under the United States Endangered Species Act (USESA) are known to occur within ten miles of the project site. The species noted in the search are the:

- Longsolid Mussel (*Fusconaia subrotunda* – KSNPC Historical)
- Indiana Bat (*Myotis sodalist* – federal Endangered)

According to the memo by Keith Coleman, dated November 29, 2010, neither of these species should be negatively impacted by the proposed reclamation work.

Although, the entire state of Kentucky has been declared to be potential Indiana Bat habitat, no mine openings or underground caverns are proposed to be closed and tree removal is only anticipated within the exempt slide area. The Longsolid is a mussel which inhabits gravel bars and deep pools within medium-sized streams to large rivers. Since no disturbances are planned for any stream channels, and stringent sediment and erosion control measures are included, there should be no negative impacts to the Longsolid Mussel.

E.1.c. Cumulative Environmental Impact:

No significant environmental impacts should occur as a result of construction of the preferred alternative in the watershed where the proposed construction site is located. While numerous AML reclamation projects have been constructed throughout the state, each has been found through the NEPA process to have no significant impact upon the environment. Therefore, as neither previous projects nor the proposed alternative will have any significant impact upon the environment within the watershed, there will be no cumulative impact as a result of the construction of this proposed AML project.

E.2. No Action Alternative:

E.2.a. Hydrology:

Existing hydrologic conditions would remain unchanged with the no-action alternative.

E.2.b. Fish and Wildlife/Plants:

Existing plant and animal species would remain unchanged with the no-action alternative.

F. <u>Summary</u>:

The Commonwealth considered two reclamation options:

1. Reclaim health and safety hazards from pre-law mining.
2. Take no action.

The first option was selected due to its overall advantages.

G. <u>Consultations</u>:

The following agencies and databases were consulted prior to preparation of this document:

- Kentucky Department of Fish and Wildlife Resources (KDFWR)
- Kentucky State Nature Preserves Commission (KSNPC) BIOTICS database.
- Office of State Archaeology, University of Kentucky (OSA)
- Kentucky Heritage Council, State Historic Preservation Officer (KHC)
- Kentucky Division of Water (DOW) floodplain database

H. Preparers/Reviewers:

Kentucky Division of Abandoned Mine Lands Personnel:

- Jay Mitchell, Environmental Technologist III
- Keith Coleman, Staff Biologist
- Ryan Howell, Environmental Control Supervisor
- Bill Overman, Program Development Branch Manager

Steve Hohmann 1/12/11

Steve Hohmann, Director Date