



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

2675 Regency Road

Lexington, KY 40503-2922

Finding of No Significant Impact (FONSI)
Authorization to Proceed (ATP)
Josh Feltner Slide
Abandoned Mine Land (AML) Reclamation Project
Knott County, Kentucky

Ms. Susan C. Bush, Commissioner
Department for Natural Resources
#2 Hudson Hollow Complex
Frankfort, Kentucky 40601

Dear Ms. Bush:

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed a review of your January 15, 2008, request for ATP with construction activity on the Josh Feltner Slide AML Reclamation project, prepared by the Division of Abandoned Mine Lands (DAML). Your request does not designate a funding source by assignment of a State Subaccount number for the construction work under the Project Costs (Non-Water Supply) of any of Kentucky's Annual AML Construction Grants. Please notify this office of the final funding source and State Subaccount number for our records.

OSM found that the appropriate request documents were submitted and appear to support the need for the proposed construction activity. OSM confirmed that the required information for this project has been included in the AML Inventory System. A pre-approval field inspection of the proposed project was conducted on January 25, 2008 for field verification under the EY 2008 Performance Agreement. The only issue raised by this inspection concerned the impact of property owner excavation on the eligibility of the site. This issue was also the reason the site was referred to the State as not primarily mine related at the conclusion of a previous OSM emergency complaint investigation.

This characterizes an interpretive policy and philosophical difference between OSM and Kentucky State AML program administrators. Since this is a situation where there is a conflicting determination based on the same facts due to a difference of opinion by agency experts, it is OSM policy that the State's opinion carries the same weight in the final determination. Therefore, unless new information comes to light, the State's position that the Josh Feltner site is eligible is accepted by OSM.



Ms. Susan C. Bush

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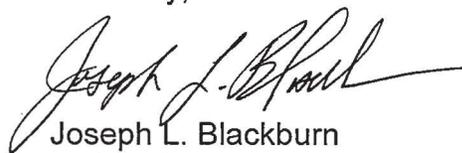
We conducted National Environmental Policy Act (NEPA) coordination with the Kentucky Field Office of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. After review of the ATP documents, we determined that formal consultation with the USFWS is not required because the proposed project will not adversely affect a federally listed species; however, we requested their comments and/or recommendations for the project. To date, the USFWS has not responded. If a response is received at a later date, a copy of their comments and any actions the USFWS finds required under the requirements of Section 7 of the Endangered Species Act will be forwarded to DAML for consideration.

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. We recommend that appropriate consideration be given to the general recommendations and comments provided in the response from the consultation agencies.

Please ensure that construction activity on the waste area follow the conditions and requirements of the floodplain encroachment permit obtained for the waste area of the recently completed Wayne Sapp Landslide AML Reclamation project. Please send OSM a copy of this floodplain permit and copies of any additional applications for permits/certifications and approval documents needed for the construction of this project that were not submitted in your original ATP. This information is needed by OSM to perform oversight and monitor compliance with the NEPA.

I have signed a FONSI and enclosed a copy to Steve Hohmann, Director, DAML under copy of this letter. Accordingly, pursuant to Section 5-11-20D.3 of the Federal Assistance Manual, you are authorized to proceed with construction activity for this project and expend Federal funds in accordance with AML grant terms and conditions. If you have any questions concerning this ATP or the procedures; please contact Steve Cassel or Gail Smith at (859) 260-8400.

Sincerely,



Joseph L. Blackburn
Acting Field Office Director

cc: Steve Hohmann, DAML



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
2675 Regency Road
Lexington, KY 40503-2922

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Josh Feltner Slide
Abandoned Mine Lands (AML) Project
Knott 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 Carrie, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 17' 17" North Latitude and 83° 05' 58" West Longitude near the community of Cordia, Kentucky. The project location, AML problems to be addressed, and proposed reclamation activity and cost are also available at <http://www.osmre.gov> in the AMLIS under PA# KY-002144-CIA. The project involves reclamation of AML conditions consisting of 1.5 acre landslide and constructing proper drainage controls at the Josh Feltner residence.

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 re-vegetation 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 formal 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 no known federally threatened/endangered fish and wildlife within a 10 mile radius of the project area. They also identified no records of state listed species of concern within 1 mile radius of the project area. KDFWR does not anticipate any significant impacts on wildlife.

The DAML staff biologist reviewed the Kentucky State Nature Preserves Commission's (KSNPC) BIOTICS database in lieu of formal consultation. The findings are noted in the ATP request letter and an attached memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius

The OSM Lexington Field Office (LFO) coordinated NEPA consultation with the Kentucky Field Office (KFO) of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky. After review of the ATP documents, which include formal consultation with the KSNPC and the KDFWR, LFO determined that formal 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.). LFO sent the USFWS KFO a copy of the ATP, notifying them of this determination and requesting their comments or recommendations for the project prior to our ATP authorization target date of February 5, 2008. To date, the USFWS has not responded. If a response is received at a later date, a copy of their comments will be forwarded to DAML for consideration and any actions the USFWS finds required under the requirements of Section 7 of the Endangered Species Act.

In previous NEPA consultation requests, the USFWS KFO comments consistently focused on one species. The USFWS KFO has generally found that the only federally listed threatened or endangered species known to occur within the proposed project area is the endangered Indiana bat. This is primarily based on the fact that Indiana bats

have been found within the borders of Kentucky and not based upon previous actual documented evidence of their existence in the local area, be it the USGS Topo Quad or ten mile radius. The USFWS KFO has concurred with OSM, that State AML reclamation projects do not adversely impact this species, if portals are collapsed precluding the use as bat habitat, no portal closures are proposed, no caves or cliffs are to be disturbed, and/or the project proposes: (1) to reclaim the open portals with generally accepted types of wildlife friendly gates to allow bat access, (2) no forested areas are disturbed that could be utilized as roosting sites, or (3) that construction activity involving tree removal is restricted to this species' hibernation period of October 15th to March 31st.

This project proposes no portal closures, impacts on caves or cliffs, and no disturbance of undisturbed stable forested areas other than those impacted by the landslide threatening the Feltner residence is anticipated. All areas to be disturbed have previously been disturbed by residential activities, the landslide, and the waste area is authorized by OSM for use under the currently active Wayne Sapp Landslide AML Reclamation Project. With this information, it is concluded that the requirements of Section 7 of the Endangered Species Act have been fulfilled.

The Office of State Archaeology found that their records did not indicate any known archaeological sites directly in the project area, 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, no properties currently listed in the National Register of Historic Places are within the project areas, and an archaeological survey will not be necessary, since all reclamation activities are restricted to previously disturbed areas or areas with low site potential, which fulfills the responsibility to consult with the SHPO under the Section 106 review process. Neither agency recommended conducting archeological surveys/investigations or mitigation measures.

Environmental and Public Protection Cabinet (EPPC) 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 of Natural Resources (DNR). DNR assigned this responsibility to their Division of Mine Permits (DMP). The DMP determined from the written description that the project does not impact a stream or wetland that requires a specific 401 Water Quality Certification.

A specific 404 Clean Water Act (CWA) permit is not needed based upon LFO and DAML application of criteria provided by the U.S. Army Corps of Engineers (COE). In addition the DMP response notes that their review of the project narrative and maps indicates there will be no stream impact resulting from placement of dredged or fill material within streams of the Commonwealth.

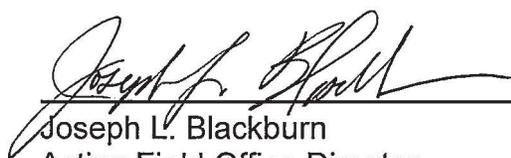
Under a 2005 agreement with the DOW Floodplain Management Section (FMS) of the Water Resources Branch, DOW authorized DAML to apply DOW floodplain standards in lieu of a DOW review. In this agreement, DAML will directly consult with DOW if it appears a permit may be required. DAML has acquired a set of Federal Emergency Management Agency (FEMA) floodplain maps that include the project area. DAML's Design Branch personnel researched these maps and have determined that the main landslide remediation area of the project is not located within the base floodplain. However, the waste area and associated two temporary low water crossings encroach upon the base floodplain of area streams. This waste area was used for the recently completed Wayne Sapp Landslide AML project. The existing floodplain encroachment permit DAML obtained for the Wayne Sapp project will be used for the current construction activity.



OSM Environmental Reviewer
AML Program Specialist

2-6-08

Date



Joseph L. Blackburn
Acting Field Office Director

2/07/08

Date

Memorandum

Date: February 6, 2008

To: Josh Feltner Slide Abandoned Mine Land (AML) Reclamation Project File

From: Steve Cassel, Sr., AML Program Specialist *2-6-08*
Lexington Field Office (LFO), Program Support Branch (PSB)

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

The Branch recommends that the Acting Field Office Director (FOD) authorize the State of Kentucky to proceed with the construction activity proposed on the Josh Feltner Slide AML Reclamation Project. The Branch prepared an ATP letter for the Acting FOD review. The Branch recommends that the Acting FOD sign the Finding of No Significant Impact (FONSI) and ATP in the space provided on each document. The original ATP letter will be sent to the Department for Natural Resources (DNR) Commissioner and a copy will be sent to the Division of Abandoned Mine Lands (DAML) Director with a copy of the CX.

The Kentucky DAML ATP request dated January 15, 2008, was received at LFO on January 16, 2008. The ATP was processed within 15 working days; therefore, the customer service target of 14 working days to process an ATP was exceeded by one day. The ATP was processed in 21 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 Grant's (ACG). In previous discussions, DNR indicated they would assign the project to a grant before it goes to construction. The temporary Subaccount# 99.080116001 was assigned to the project file for LFO tracking purposes until an actual subaccount number is assigned by DAML. No bid advertisement, bid opening, or construction completion dates were provided by DAML in the ATP request letter, therefore I have inserted dates in the database based on their comment that these activities will occur as soon as possible after the beginning of the States 2008 FY.

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-002144-SGA. Initially DAML submitted a Categorical Exclusion Determination (CX), but on January 17, 2008, requested that it be replaced by an EA transmitted by email. The emails and EA are made part of this DAML ATP package, and the CX has been voided.

A pre-approval field inspection of the proposed project was conducted on January 25, 2008, for field verification under the EY 2008 Oversight Agreement. The proposal was recommended for approval with the noted issue that there was an eligibility disagreement between the Office of Surface Mining Reclamation and Enforcement (OSM) and DAML which is briefly discussed below as well as in the report findings and photos in the LFO State AML Project Database.

Previously the project area was evaluated by OSM under AML emergency complaint investigation on February 6, 2006. The Josh Feltner #2006-037-L investigation resulted in OSM referral of the complaint to the State as not primarily related to an AML problem. The OSM investigator did not identify any eligible coal mining operations above the Feltner residence. He did obtain water samples within the slide that exhibited coal mine operation characteristics, but were attributed to unmined coal seams. The primary cause of the landslide was determined to be destabilization of the slope by removal of slope toe material for house seat excavation. The current OSM inspection agreed with the previously primary cause determination.

At that time DAML also leaned toward the house seat excavation as a significant factor. Further mine history review, documented in the Priority Documentation Form for PAD# KY-002144-SGA, indicated they located a draining pre-SMCRA auger bench in the Hazard No.7 coal bed that is saturating the slope above the Feltner residence. Based on this additional information, DAML determined that the site conditions are eligible for AML funding.

This characterizes an interpretive policy and philosophical difference between OSM and Kentucky State AML program administrators. Since this is a situation where there is a conflicting determination based on the same facts due to a difference of opinion by administrative experts, it is OSM policy that the State's opinion carries the same weight in the final determination. Therefore, unless new information comes to light, the States position that the Josh Feltner site is eligible is accepted by OSM.

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 OSM accept the EA submitted by the Kentucky DAML. The EA prepared by the State and the State's ATP request letter summarized the formal responses from agencies consulted for the NEPA review and discussed appropriate resolution of all their concerns and recommendations. The formal 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-002144-SGA was directly

input into the AMLIS by the DAML. This information reflects the changes in units and costs based upon the design and classification of the funded category. This was confirmed by LFO's review of the AMLIS data and a PAD summary printout from the OSM HDQ AMLIS database. The PAD submitted for this ATP does not represent a "new Problem Area" after December 20, 2006, requiring FOD approval under OSM Directive AML-1-2 (signed June 22, 2007); therefore, no FOD approval forms were prepared for FOD signature.