

GUIDANCE FOR PROJECT ELIGIBILITY UNDER THE ABANDONED MINE LAND RECLAMATION ECONOMIC DEVELOPMENT PILOT PROGRAM FOR FISCAL YEAR 2017

I. OVERVIEW

Consistent with the Consolidated Appropriations Act, 2017 (Public Law 115-31), the Department of the Interior's (DOI) Office of Surface Mining Reclamation and Enforcement (OSMRE) has made funding available for projects in the Abandoned Mine Land Reclamation Economic Development Pilot Program (AML Pilot) for Fiscal Year (FY) 2017. This Pilot Program will provide grants to the six Appalachian states with the highest amount of unfunded Priority 1 and Priority 2 Abandoned Mine Land (AML) problems based on OSMRE's AML inventory data as of September 30, 2016. The following states will each receive \$25 million - Kentucky, Pennsylvania, and West Virginia; while Alabama, Ohio, and Virginia will each receive \$10 million in order to accelerate the remediation of AML sites with economic and community development end uses. The intent of the Pilot Program is to explore and implement strategies to return legacy coal sites to productive uses.

State AML programs, in consultation with state and local economic and community development authorities, must develop a list of eligible projects in Appalachian counties that demonstrate a nexus with AML cleanup and economic and community development. This AML Pilot is an opportunity for local communities and states to return impacted areas to productive reuse, which should be defined by the state in cooperation with local communities, to achieve the economic and community development goals identified for the community and/or region.

The purpose of this guidance document is to provide state AML programs with general criteria by which potential projects will be evaluated for eligibility and successful selection. This guidance is intended to ensure that projects meet the economic and community development nexus criteria, as the current AML program does not require such criteria. As such, the AML Pilot Program offers a non-traditional approach to the reclamation of impacted mine lands. A uniform approach is not expected in every state; however, this guidance is intended to assist states in their selection of projects.

State AML Programs are encouraged to collaborate with their respective state and local economic development authorities and local communities to identify potential projects and apply funds from the AML Pilot to projects that will offer the greatest benefits for communities. The AML Pilot offers states and local communities' flexibility in deciding which projects offer the greatest opportunities within their communities.

II. ELIGIBLE PROJECTS

Sites eligible under the AML Pilot:

- Unreclaimed Priority 1, Priority 2, or Priority 3 sites (i.e. AML lands and polluted waters) listed in e-AMLIS.
- Previously reclaimed AML lands and polluted waters.
- Land adjacent to unreclaimed or previously reclaimed AML lands and polluted waters as justified by the state and/or the communities impacted by historic coal production.

Please note: Currently permitted Title V active mine sites and former mine sites permitted and reclaimed after August 3, 1977, are not eligible to receive AML Pilot funds.

III. ECONOMIC AND COMMUNITY DEVELOPMENT NEXUS

The economic and community development nexus can be demonstrated by states in different ways depending on whether the proposed project is intended to: (1) incorporate economic and community development related activities as part of the project itself (Category A projects) or (2) involve primary reclamation activities only in order to create the conditions for future economic and community development that occurs post-reclamation (Category B projects).

When selecting projects, states are encouraged to consider the following:

“Category A” Projects (Reclamation with Development):

Is a project intended to include economic and community development related activities as part of the project itself, as well as reclamation activities, likely to result in positive economic and community development outcomes that can be measured?

In order to provide accountability, state AML programs will need to demonstrate that favorable conditions are created by the reclamation of the site. However, the Consolidated Appropriations Act did not specify criteria or metrics by which projects are evaluated since project-related outcomes will vary based on the project type. State AML programs should, to the extent possible, differentiate between post-project measures of future economic development in the medium to long term, and more short-term measures associated with economic development activities (e.g., infrastructure construction) that are included in the project itself. OSMRE recognizes that the metrics for productive reuse will vary based on the type of project selected. The following provides examples of measures a state may wish to report:

- Jobs created (beyond those jobs necessary to conduct reclamation);
- Businesses created, or served, or improved;
- Infrastructure created (impact could be measured by the linear feet, acreage, square feet, or other unit of measure for the expected amount of water, sewer, utility, or other form of infrastructure installed, constructed or repaired);
- Increased, enhanced, or restored infrastructure system capacity;
- Communities served or improved;
- Households served or improved;
- New or existing workers or students served or improved; and
- Number of visitors (overnight and daytime).

“Category B” Projects (Reclamation for Potential Development):

Is the project reasonably likely to create favorable conditions for the economic development of the project site or promote the general welfare through economic and community development of the area in which the project is conducted?

Such “favorable conditions” may be demonstrated by any one of the following:

- Documentation of the role of the project in the area’s economic development strategy or other economic and community development planning process.
- Documentation of the planned economic and community use of the project site after the primary reclamation activities are completed. Examples include contracts, agreements in principle, or other evidence that, once reclaimed, the site is reasonably anticipated to be used for one or more industrial, commercial, residential, agricultural or recreational purposes.

It is recommended that the documentation and outcomes noted above are submitted when seeking an authorization to proceed. Project description examples are provided below.

Example of Acceptable Category A Project: *The Big Sky Outdoor Recreation Trail project will consist of two sections of trail infrastructure development: 1) reclamation and construction on abandoned mine lands to create 10 miles of trails within the Big Sky Outdoor Recreation Trail Network, using AML Pilot funding; and 2) construction of trail facilities and five miles of feeder trails on adjacent properties that will connect to the Big Sky Outdoor Recreation Trail Network, leveraging private funding. This project is consistent with a Comprehensive Economic Development Strategy (CEDS) developed by the region and focuses on tourism and recreation as an economic growth opportunity. By investing in the infrastructure for both local and visiting outdoor enthusiasts, the region will attract visitors and develop local businesses around the emerging cluster of outdoor recreation outfitters and manufacturers, restaurants, hospitality businesses, and other related businesses.*

Example of Acceptable Category A Project: *This project will install waterline, broadband, utilities, and local access road to a 10 acre AML site. This project includes acid mine drainage cleanup activities to prepare the site for future business site development. The site is targeted for manufacturing and industry tenants, based on agreements in principle with two prospective manufacturing tenants. Additional funds include \$1 million in private investment.*

Example of Acceptable, Category B Project: *This project will reclaim 10 acres of abandoned mine land, a site that will later be used to build a community center with Internet access, job placement and vocational training facilities. The need for the community center was identified in a documented community planning process and approved by local government officials.*

Example of Unacceptable Project: *This project will reclaim 100 acres of abandoned mine land. The performance measure for economic and community development is being categorized as future industrial development but it is not associated with a local economic or community development planning process and/or does not have the support of local government officials.*

IV. USE OF FUNDS AND LEVERAGING OTHER FUNDING SOURCES

Under the AML Pilot, states and local communities have the flexibility to use AML Pilot funds for both the reclamation of impacted lands and brick and mortar needs related to the end-use development project. The Pilot Program offers maximum flexibility in this regard. As such, we request that states and local communities balance the needs of an individual project with the ability to fund other priority pilot projects.

Where resources may help expand a project's scope or outcome, states and local communities are encouraged to identify and leverage other public and private funding sources to be used in conjunction with funding provided through the AML Pilot. In particular, states are encouraged to review opportunities for leveraging funds and other resources made available by other Federal offices. This includes the Appalachian Regional Commission (ARC) and the Economic Development Administration (EDA)¹. A non-exhaustive list of examples of funding combinations includes:

- AML Pilot \$ + Private \$
Additional funds could demonstrate economic and community development with a nexus to an AML site.

¹ Information about federal funding opportunities and additional funding and other resources (e.g., technical assistance) can be found at: www.eda.gov/coal/ and www.arc.gov.

- **AML Pilot \$ + AML \$**
Monies will need to be tracked separately. OSMRE's existing account structure can accommodate this tracking.
- **AML Pilot \$ + ARC \$**
Combining, coordinating, or matching AML Pilot funds with ARC funds could demonstrate economic and community development with a nexus to an AML site. AML Pilot funds or other AML funds can be used as matching funds for projects funded by ARC.
- **AML Pilot \$ + EDA \$**
Combining, coordinating, or matching AML Pilot funds with EDA funds could demonstrate economic and community development with a nexus to an AML site to leverage other funding sources such as funds awarded by EDA.
- **AML Pilot \$ + USDA \$**
Opportunities for combining, coordinating, or matching AML Pilot funds with USDA rural development funds in certain areas may also be available.

V. DEVELOPING LIST OF PROJECTS

Each state AML program must develop a list of eligible projects and include a description of how, when, where, and for what reclamation and economic or community development purposes AML Pilot funds will be used. States should provide summary level information about the project's purpose, cost, partnerships and/or leveraged funds (if applicable) that lead to the project's selection. The state should also include information on the intended sub-recipient of funds. Eligible grant sub-recipients are limited to state and local governments, economic development organizations, local communities, and non-government organizations. These sub-recipients, who are also considered sub-grantees may sub-contract project-related activities as appropriate, only after authorization to proceed have been issued for the specific project.

VI. PUBLIC ENGAGEMENT

When developing the list of eligible projects for the AML Pilot, state AML programs should ensure public engagement at the local level through communication with state and local economic development programs. These organizations are well-suited for understanding and achieving economic and community development end uses and goals.

States are encouraged to utilize best practices for public engagement if they are already in place or develop a process for public outreach and communication with local citizens and public organizations that best meet their unique circumstances. Some examples of public engagement include, but are not limited to, notification of local citizens of the intent/purpose of a project via meetings, print media, and social media; and partnering with organizations that inherently facilitate public outreach and communication. Documentation of public outreach should be submitted when seeking authorization to proceed.

VII. PROJECT BENEFITS, EXPECTED OUTCOMES OR PERFORMANCE MEASURES

States can identify, track and define the success of projects in many ways. Examples provided below:

- Jobs created (beyond those jobs necessary to conduct reclamation);
- Businesses created, or served, or improved;

- Infrastructure created (impact could be measured by the linear feet, acreage, square feet, or other unit of measure for the expected amount of water, sewer, utility, or other form of infrastructure installed, constructed or repaired);
- Revenues increased (export or domestic sales);
- Patients served or improved;
- Participants served or improved;
- Organizations served or improved;
- Increased, enhanced, or restored infrastructure system capacity (includes energy capacity, broadband accessibility);
- Communities served or improved;
- Households served or improved;
- Housing units constructed or rehabbed;
- New or existing workers or students served or improved; and
- Number of visitors (overnight and daytime).

VIII. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

OSMRE has determined that the provisions of the National Environmental Policy Act (NEPA) apply to all AML Pilot projects funded under Public Law 115-31. NEPA regulations issued by the White House Council on Environmental Quality (CEQ) are found at Title 40, Parts 1500-1508 of the Code of Federal Regulations (40 CFR 1500-1508, 42 U.S.C. 4371 et seq.).

In accordance with NEPA regulations, analysis of the “Federal action” is applicable to the approval of AML Pilot projects, as they are “Federally assisted activities” due to the allocation of Federal funds which must be “approved” by “other regulatory decisions.” Public Law 115-31 provides OSMRE with the authority to allocate funding to Alabama, Kentucky, Ohio, Pennsylvania, Virginia, and West Virginia for eligible projects that involve abandoned mine land reclamation and related economic and community development activities.

Based on the significance of the actual and potential impacts of the proposed action, there are three types of NEPA analysis:

- 1) Categorical Exclusion (CE);
- 2) Environmental Assessment (EA); and
- 3) Environmental Impact Statement (EIS).

The Department’s NEPA regulations make clear, in the absence of an applicable CE, that an EA, and in some cases, an EIS must be prepared for the proposed Federal action. Title 43 of the Code of Federal Regulations (CFR) Part 46.205(A) states:

If a proposed action does not meet the criteria for any of the listed Departmental categorical exclusions or any of the individual bureau categorical exclusions, then the proposed action must be analyzed in an environmental assessment or environmental impact statement.

However, based on the aforementioned and OSMRE’s experience with the traditional Title IV – AML sites it is anticipated a CE or an EA will suffice for most AML Pilot projects. These definitions are outlined below.

Categorical Exclusion

A CE is the first threshold of NEPA analysis for a proposed Federal action. The NEPA regulations account for projects that are sufficiently minor in scope and effect that neither an EA nor EIS need to be prepared. For these types of projects, OSMRE has created and received approval from CEQ for CE for

certain types of AML projects. This CE is contained in the DOI Departmental Manual (DM), Chapter 13 [516 DM 13.5 (33)], and applies to AML projects that meet the following criteria:

No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine sites, no dangerous slides where abatement has the potential for damaging inhabited property; no subsidence involving the placement of material 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.

Environmental Assessment

If a determination is made that a CE does not apply to a proposed Federal action then an EA is prepared. The EA determines whether or not a Federal action has the potential to cause significant environmental effects.

Environmental Impact Statement

An EIS is prepared if the proposed major Federal action is determined to significantly affect the quality of the human environment. The determination whether to perform an EIS must be made with respect to any “Federal action” because an EIS must be performed for any Federal action deemed major or significant. The regulatory requirements for an EIS are more detailed and rigorous than the requirements for an EA.

Project participants are strongly encouraged to utilize this guidance and look closely at the parameters of the three types of NEPA analyses outlined above to align their proposed projects accordingly in order to best understand their likely level of NEPA threshold prior to OSMRE’s review.

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If you have any questions or need additional assistance, please contact Sterling Rideout or Yolande Norman at 202-208-4264.