

Authorization to Proceed (ATP)

Back Branch Landslide High Priority Abandoned Mine Land (AML) Reclamation Project based on Categorical Exclusion (CX) Finding Magoffin County, Kentucky

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the April 26, 2011, request for ATP with construction activity on the Back Branch 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, and appear to support the need for the proposed construction activity.

The information to enter new AMLIS Problem Area (PA) # KY-004129-SGA was submitted by DAML for OSM review and approval with 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 new PA data when the AMLIS is once again operative. I have signed an approval form for the PA in accordance with OSM Directive AML-1-2 (June 22, 2007).

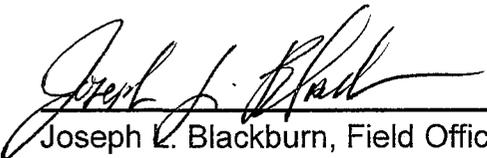
OSM reviewed the categorical exclusion (CX) certification prepared by DAML for this project. OSM determined that the construction activity requested under this project conforms to the exclusion criteria in 516 DM 2 and 13, does not involve any of the general exceptions in 516 DM 13.5(A)(33) or extraordinary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

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:

- Please ensure that as noted in your DAML Design Branch water issues consultation response that "Waste will be kept 25' from the top of the stream bank" at the proposed waste disposal area.
- No tree removal is requested or authorized for this project, since the current proposal involves only cutting a roadside ditch, and the landslide and impounding of the stream conditions are not proposed to be addressed directly by this project and the proposed waste area has no tree cover.
- The project proposes "to cut a roadside ditch" to "alleviate some ponded water" only. Since this project is within the Licking River basin, please note that there can be "No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the ... Licking River basins" unless

further consultation with the U.S. Fish and Wildlife Service is completed to determine if any mitigation measures are required.

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



Date

Cassel, Steven R. "Steve"

From: Cassel, Steven R. "Steve"
Sent: Wednesday, April 27, 2011 2:58 PM
To: 'Steve Hohmann (steve.hohmann@ky.gov)'
Cc: 'carl.campbell@ky.gov'; 'mark.meade@ky.gov'; 'Bill.Overman@ky.gov'; 'Howell, Ryan (EEC)'; 'Train, Shannon (EEC)'; Rickwa, Vanna (EEC); Blackburn, Joseph L. "Joe"; Smith, Gail; Turner, Samuel R. "Sam"; Francis, Gary D.; Edwards, Chester L. "Chet"; Holliday, James "Jim"; Miller, Corey T.; Estes, Loren A.
Subject: ATP Transmittal: Back Branch Landslide High Priority ATP, Magoffin County
Attachments: 2011 - Back Branch Landslide High Priority, Magoffin County.pdf

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of your April 26, 2011, request for ATP with construction activity on the Back Branch Landslide High Priority AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML). The request does not designate a funding source for the construction work under the Project Costs (Non-Water Supply) of any of Kentucky's Annual AML Construction Grant. OSM requests to be notified of the final funding source and State account number for our records.

A pre-approval field inspection of the proposed project was deemed unnecessary, since DAML provided a DAML Inquiry Response Report, no issues were identified warranting further field review at this time in light of the urgency of the project and DAML requested expedited processing. The report and DAML relatedness investigation appear to provide evidence supporting DAML's opinion that the landslide is related to eligible AML mining operations, as summarized in the email from DAML Ryan Howell at 10:34 AM on April 27, 2011, DAML notes that a formal eligibility statement is being processed and prepared an AMLIS PAD based on this opinion.

It is OSM's recommendation that appropriate consideration be given to the general recommendations and comments provided in the response from the agencies consulted in the National Environmental Policy Act (NEPA) environmental review documented in the Environmental Assessment (EA) prepared by DAML. Please give special attention to the following NEPA consultation recommendation(s)/conditions and ensure compliance with the following provisions in the ATP request documents noted here for emphasis, and/or the authorization of this project is further conditioned as follows:

- Please ensure that as noted in your DAML Design Branch water issues consultation response that "Waste will be kept 25' from the top of the stream bank" at the proposed waste disposal area..
- No tree removal is requested or authorized for this project, since the current proposal involves only cutting a roadside ditch, and the landslide and impounding of the stream conditions are not proposed to be addressed directly by this project and the proposed waste area has no tree cover..
- The project proposes "to cut a roadside ditch" to "alleviate some ponded water" only. Since this project is within the Licking River basin, please note that there can be "No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the ... Licking River basins" unless further consultation with the U.S. Fish and Wildlife Service is completed to determine if any mitigation measures are required.
- OSM requests copies of any applications for permits/certifications and approval documents required for the construction of this project that were not submitted with the original ATP. This information is needed by OSM to perform oversight and monitor compliance with the NEPA.

The OSM Lexington Field Office Director has signed an ATP notice, AMLIS PAD approval and the Categorical Exclusion Determination. A copy of each of these documents and the LFO review memorandum are scanned into the attachment to this email for your information and use. Mr. Carl Campbell, Commissioner, Department for Natural Resources has been notified of this authorization by receiving a copy of this email.

As noted in your request documents, currently the AMLIS is not operational for data input. As noted in your ATP request letter, please be sure to update the AMLIS with the information regarding Problem Area (PA) # KY-004129-SGA at a later date when the system is once again operational. Please note that the only problem identified on the PAD is a clerical error, in that the Funded Cost was not entered for the DS AML Problem on page 4 of the OSM-76 form. Please make sure the abatement cost is entered on the form and into the AMLIS.

Any questions concerning this ATP or the procedures can be addressed to Steve Cassel at 859-260-3912 or Gail Smith at (859) 260-3908. Thank you.

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 4129 SGA
Project Name: Back Branch Landslide HP AML Reclamation Project
Project Description: Construct a ditch to allow water that is backing up behind a landslide to drain away from a county road.

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 Yes

II. DEPARTMENT OF INTERIOR EXCEPTIONS

Will the project have any of the following:

A significant adverse effect on public health or safety? No Yes

An adverse effect on any of the following unique geographic characteristics? If 'yes,' check the ones that apply: No Yes

- | | |
|---|--|
| <input type="checkbox"/> Parks (state, local or National) | <input type="checkbox"/> Wild or Scenic Rivers |
| <input type="checkbox"/> Recreation or Refuge Lands | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Wilderness Areas | <input type="checkbox"/> Floodplains |
| <input type="checkbox"/> Ecologically Significant or Critical Areas | <input type="checkbox"/> Sole or Principal Drinking Water Aquifers |
| <input type="checkbox"/> Prime Farmlands | |

Highly controversial environmental effects? No Yes

Highly uncertain and potentially significant environmental effects or unique or unknown environmental risks? No Yes

A precedent for future action or a decision in principle about future actions with potentially significant environmental effects? No Yes

Directly related to other actions with individually insignificant but cumulatively significant environmental effects? No Yes

Adverse effects on properties listed or eligible for listing on the National Register of Historic Places? No 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 Yes

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

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

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

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann by [Signature] Date: 4/26/11

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

VI. OSM DETERMINATION

DA-27-11

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: [Signature] Date: 4/28/11

Name and Title: _____

Memorandum

Date: April 27, 2011

To: Back Branch Landslide High Priority Abandoned Mine Land (AML)
Reclamation Project File ID# 99.10440000

From: Steve Cassel, Sr., AML Program Specialist *SC 4-27-11*
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 Back Branch Landslide High Priority AML Reclamation Project. The Branch prepared an ATP notice and Problem Area (PA) approval form, as required by OSM Directive AML-1-2 (signed June 22, 2007) for the FOD review. The Branch recommends that the FOD sign the Categorical Exclusion Determination (CX), PA approval form, 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, CX, and PA approval form. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request email dated April 26, 2011, at 3:36 PM, was received at LFO at 10:30 AM on April 27, 2011. DAML requested expedited processing of the ATP due to site conditions. The ATP was processed within 1 working day; therefore, the customer service target of 14 working days to process an ATP has been met. The ATP was processed in 1 calendar day; 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 #99.10440000 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 urgency of the request for high priority expedited processing. The following proposed dates were assigned and entered by LFO for database tracking purposes: Proposed and Actual Bid Advertisement and Construction Dates were entered as May 1, 2011, and Proposed Contract Completion as December 1, 2011.

An office review of the request documents was conducted. The documents consisted of; a project description, DAML Inquiry Response Report, location maps, , a National Environmental Policy Act (NEPA) review documented in a CX with agency consultation explanations; 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-004129-SGA.

A pre-approval field inspection of the proposed project was deemed unnecessary, since DAML provided a DAML Inquiry Response Report, no issues were identified warranting further field review at this time in light of the urgency of the project and DAML requested expedited processing. The report and DAML relatedness investigation appear to provide evidence supporting DAML's opinion that the landslide is related to eligible AML mining operations, as summarized in the email from DAML Ryan Howell at 10:34 AM on April 27, 2011, DAML notes that a formal eligibility statement is being processed and prepared an AMLIS PAD based on this opinion.

The CX 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. 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. All access is via existing roads. The waste area was previously disturbed as agricultural land, and residential use. There are no unresolved issues or adverse effects requiring specialized mitigation.

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 emails 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:

There was insufficient time for normal consultation with the Kentucky Department of Fish and Wildlife Resources (KDFWR) for the current project. DAML noted that KDFWR has been notified of the project proposal and their response will be forwarded to OSM when received. In past consultation the KDFWR findings are similar in outcome to the DAML biological review staff findings and the evaluation of the project under U.S. Fish and Wildlife consultation. Therefore, due to the need to expedite authorization of this project, fish and wildlife concerns will be considered sufficiently evaluated under the following consultations/evaluations.

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, the Evening Bat, is known to occur within a 1-mile radius of the project. DAML listed and discussed each species noted above in the biological review memorandum, and their ATP request, finding that the noted species will not be impacted. 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 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 (which is a landslide and impounding of the stream, both conditions of which are not proposed to be addressed directly by this project), 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;

- 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;

- 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 (note the project is within the Licking River basin, but the project only proposes to "to cut a roadside ditch" to "alleviate some ponded water", this will be emphasized in the authorization notice;

- 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 biological review memorandum also notes that if any tree removal is later found to be necessary 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, they found the requirements of Section 7 of the Endangered Species Act have been fulfilled.

There was insufficient time for normal consultation response from the Office of State Archaeology (OSA) and archaeological consultation was accomplished as described below. The Kentucky Heritage Council (KHC) and State Historic Preservation Officer (SHPO) were not consulted further for the current construction activity, since this project activity falls under the provision in Programmatic Agreement that DAML signed on January 3, 2011, with the KHC of "exempt projects." Exempt projects are "Routine and recurring projects whose impacts [under Section 106 of the Natural Historic Preservation Act] are "foreseeable and cause little or no ground disturbance or that have a low probability of affecting known or unknown historic properties." Under the agreement KHC requires no consultation beyond DAML's determination that the project is an exempt project. In addition the archaeological consultation with the OSA and SHPO identified no impacts or concerns by these agencies.

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. The DAML Design Branch determined that neither a 401 WQC nor a 404 CWA permit are needed for the project as proposed.

Under a 2005 agreement with the Kentucky Division of Water (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. DAML's Design Branch personnel researched these maps and have determined that the project is not within the base floodplain and no floodplain permits are required. This statement is contained in the ATP request and email response from the DAML Design Branch.

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-004129-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 that they will input this information at a later date in the future when the AMLIS is once again operational. PA # KY-004129-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 submitted for FOD signature. The signed form will be kept on file at LFO and a copy will be transmitted to DAML as an enclosure with the ATP letter.

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.



Steve Cassel <scasselsr@gmail.com>

FW: Back Branch Landslide HP AML Reclamation Project ATP request

Bill Overman <kyaml2008@gmail.com>

Tue, Apr 26, 2011 at 3:34 PM

To: scasselsr <scasselsr@gmail.com>, ctmsbc <ctmsbc@gmail.com>

Steve and/or Corey,

A landslide along Back Branch in Magoffin County has caused water to back-up and threatens to damage the county road and block the only access for several residences that live in the hollow. This site has been deemed a high priority, so an expedited ATP is being requested.

Attached are a project description, overview map, and close-up map that are being sent to OSA and KDFWR for their comments. Aerial photos from 2006 (attached) indicate the waste area has been previously disturbed. Also, material will only be placed in this area, which should not negatively impact any archaeological resources that may be buried at the site. The proposed ditch is along the county road, which would have also been previously disturbed during road construction, so it is very unlikely that any archaeological resources will be negatively impacted in the work area or the waste area. For these reasons, KHC was not contacted, as the project is exempt under the Programmatic Agreement between KHC and AML. We will forward any comments that we receive from OSA when we receive them.

A search of the KSNPC database was performed, and attached is a memo from Keith Coleman that indicates no species of concern should be negatively impacted. This memo originally was named the Patricia Arnett Landslide HP AML Reclamation Project, but it is for the same project area. Aerial photos from 2010 (attached) indicate the waste area still does not have trees in this location, and no trees are proposed to be cut along the roadside, so the Indiana Bat should not be negatively impacted. We will forward any comments we receive from KDFWR, but it is unlikely that any species of concern not already discussed in the KSNPC memo would be negatively impacted, as the waste area is a residentially maintained area, no cave-like structures will be closed, and the ditch will not extend into the stream channel.

A review of water issues was performed for this project to determine if any permits/certificates will be required. The attached email (Patricia Arnett) indicates that no floodplain permits, WQC, or COE permits will be required. Waste will be kept 25' from the top of the stream bank.

The PAD KY 4129 SGA has been previously sent for your review. Also, attached is a Categorical Exclusion.

Please accept this email as a formal ATP request.

Your expedited response is greatly appreciated.

Thanks,
Ryan Howell

8 attachments



2006 aerial.pdf
1937K



2010 aerial.pdf
1092K



Back Branch close-up.pdf
632K



Back Branch Landslide HP AMLRP Description.doc
27K



Back Branch overview map.pdf
430K



CE for Back Branch Landslide HP AMLRP.pdf
660K



KSNPC memo for Back Branch Landslide HP AMLRP.pdf
1494K



Patricia Arnett.msg
1364K

BACK BRANCH LANDSLIDE HIGH PRIORITY

AML RECLAMATION PROJECT

The Back Branch Landslide High Priority AML Reclamation Project is located on Back Branch Road in Magoffin County, at 37° 39' 13.5" North latitude 83° 12' 01.5" West longitude on the United States Geological Survey (USGS) 7.5' Seitz Quadrangle (See attached map).

The landslide is approximately 300 feet at the base and extends up the hill approximately 180 feet. The landslide has blocked a portion of a tributary to Back Branch impounding water upstream that could inundate a portion of county road during heavy rains and maybe erode the road where it will not be functional for a period of time. There are at least three residents upstream of the slide that could be affected by the inundation of the county road. While they will not be flooded by the flood waters, they will not have any access to their homes over the county road. The county road is the only access to those homes.

AML proposes to cut a roadside ditch approximately 300 feet in length along Back Branch Road in order to alleviate some of the ponded water and to insure that the county road will not be affected by future storm events until permanent measures can be taken to fix the landslide. The ditch will be primarily an overflow ditch and will not extend into the channel nor will it replace the existing channel. The ditch will only be in place to handle the stormwater that the existing channel cannot handle due to being constricted by the landslide. Material will be placed in a waste area just downstream and will not be in the floodway of Back Branch. This landslide is located at 37° 39' 19" North latitude 83° 11' 55.8" West longitude.

The entire project work area slated for any excavation has been previously disturbed by any or all of the following: coal mining operations, including mine drainage, timber operations, gas/oil well development, residential development, road construction, and/or high velocity water flows associated with heavy rain events and flooding. These disturbances consist of significant upheaval, mixing, and removal of earthen material from deep excavation, grading, sub-surface drilling, fill material placement, and erosion. There should be no undisturbed earthen material to a depth of several feet at the areas slated for significant project-related construction activities.

Access to the work areas will be via existing roads and residentially maintained yards. Construction activities will be kept to a minimum through the use of a stringently formulated sediment and erosion control program, consisting of such measures as hay-bale silt checks, maintained throughout the life of the project, and prompt re-vegetation will be implemented on all areas disturbed by this project using agricultural limestone, fertilizer, seed, mulch, and netting, as required. No trees outside of the immediate slide area should need to be removed.

Memorandum

To: Back Branch
~~Patricia Arnett~~ Landslide
AML High Priority Reclamation Project

From: Keith B. Coleman *Keith B Coleman 4-26-11*
Environmental Technician, AML Program Development Branch

Through: Bill Overman *Bill Overman 4/26/11*
Manager, AML Program Development Branch

RE: Results of Kentucky State Nature Preserves Commission (KSNPC)
BIOTICS Database Search

Date: April 26, 2011

On April 26, 2011, I conducted a search of the KSNPC database in order to determine if any species which are monitored by the KSNPC are known to occur within the near vicinity (1 mile radius) of the sites to be disturbed by this project, and if any federally listed threatened or endangered species are known to occur within the general vicinity (10 mile radius) of the project sites. This search revealed that 1 species of state concern, monitored by the KSNPC, is known to occur within one mile, and that 1 species listed as threatened or endangered under the United States Endangered Species Act (USESA) is known to occur within ten miles of the project sites.

This project (300 linear feet) consists of the elimination of a drainage problem associated with an active landslide along Back Branch, in Magoffin County. Reclamation plans associated with the abatement of the high priority problem include the installation of a 300' linear ditch, which will allow threatening impounded drainage to flow through the watershed as it did prior to the slide event. The project area consists of the landslide area which parallels a previously disturbed mine bench. All access routes are previously existing routes. At this time, the only tree removal intended is within the slide area. To minimize sedimentation, a stringent erosion and sediment control plan including such measures as hay-bale silt checks, silt fences and prompt vegetation of all disturbed areas will be implemented.

The KSNPC species found within 1 mile from the project site is:

Evening Bat (*Nycticeius humeralis*)

The USESA listed species found within 10 miles from the project site is:

Indiana Bat (*Myotis sodalis*)

The **Evening Bat** is considered a summer resident of Kentucky, generally within the western 1/3 of the state. They return to the state within the latter part of April and form summer colonies in natural and artificial sites including hollow trees and barns or other buildings. A few records include roost sites under bridges. Conversion of forested wetlands and logging are believed to be the most direct impacts on roosting and foraging habitat. Summer roosting habitat is similar to that of the Indiana Bat, and the conditions regarding this project will be addressed below. One record (pre-1930) of capture of this species exists within 1 mile of the project site.

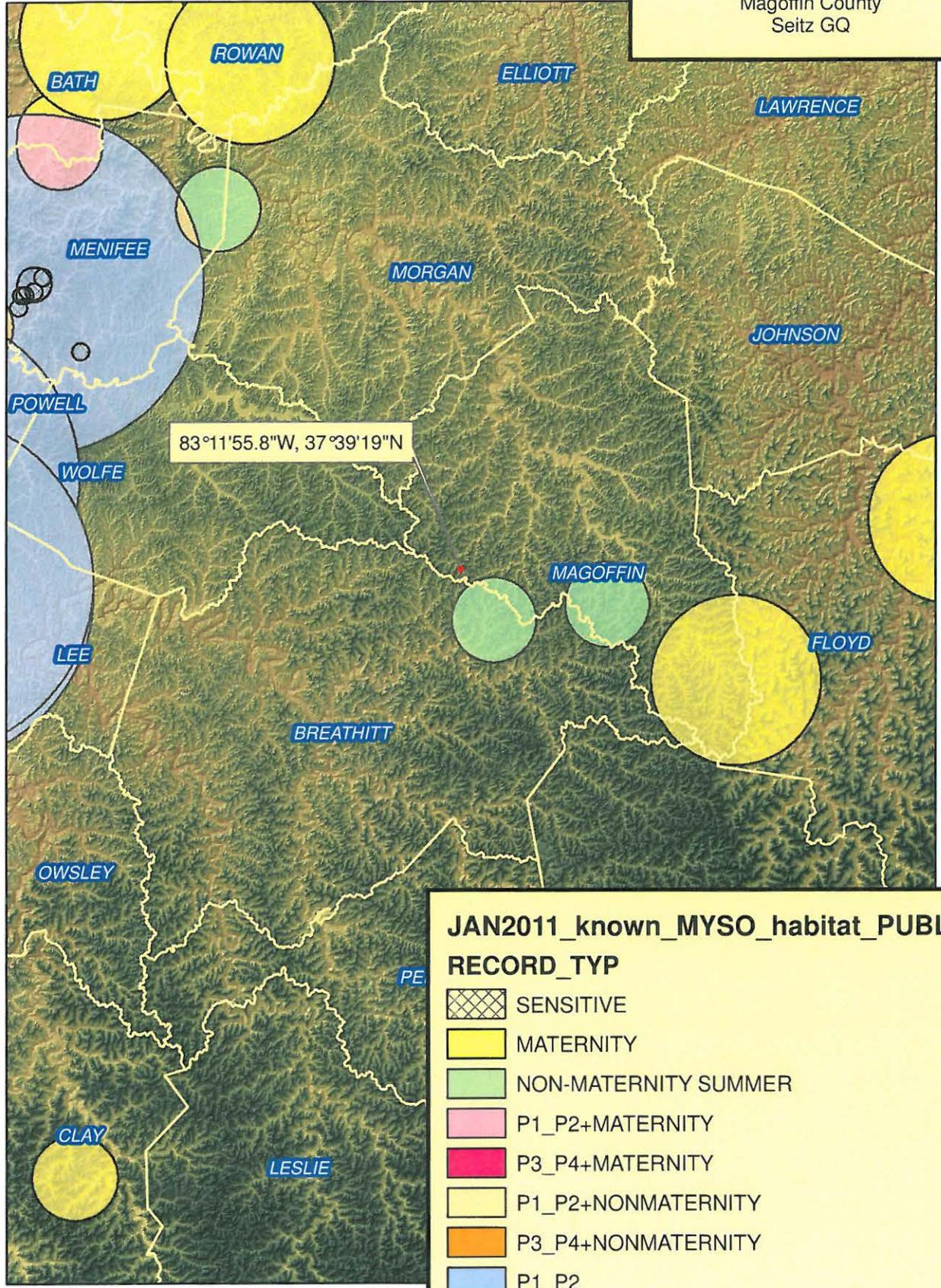
The US Fish and Wildlife Service (USFWS) has declared the whole of the state of Kentucky to be the habitat of the **Indiana Bat** (*Myotis sodalis* – USESA Endangered). This species day roosts and establishes maternity colonies in trees with exfoliating bark or splits in their trunks and larger limbs, and hibernates in caves and other similar underground cavities. The above search of the KSNPC BIOTICS database revealed 3 records of this species within 10 miles of any of the project sites. Two of those records are summer mist net records, 3.5 and 8.9 miles E-SE of the project site. The other record is an undetermined record, located 9.7 miles S of the site.

Additionally, two other records document the species within 10-20 miles from the project sites. One of the records is an “undetermined” record, and the other is a “summer mist-net record”. Since *no* records of hibernacula are within 10 miles of any project area and *no* maternity area records are within 5 miles from any project area, and since *no* maternity colonies or non-maternity records are within 2.5 miles from any project area, no special conditions would apply to the accepted tree removal period, a time at which bats are secured within their hibernacula (October 15 – March 31).

However, since tree clearing is only anticipated within the landslide area, construction *should not* negatively impact the Indiana Bat, regardless of the construction timing. If it is later determined that trees (greater than 5” DBH which also display characteristics such as shaggy or exfoliating bark and/or cracks, crevices, or hollowed out cavities within trunks and larger limbs), need to be cleared, a biological assessment, or a mist net survey may be required if the clearing would not occur between October 15 and March 31, (for the waste or access areas only). Lastly, the project does not fall within a buffered “*known habitat*” of the Indiana Bat, as described by USFWS. Adherence to these best management practices should prevent any negative impacts upon the Indiana Bat and the Evening Bat.



Patricia Arnett Landslide
 AML High Priority Reclamation Project
 Magoffin County
 Seitz GQ

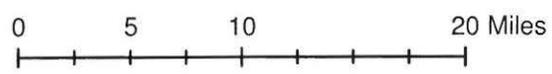


83°11'55.8"W, 37°39'19"N

JAN2011_known_MYSO_habitat_PUBLIC

RECORD_TYP

-  SENSITIVE
-  MATERNITY
-  NON-MATERNITY SUMMER
-  P1_P2+MATERNITY
-  P3_P4+MATERNITY
-  P1_P2+NONMATERNITY
-  P3_P4+NONMATERNITY
-  P1_P2
-  P3_P4



Cassel, Steven R. "Steve"

From: Hall, Samantha (EEC)
Sent: Tuesday, April 26, 2011 8:21 AM
To: Howell, Ryan (EEC); Manley, Joseph (EEC); Dungan, Steve (EEC)
Subject: Patricia Arnett
Attachments: Patricia Arnett.jpg

Here is a map with the slide and waste area. No floodplain permits will be required. All waste should be kept 25 feet from the top of the stream bank. No WCQ or COE permits are required.

Let me know if you have any questions

Thank you

Samantha Hall
Environmental Technologist III
Division of Abandoned Mine Lands
502-564-2141



Cassel, Steven R. "Steve"

From: Howell, Ryan (EEC) [Ryan.Howell@ky.gov]
Sent: Thursday, April 28, 2011 9:33 AM
To: Cassel, Steven R. "Steve"; Miller, Corey T.
Cc: Rickwa, Vanna (EEC); Overman, Bill (EEC)
Subject: FW: KDFWR comments ref. Back Branch Landslide HIGH PRIORITY AMLRP (Magoffin County)
Attachments: Comment Letter.pdf

Here's a copy of the KDFWR comments for the Back Branch Landslide HP AML Reclamation Project for your records.

Thanks,
Ryan

From: Stoelb, Daniel (FW)
Sent: Thursday, April 28, 2011 9:29 AM
To: Overman, Bill (EEC); Rickwa, Vanna (EEC); Howell, Ryan (EEC)
Subject: KDFWR comments ref. Back Branch Landslide HIGH PRIORITY AMLRP (Magoffin County)

Attached, please find the KDFWR comment letter regarding the subject project.

Thanks,

Dan Stoelb
Wildlife Biologist
Fisheries Division - Environmental Section
KY Department of Fish and Wildlife Resources
#1 Sportsman's Lane
Frankfort, KY 40601
Phone: (502) 564-7109 ext. 4453
Fax: (502) 564-4519
www.fw.ky.gov

Did you know...Department of Fish and Wildlife receives NO state tax dollars and manages wildlife for all citizens?

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**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES
TOURISM, ARTS, AND HERITAGE CABINET**

Steven L. Beshear
Governor

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Frankfort, Kentucky 40601
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Marcheta Sparrow
Secretary

Dr. Jonathan W. Gassett
Commissioner

28 April 2011

Steve Hohmann, Director
Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, KY 40601

RE: Back Branch Landslide **HIGH PRIORITY** AML Reclamation Project (Magoffin County)

Dear Mr. Hohmann:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has received your request for information pertaining to the subject project. The Kentucky Fish and Wildlife Information System indicates that the federally-endangered Indiana bat (*Myotis sodalis*) is known to occur within 10 miles of the project site. No state-listed species are known to occur within one mile of the project site. Please be aware that our database system is a dynamic one that only represents our current knowledge of various species distributions.

Erosion control measures, as mentioned in the project description, will need to be installed prior to construction and should be inspected and repaired regularly as needed. I hope this information is helpful to you, and if you have questions or require additional information, please call me at (502) 564-7109 extension 4453.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Stoelb".

Dan Stoelb
Wildlife Biologist

Cc: Environmental Section File