

Authorization to Proceed (ATP)  
Chuck Fernandez Group  
Abandoned Mine Land (AML) Reclamation Project  
based on Categorical Exclusion (CX)  
Letcher County, Kentucky

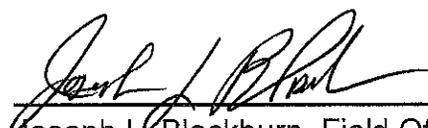
The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of the August 17, 2011, request for ATP with construction activity on the Chuck Fernandez Group AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML) of the Kentucky Department for Natural 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-003770-SGA was submitted by DAML for OSM review prior to submission of the ATP request package and I approved it on August 17, 2011 and DAML update data for existing PA# KY-002546-SGA was confirmed..

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 or the authorization of this project is further conditioned as follows:

- The DAML project request notes that no tree removal is proposed/anticipated at this time outside the AML problem areas, but that if tree removal is needed in these areas it will only take place between October 15 and March 31, or a habitat assessment or a presence/absence survey will be 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

9/16/2011  
Date

## Cassel, Steven R. "Steve"

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**From:** Edwards, Chester L. "Chet"  
**Sent:** Friday, September 16, 2011 2:07 PM  
**To:** Cassel, Steven R. "Steve"  
**Subject:** FW: ATP Transmittal: Chuck Fernandez Group ATP, Letcher County  
**Attachments:** Lexington\_20110916\_124718.pdf

Back at you.

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**From:** Cassel, Steven R. "Steve"  
**Sent:** Friday, September 16, 2011 1:58 PM  
**To:** 'Steve Hohmann ([steve.hohmann@ky.gov](mailto: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: Chuck Fernandez Group ATP, Letcher County

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of your MONTHDAY, 2011, request for ATP with construction activity on PROJECTNAME 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 conducted on September 1, 2011, for field verification under the EY 2012 Oversight Agreement. The proposal was recommended for approval with no concerns or recommendations.

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:

- The DAML project request notes that no tree removal is proposed/anticipated at this time outside the AML problem areas, but that if tree removal is needed in these areas it will only take place between October 15 and March 31, or a habitat assessment or a presence/absence survey will be 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 and the Categorical Exclusion Determination for the project. 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.

Please ensure that the e-AMLIS information regarding Problem Area's (PA) # KY-002546-SGA and KY-003770-SGA are updated to reflect the authorization of this project by moving the appropriate Units and Cost from Unfunded to Funded category. This will update the e-AMLIS for use in generating the Annual Report to Congress and other inquiries of the database.

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.



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 [ ]

- |   |   |
|---|---|
| <input type="checkbox"/> Topography                         | <input type="checkbox"/> Historic and Cultural            |
| <input type="checkbox"/> Land Use (includes prime farmland) | <input type="checkbox"/> Recreation                       |
| <input type="checkbox"/> Soils                              | <input type="checkbox"/> Air Quality                      |
| <input type="checkbox"/> Vegetation (includes wetlands)     | <input type="checkbox"/> Noise                            |
| <input type="checkbox"/> Hydrology                          | <input type="checkbox"/> Other (includes socio-economics) |
| <input type="checkbox"/> Fish and Wildlife                  |   |

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP

V. RESPONSIBLE OFFICIAL CERTIFICATION

Signature: Steve Hohmann Date: 8/17/11

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

VI. OSM DETERMINATION

<sup>9-16-11</sup> 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: Joseph L. Blackburn Date: 9-16-11

Name and Title: JOSEPH L. BLACKBURN, FIELD OFFICE DIRECTOR

Memorandum

Date: September 16, 2011

To: Chuck Fernandez Group Abandoned Mine Land (AML) Reclamation  
Project File ID# 99.127030000

From: Steve Cassel, Sr., AML Program Specialist *SC* 9-16-11  
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 Chuck Fernandez Group AML Reclamation Project. The Branch prepared an ATP notice for the FOD review. The Branch recommends that the FOD sign the Categorical Exclusion Determination (CX) 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* CX. Additionally, the transmittal email will be copied to the Department for Natural Resources (DNR) Commissioner.

The Kentucky DAML ATP request dated August 17, 2011, was received at LFO on August 17, 2011. The ATP was processed within 21 working days; therefore, the customer service target of 14 working days to process an ATP was exceeded, due to other duties. The ATP was processed in 30 calendar days; therefore, the Federal employee performance appraisal standard of 30 calendar days to process an ATP has been met.

The project area may be centrally located on the Jenkins West, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 10' 14" North Latitude and 82° 44' 06" West Longitude near the community of Mayking, 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#s KY-002546-SGA and KY-003770-SGA. The project involves reclamation of AML conditions at two locations consisting of installing a reinforced concrete wall, a wildlife access gate closure of an open portal, and installation of necessary drainage control structures.

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 # 99.127030000 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

proposed 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 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 September 15, 2011, Contract Award was entered as October 1, 2011, and Contract/Construction Completion was entered as October 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 a CX with agency consultation documentation; and an Abandoned Mine Land Inventory System (AMLIS) Problem Area Description (PAD) summary and appropriate Priority Documentation Forms, with engineer cost estimates for PA#s KY-002546-SGA and KY-003770-SGA.

A pre-approval field inspection of the proposed project was conducted on September 1, 2011, for field verification under the EY 2011 Oversight Agreement. 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 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 subsidence's 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. 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 correspondence and attachments discussed 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 three known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified two records of state listed species of concern within 1 mile radius of the project area. 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 correspondence and attached biological review memorandums. DAML found that KSNPC data indicated three federally listed threatened or endangered species within a 10-mile radius and three 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 memorandums, and their ATP request correspondence, 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, 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 problems, 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;
- The project proposes to reclaim the one designated open mine portal or any other portals within the project with FWS accepted types of wildlife friendly gates that allow bat access, to include DAML's current standard culvert closure design (see attached plans);
- 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 removal of trees not directly impacted by the AML problem is later found to be necessary during the period April 1 to October 15, a habitat assessment or presence/absence survey will be required by qualified DAML staff.

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 (KHC) and State Historic Preservation Officer (SHPO) were not consulted further for the current construction activity, since this project activity falls under the "exempt projects" provisions in the Programmatic Agreement that DAML signed on January 3, 2011, with the KHC. 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.

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 letter and the project description.

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 #'s KY-002546-SGA and KY-003770-SGA was submitted by DAML for OSM review and input into the AMLIS prior to submission of this ATP request. This information reflects the changes in units and costs based upon the design and classification of the funded category. This was confirmed by LFO review of the AMLIS data and a PAD summary/history AMLIS website screen printout from the OSM HDQ AMLIS database.

PA# KY-002546-SGA 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). PA # KY-003770-SGA represents a "new Problem Area" requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007). A FOD approval form was not prepared for the PA, since the new e-AMLIS is operational, with electronic OSM FOD approval, which eliminated the need for the FOD approval form. The e-AMLIS file indicated the PA had been previously approved on August 17, 2011.

Chuck Fernandez Group AML Reclamation Project

September 16, 2011

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.

Attachments:

PAD summary/history AMLIS website screen printouts



**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR NATURAL RESOURCES**

**Steven L. Beshear**  
Governor

Division of Abandoned Mine Lands  
2521 Lawrenceburg Road  
Frankfort, Kentucky 40601  
[www.ky.gov](http://www.ky.gov)

**Leonard K. Peters**  
Secretary

**Carl E. Campbell**  
Commissioner

August 17, 2011

Mr. Joseph L. Blackburn, Director  
U. S. Department of the Interior  
Office of Surface Mining  
Lexington Field Office  
2675 Regency Road  
Lexington, KY 40503

RE: Chuck Fernandez Group AML Reclamation Project (Letcher County)

Dear Mr. Blackburn:

We are requesting "Authorization to Proceed" with site-specific construction activities on the referenced project, as described in the enclosed package. Enclosed are a project description, location maps, and problem area description (PAD) supplemental forms, including a problem description and an engineer cost estimate, for the above-referenced project. The PAD's for problem area #'s KY 2546 SGA and KY 3770 SGA have been prepared and entered into the e-AMLIS by the division. An eligibility determination that finds the proposed project eligible for AML funding has been reviewed and signed by the Office of Legal Services. Support documents for the PAD and the eligibility determination will be made available to you upon request. Also, enclosed is a Categorical Exclusion, with two agency consultation response documents and two DAML consultation documents attached. The KHC was not contacted, as the project sites are exempt under the Programmatic Agreement with KHC, due to the previous disturbances of the site by mining activity and/or houseseat construction.

AML Program Development staff conducted a search of the Kentucky State Nature Preserves Commission (KSNPC) BIOTICS database. This search revealed that three species of state concern, monitored by the KSNPC, are known to occur within one mile of the project site, and that two species listed as threatened or endangered, under the United States Endangered Species Act (USES), are known to exist within ten miles of the project site. The species noted in the search are the:

KSNPC monitored species:

- Curtis' Goldenrod (*Solidago curtisii*)
- Elusive Clubtail (*Stylurus notatus*)
- Cinereus Shrew (*Myotis sodalist*)

USES listed species:

- Blackside Dace (*Chrosomus cumberlandensis*)
- Indiana bat (*Myotis sodalis*)

The KDFWR also indicated the federally-endangered Gray bat (*Myotis grisescens*) is within 10 miles of the project sites, and the state-listed Small-footed Myotis (*Myotis leibii*) and American Black Bear (*Ursus americanus*) are known to occur within one mile of the Larry Morrow site. According to the memos by Keith Coleman, dated August 1, 2011 and August 17, 2011, none of the species noted in the KSNPC search or the letter from KDFWR should be negatively impacted by the proposed reclamation work.

Although the entirety of the Commonwealth of Kentucky has been determined, by the United States Fish and Wildlife Service (USFWS), to be the potential habitat of the Indiana bat, tree clearing is not anticipated within the project sites or the associated waste area; and, since any portals to be closed will be closed with wildlife accessible closures, project-related construction should not impact this species, regardless of the timing of the construction.

A letter was sent to the DAML floodplain and hydrology staff specialist, soliciting their comments regarding this project. The letter requested comments regarding water quality certification (WQC) and floodplain permit issues. The response stated that no WQC, COE, or floodplain permits will be required. The other consulted agencies had no objections or concerns regarding this project.

Overall, the project is a Priority 1. The project is estimated to cost \$483,476.00, exclusive of "in-house" personnel costs associated with project administration, design, support, surveying, and bid activities. Completion of the project will not require the acquisition of any land and will not significantly affect the potential recovery of residual coal reserves at the sites. The principal benefits to be derived from the successful completion of the project are the elimination of abandoned mine land problems as described in the attached project description.

Construction contract bidding, awarding, and subsequent construction completion will occur as soon as possible. Should you have any questions regarding this information, please contact us at 502/564-2141.

Sincerely,



Steve Hohmann, Director  
Division of Abandoned Mine Lands

SH:BO:RH:vr

Enclosures

**Chuck Fernandez Group**  
Abandoned Mine Lands (AML) Reclamation Project  
Letcher County, Kentucky  
Jenkins West and Mayking Quadrangles

**Revised Project Description**

The proposed project (4.3 acres total) consists of two sites in the vicinity of Seco and Mayking, in Letcher County. The project area is centrally located at the Chuck Fernandez site at latitude N37° 10' 15" and longitude W82° 44' 07" on the United States Geological Survey (USGS) 7.5' Jenkins West quadrangle (see the attached site maps). If left unabated, these abandoned mine land problems are a threat to human health and safety.

The **Chuck Fernandez site** is located on Tree Top Road near Seco, in Letcher County (Latitude: N37° 10' 15", Longitude: W82° 44' 07"). AML plans to construct a reinforced concrete wall to stop the landslide in conjunction with sub drains in the front and back of the wall to direct drainage into an 18" high density polyeththylene (HDPE) pipe.

The **Larry Morrow site** is located along KY 3406 approximately 0.75 miles from the junction of US 119, which is approximately 1.5 miles from Mayking, in Letcher County (Latitude: N37° 08' 18.6", Longitude: W82° 44' 04.5"). AML plans to close an open portal with wildlife access and construct sub drains in front of three collapsed portals to direct flow from them into AML constructed ditches: a gabion ditch into a reinforced concrete ditch into a roadside ditch that empties into Bottom Fork creek. No trees greater than 5" DBH will be removed.

Access to the work areas will be via existing roads. 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 using agricultural limestone, fertilizer, seed, mulch, and netting required will be implemented on all areas disturbed by this project. Due to the work involved with this project, dust will be kept to a minimal.

All mining and domestic debris within the project boundaries will be placed in the designated waste area located approximately 0.3 miles from the intersection KY 805 and Ramey Fork, latitude N37° 10' 21.6" and longitude W82° 40' 45.4". The project sites have been previously disturbed by coal mining, residential activities, or road construction. This project will not disturb any intermittent, perennial or ephemeral streams. All necessary permits and/or variances will be procured prior to construction. The project will be evaluated for potential impacts to wildlife species. No trees over 5" DBH will be removed and any utility structures encountered during construction must be protected, repaired or replaced as directed.

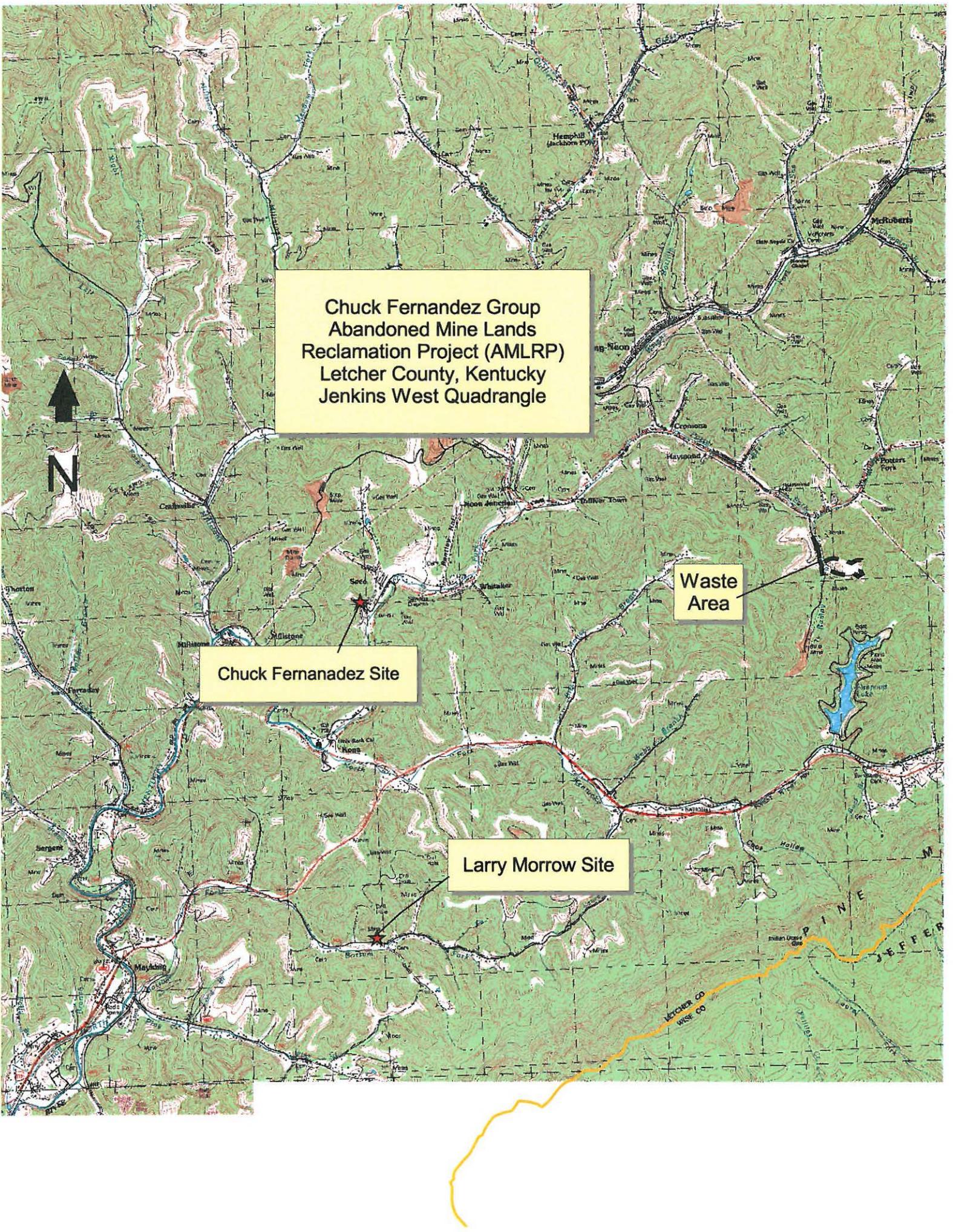
**Chuck Fernandez Group  
Abandoned Mine Lands  
Reclamation Project (AMLRP)  
Letcher County, Kentucky  
Jenkins West Quadrangle**



**Chuck Fernandez Site**

**Waste Area**

**Larry Morrow Site**



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

State: Kentucky                      PA: KY 3770 SGA & KY 2546 SGA  
Project Name: Chuck Fernandez Group AML Reclamation Project  
Project Description: Close 4 portal, construct a retaining wall, and control drainage at two different locations

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 <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
Threaten to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>

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 <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
<input type="checkbox"/> Topography	<input type="checkbox"/> Historic and Cultural	
<input type="checkbox"/> Land Use (includes prime farmland)	<input type="checkbox"/> Recreation	
<input type="checkbox"/> Soils	<input type="checkbox"/> Air Quality	
<input type="checkbox"/> Vegetation (includes wetlands)	<input type="checkbox"/> Noise	
<input type="checkbox"/> Hydrology	<input type="checkbox"/> Other (includes socio-economics)	
<input type="checkbox"/> Fish and Wildlife		

IV. ATTACH CONSULTATION LETTERS AND A LOCATION MAP
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V. RESPONSIBLE OFFICIAL CERTIFICATION	
Signature: <u>Steve Hohmann</u>	Date: <u>8/17/11</u>
Name and Title: <u>Steve Hohmann, Director</u> Division of Abandoned Mine Lands	

VI. OSM DETERMINATION	
<input type="checkbox"/> This project conforms with the exclusion criteria in 516 Dm 6, Appendix 8, and is excluded from further NEPA compliance.	
<input type="checkbox"/> This project does not conform with the exclusion criteria in 516 DM 6, Appendix 8, and requires an environmental assessment.	
Signature: _____	Date: _____
Name and Title: _____	



**W. S. Webb Museum of Anthropology**  
**Office of State Archaeology**  
*College of Arts and Sciences*  
*211 Lafferty Hall*  
*Lexington, KY 40506-0024*  
*(859) 257-8208*  
*Fax (859) 323-1968*  
*www.uky.edu*

April 20, 2011

Mr. Steve Hohmann, Director  
Energy and Environment Cabinet  
Department for Natural Resources  
Division of Abandoned Mine Lands  
2521 Lawrenceburg Road  
Frankfort, KY 40601

RE: Chuck Fernandez Group AML Reclamation Project (Letcher County)

Dear Mr. Hohmann:

Concerning the above referenced project, I have reviewed the Office of State Archaeology files to determine if any prehistoric or historic sites are located in proximity to the proposed AML project. The following information is provided to assist in your decision to proceed with an Environmental Assessment or a Categorical Exclusion Determination for the project.

Our records indicate that there are no archaeological sites or surveys recorded within the immediate vicinity of the project area. While our records indicate that the project area has not been previously surveyed for archaeological remains, past disturbances to the area make it unlikely that archaeological sites will be preserved.

Sincerely,

A handwritten signature in blue ink that reads 'George M. Crothers'. The signature is written in a cursive, flowing style.

(Christina Pappas for)  
George M. Crothers, Ph.D.  
Director

## Howell, Ryan (EEC)

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**From:** Hall, Samantha (EEC)  
**Sent:** Friday, April 22, 2011 10:07 AM  
**To:** Rickwa, Vanna (EEC)  
**Cc:** Howell, Ryan (EEC); Moore, Jesse (EEC); Overman, Bill (EEC)  
**Subject:** RE: Request for floodplain and WQC review for Chuck Fernandez Group AMLRP

After reviewing the map and description for the Chuck Fernandez Group AMLRP, I have determined that no WQC, COE or floodplain permits will be required.

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**From:** Rickwa, Vanna (EEC)  
**Sent:** Tuesday, April 19, 2011 12:01 PM  
**To:** Hall, Samantha (EEC)  
**Cc:** Howell, Ryan (EEC); Moore, Jesse (EEC)  
**Subject:** Request for floodplain and WQC review for Chuck Fernandez Group AMLRP

Attached please find the project description and maps for the Chuck Fernandez Group AMLRP.

Please do a floodplain and WQC review to determine if there would be any issues reference this project.

Please notify Bill Overman, Ryan Howell, Jesse K. Moore, and myself of your response.

Thanks,

*Vanna Rickwa  
Administrative Specialist III  
Energy and Environment Cabinet  
Department for Natural Resources  
Division of Abandoned Mine Lands  
2521 Lawrenceburg Road  
Frankfort, Kentucky 40601  
502/564-2141, Ext. 130*



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

**Steven L. Beshear**  
Governor

#1 Sportsman's Lane  
Frankfort, Kentucky 40601  
Phone (502) 564-3400  
1-800-858-1549  
Fax (502) 564-0506  
fw.ky.gov

**Marcheta Sparrow**  
Secretary

**Dr. Jonathan W. Gassett**  
Commissioner

22 April 2011

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

RE: Chuck Fernandez Group AML Reclamation Project (Letcher 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 Blackside Dace (*Chrosomus cumberlandensis*), Indiana bat (*Myotis sodalis*), and Gray bat (*Myotis grisescens*) are known to occur within 10 miles of both the Chuck Fernandez and Larry Morrow sites as well as the waste area. The Eastern Small-footed Myotis (*Myotis leibii*) and American Black Bear (*Ursus americanus*) are state-listed species known to occur within one mile of the Larry Morrow 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

## Memo to File

*Keith Coleman, Environmental Technician III  
KDAML, Program Development Branch*

**RE:** KDFWR commentary on biologic records near the Chuck Fernandez Group – AML Reclamation Project. (22 April, 2011)

**Date:** August 17, 2011

The KDFWR response letter, regarding biologic records near the Chuck Fernandez Group AML Reclamation Project, includes 3 species not addressed by the review of the KSNPC database search.

The species and the proximity of the record to the project sites are as follows:

**Gray Bat** (*Myotis grisescens*, < 10 miles from all sites, as per KDFWR record)  
(USESA Endangered)

**Eastern Small-footed Myotis** (*Myotis leibii*, < 1 mile from Morrow site)  
(KSNPC Threatened)

**American Black Bear** (*Ursus americanus*, < 1 mile from Morrow site)  
(KSNPC Special Concern)

Since the portal to be closed at the Morrow site will be closed with a wildlife accessible closure, and since no tree clearing is anticipated, no negative impacts upon the **Gray Bat** or the **Eastern Small-footed Bat** should result due to project-related construction. As mentioned in the KSNPC database review, since an **Indiana Bat** hibernacula has been documented within 10 miles of the Morrow site, should any tree clearing outside of any unstable, directly AML-impacted areas be necessary, as per the Kentucky Indiana Bat Mitigation Guidance, the tree clearing window should be restricted to clearing between November 15 – March 31. This restriction should ensure that bats are secure within their hibernacula for the upcoming winter season. None of the project areas fall within areas buffered by USFWS for bat conservation.

**Black Bear** have been described as timid, wary creatures. Their habitat has been generally described as undisturbed, heavily forested wilderness areas. They are known to wander over relatively long distances over rather short periods of time, and may be easily seen while exploring for food sources. Since the Morrow project site primarily involves the installation of drainage ditches through a residential area, and since the portal to be closed is producing too much mine-related drainage to be used as a den site, project-related construction would be considered highly unlikely to cause negative impacts to this species, even if it were routinely present near the site.

## Memorandum

**To:** Chuck Fernandez Group  
AML Reclamation Project

**From:** Keith B. Coleman  
Environmental Technician, AML Program Development Branch  
*Keith B. Coleman 8-15-2011*

**Through:** Bill Overman  
Manager, AML Program Development Branch  
*Bill Overman 8/15/11*

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

**Date:** August 15, 2011

On August 15, 2011, I conducted a search of the KSNPC database in order to determine if any species of state concern (monitored by KSNPC) are known to occur within the near vicinity (1 mile radius) of the sites to be reclaimed 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 3 species of state concern, monitored by KSNPC, are known to occur within one mile, and that 2 species currently listed as threatened or endangered under the United States Endangered Species Act (USESA) are known to occur within ten miles of the project sites.

This project (4.3 acres total) consists of the installation of a reinforced concrete retaining wall and associated drainage control structures at the Chuck Fernandez site, and the closure of an open portal and the installation of sub-drains and open ditch control structures at the Larry Morrow site. The open portal will be closed with a wildlife accessible closure. Project access routes are all pre-existing. No disturbances to any type of stream channels are anticipated. No trees over 5" DBH will be removed outside of areas directly impacted by the AML problem. The project sites have been previously disturbed by mining activities, residential development, and roadway construction. To minimize sediment and erosion problems, a stringent control plan, including the utilization of such measures as hay-bale silt checks, silt fences, erosion control blankets, and prompt vegetation of all disturbed areas, will be implemented and monitored during the construction process.

## KSNPC Monitored Species

**Curtis' Goldenrod** (*Solidago curtisii* – historical, 1934 record, special concern)

**Elusive Clubtail** (*Stylurus notatus* – pre-1970 record, state endangered)

**Cinereus Shrew** (*Sorex cinereus* – 1991 record, special concern)

## USESAs Listed Species

**Blackside Dace** (*Chrosomus cumberlandensis*, USESA Threatened)

**Indiana Bat** (*Myotis sodalis*, USESA Endangered)

**Curtis' Goldenrod** inhabits mountain woods and rich, shady areas. A 36 mile long buffer area has been designated by KSNPC, along the north face of Pine Mountain. Since the two project areas consist of landslide and mine bench / portal areas, soils are better classed as mineral soils rather than organic rich at the project sites. Also, since the project areas are either unstable or impacted heavily by mine-related drainage, it is unlikely that any negative impacts should result from project-related construction. None of the project sites fall within the above-mentioned buffered area.

The **Elusive Clubtail** is a dragonfly, the larvae of which inhabit large rivers. No disturbances to any stream channels are anticipated in association with the project construction. The AML Sediment and Erosion Control Plan, to be implemented and monitored during construction, will significantly limit the potential of turbidity-related problems from developing. The net result of reclamation construction should be that the unstable areas contribute little or no sediment to localized streams.

The **Cinereus Shrew** inhabits areas described as moist forests or meadows, and rich woods. Historically, the species was observed only on Big Black Mountain, within wet areas which also contain fallen trees. The KSNPC record is within 1 mile from the Larry Morrow site. Since access has been described as pre-existing and reclamation plans are limited to the installation of drainage control ditches, which mainly run through the residential yard, negative impacts to this species are unlikely.

The **Blackside Dace** inhabits small upland streams, usually within pools that are well shaded by dense riparian vegetation. Since no disturbances are planned to any stream channels, project-related construction should only serve to improve localized

streams, mainly due to the stabilization of currently unstable areas. As mentioned above, the AML Sediment and Erosion Control Plan will also serve to control turbidity levels (associated with potential surface run-off) during construction.

The US Fish and Wildlife Service (USFWS) has declared the whole of the state of Kentucky to be the potential 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 search of the KSNPC BIOTICS database revealed 8 records of this species within 10 miles of the project sites. 8 additional records document the Indiana Bat within 10-20 miles from the project sites. Of the 8 records within 10 miles, 5 are summer mist-net records, 1 is a roost site, 1 is a maternity area record, and 1 is a potential (?) hibernaculum. Of the 8 records which are 10-20 miles from any of the project sites, 4 records are of hibernacula, 3 are summer mist-net records, and 1 is a breeding area record.

Since one record of a potential hibernacula is within 10 miles of the Larry Morrow project site, the typical safe tree clearing window (October 15 – March 31) should be restricted to the more narrow window (November 15 – March 31) should tree clearing, other than within a directly impacted area (i.e. – AML-related landslide), become necessary. The above-mentioned potential hibernaculum record is 11.9 miles SW of the Chuck Fernandez project site, therefore the normal tree clearing window (October 15 – March 31) is acceptable for the Fernandez site, should tree clearing become necessary. No maternity areas are within 5 miles from any of the project sites, and no maternity colonies or non-maternity records are within 2.5 miles from any of the project sites.

However, since tree clearing is not anticipated within the project sites or the associated waste area, and since any portals to be closed will be closed with wildlife accessible closures, project-related construction should not impact this species, regardless of the timing of construction. Should the clearing of trees (trees which are over 5” DBH and also display characteristics such as shaggy, exfoliating bark, or crevices and hollowed-out cavities within their trunks and larger limbs) outside of any unstable, AML-impacted areas become necessary, a habitat assessment or presence-absence survey may be required. Lastly, the project does not fall within “known habitat” of the Indiana Bat, as described by USFWS. (USFWS MYSO known-habitat map attached.) Adherence to these best management practices should prevent any negative impacts upon the Indiana Bat.