

**FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**NOV 03 2010**

Sammy Maynard Group  
Abandoned Mine Lands (AML) Project  
John Robinson and Karen Thompson Sites  
Pike 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 John Robinson and Karen Thompson project site areas may be centrally located on the Belfry, Kentucky U.S.G.S. 7.5 minute Topographic Quadrangle map at 37° 34' 03" North Latitude and 82° 16' 09" West Longitude and at 37° 33' 21" North Latitude and 82° 15' 06" West Longitude, respectively, near the community of McAndrews, 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-003760-SGA and KY-003634-SGA. The project involves reclamation of AML conditions consisting of installing wildlife accessible closures to twelve coal mine portals, stabilizing a slope with a concrete retaining wall at two sites, and controlling drainage. The reason an EA is necessary for these two sites of the Sammy Maynard Group project, which has a total of ten sites, is that temporary low water crossings are necessary to gain access to these two sites in order to conduct construction activities. This activity will require a floodplain permit and a water quality certification.

OSM has thoroughly reviewed the EA prepared for the John Robinson and Karen Thompson project sites of 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 Sammy

environmental impacts are limited to sedimentation, noise, and inconvenience to the local residents while the project is constructed. Sedimentation will be controlled by using silt control and prompt revegetation of the disturbed area. Noise, dust, and other inconveniences to local residents are unavoidable impacts related to construction activities.

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

The Kentucky Department of Fish and Wildlife Resources (KDFWR) identified no known federally threatened/endangered fish and wildlife within a 10 mile radius of the sites of this project. They identified several records of the state listed species of concern, the American Black Bear, near the project area. KDFWR does not anticipate any significant impacts on this species or its critical habitat. KDFWR did recommend that the erosion control measures and tree cutting restrictions in the project proposal be implemented.

The DAML staff biologist 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 memorandum. DAML found that KSNPC data indicated no federally listed threatened or endangered species within a 10-mile radius and one species of State concern the Squarrose Goldenrod is known to occur within a 1-mile radius of the sites of this project. DAML listed and discussed the species noted above in the biologist's memorandum, and their ATP request letter, finding that the noted species will not be impacted, since the project will not result in a significant negative impact to their critical habitat and/or suitable habitat does not exist within the project area to support the species. No reason was identified to dispute their determination.

The DAML Biologist also noted that the federally listed endangered Indiana bat, although not indicated to exist in the vicinity of any of the sites of this project by his and the KDFWR reviews and for which the U.S. Fish and Wildlife Service has declared the entire state of Kentucky as potential habitat, would not be disturbed by the project. This is based on the fact that the project proposes to comply with the provisions of the consultation Memorandum of Agreement (MOA) between the OSM Lexington Field

Office (LFO) and the Kentucky Field Office (KFO) of the U.S. Fish and Wildlife Service (USFWS) in Frankfort, Kentucky signed on September 18, 2009.

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:

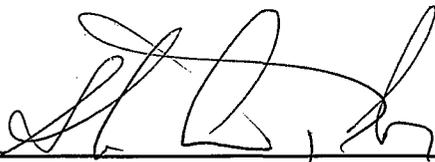
- With the exception of trees directly impacted by the AML problem, such as four of the seven portals on the Brenda Pecco site that are within an unstable dangerous highwall, the project does not include the purposeful removal of standing trees larger than 5 inches diameter at breast height or standing 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 sites of the project activity do 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 biologists memorandum as proof of this determination);
- No caves or clifflines will be disturbed;
- The project proposes to reclaim open mine portals/shafts with FWS accepted types of wildlife friendly gates that allow bat access, to include DAML's current standard culvert closure design (see attached plans); except the four described above at the Brenda Pecco site and mine portals/shafts that are collapsed or are too small (less than one foot in diameter) and, thus, preclude their use as bat habitat.
- No purposeful filling or crossing of streams using heavy equipment or the removal of riparian vegetation using heavy equipment within the Tradewater, lower Ohio, upper Cumberland, Green, and Licking River basins;
- In order to avoid/reduce indirect impacts, erosion and sediment control plans will be implemented and monitored until permanent vegetation has become established in the above listed watersheds and all other watersheds as may be appropriate.

With 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 areas of any of the ten project sites, 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. Their August 24, 2010, consultation response email did not recommend any mitigation, nor did they recommend further coordination with the State Historic Preservation Officer (SHPO) before beginning construction activities. The Kentucky Heritage Council and State Historic Preservation Officer (SHPO) in the initial consultation response letter dated September 9, 2010, determined that the undisturbed portions of the Joe Hunt, Tom and Roger Blackburn, and Karen Thompson sites of the project have a high potential for impacting archaeological sites and recommended that these portions be surveyed by a professional archaeologist. In email responses DAML on September 27 and 28, 2010, the SHPO indicated that archaeological surveys will no longer be necessary and this fulfills the responsibility to consult with the SHPO under the Section 106 review process.

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 their Division of Mine Permits (DMP). The DMP determined from the written description that only the John Robinson and Karen Thompson sites of the project that involve low water crossings impact a stream or wetland requires a specific 401 Water Quality Certification and encroach upon the base floodplain of area streams requiring a stream construction permit to "Construct Across or Along a Stream" be submitted to Kentucky Division of Water. The DAML project ATP request notes that construction will not start until all required permits and authorizations have been issued. A specific 404 Clean Water Act (CWA) permit is not needed based upon DNR application of criteria provided by the U.S. Army Corps of Engineers (COE).



OSM Environmental Reviewer  
AML Program Specialist

11-4-2010

Date



Joseph L. Blackburn  
Field Office Director

11/04/2010

Date