

GUIDANCE FOR PROJECT ELIGIBILITY UNDER THE ABANDONED MINE LAND RECLAMATION ECONOMIC DEVELOPMENT PILOT PROGRAM FOR FISCAL YEAR 2018

I. OVERVIEW

Pursuant to the Consolidated Appropriations Act, 2018 (Public Law 115-141), 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) 2018. 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, 2017. Accordingly, 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. In addition, the three Tribes with an approved AML reclamation program will each receive an equal portion of \$10 million (Hopi Tribe - \$3.33 million, Crow Tribe - \$3.33 million, and Navajo Nation - \$3.33 million). The Pilot Program is intended to explore and implement strategies to return legacy coal sites to productive uses.

State/Tribal AML Programs, in consultation with State/Tribal, local economic, and community development authorities, must develop eligible projects that demonstrate a nexus with AML land and water reclamation, and economic and community development. This AML Pilot is an opportunity for local communities and States/Tribes to return impacted areas to productive reuse, which should be defined by the States/Tribes 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/Tribal 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/Tribe; however, this guidance is intended to assist States/Tribes in their selection of projects.

State/Tribal AML Programs are encouraged to collaborate with their respective State/Tribal 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, Tribes, 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, Tribe, and/or the communities impacted by historic coal production.

Please note: Currently permitted Title V mine sites are not eligible to receive AML Pilot funds. Formerly permitted mine sites reclaimed after August 3, 1977 that are adjacent to, or connected with, an eligible AML Pilot project may be included in AML Pilot funding.

III. ECONOMIC AND COMMUNITY DEVELOPMENT NEXUS

The economic and community development nexus can be demonstrated by States/Tribes 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/Tribes are encouraged to consider the following:

“Category A” Projects (Reclamation with Development):

This 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/Tribal 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/Tribal 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. However, State and Tribal AML Programs will be required to report economic benefits and performance measures associated with awarded projects (see Section X). The following provides examples of measures a State/Tribe 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):

This is a 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 during the vetting process (described more fully below). The documentation and outcomes noted above will be required when seeking an Authorization to Proceed (ATP).

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.

Examples of Unacceptable Projects: 1) The project is not located on or adjacent to an unreclaimed or previously reclaimed AML site. 2) The project does not sufficiently demonstrate a nexus to economic and community development. 3) 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

AML Pilot grant recipients must comply with all applicable Federal grant award requirements, including but not limited to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200). States, Tribes, and local communities have the flexibility to use AML Pilot funds for both the reclamation of impacted lands and waters and brick and mortar needs related to the end-use development project. The Pilot Program offers maximum flexibility in this regard, letting States, Tribes, 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, Tribes, 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 and Tribes 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.
- 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 AML PILOT PROJECTS

Each State/Tribal AML Program is responsible for developing eligible AML Pilot projects. AML Pilot project proposals should include a description of how, when, where, and for what reclamation, economic or community development purposes AML Pilot funds will be used. States/Tribes should provide summary level information about the project's purpose, cost, partnerships and/or leveraged funds (if applicable), and the expected economic benefits that lead to the project's selection. The State/Tribe should also include information on the intended sub-recipient of funds. Eligible grant sub-recipients are typically limited to State, Tribal, 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 an Authorization to Proceed (ATP) has been issued for the specific project.

Once State/Tribal AML Programs, working with their local economic development authorities and local communities, conceptually develop their AML Pilot project proposals, these proposals must then be submitted to the servicing OSMRE Field Office. OSMRE will work with the State and Tribal AML Programs to conduct a review of these proposed projects on a rolling basis. OSMRE's review and approval process occurs in two phases.

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.

First, OSMRE will vet project proposals to identify at the early stage any concerns about the project or its eligibility. OSMRE will advise the State/Tribe of any concerns with the project, or will provide confirmation that the project does not raise any concerns at this early stage. Once the proposed project has been vetted, and if it receives OSMRE's preliminary approval, the State/Tribe should then proceed to develop the detailed project design, technical analysis, legal and regulatory requirements necessary, so that the project can advance to the next phase.

The second and final phase involves the environmental review and OSMRE's issuance of an ATP. Please note that each preliminarily-approved AML Pilot project requires the issuance of an authorization to proceed.

VI. PUBLIC ENGAGEMENT

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

States/Tribes are encouraged to utilize best practices for public engagement that are already in place, or develop a process for public outreach and communication with local citizens and public organizations that best meets 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 must be submitted when seeking an ATP.

VII. PROJECT BENEFITS, EXPECTED OUTCOMES OR PERFORMANCE MEASURES

States and Tribes are urged to demonstrate the success of their Pilot Program by tracking and reporting on as many economic measures as practical for each selected AML Pilot project. States/Tribes can identify, track and define the success of projects in many ways. However, State and Tribal AML Programs will be required to report economic benefits and performance measures associated with awarded projects (see Section X). Examples of significant measures of success are 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 rehabilitated;
- 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 115-141. 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 Parts 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 115-141 provides OSMRE with the authority to allocate funding to Alabama, Kentucky, Ohio, Pennsylvania, Virginia, West Virginia, the Crow Tribe, the Hopi Tribe, and the Navajo Nation 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), which may result in a Finding of No Significant Impact (FONSI);
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 so that neither an EA nor an EIS needs to be prepared. For these types of projects, OSMRE has created and received approval from CEQ for a 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 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 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.

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 a Federal action has the potential to cause significant environmental effects. If no significant environmental effect is found, the decision document will result in a FONSI and the project may continue. However, if a significant effect is found, then the project must go through the more rigorous EIS process.

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” deemed major or significant (see 40 CFR 1508.18). 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.

IX. PURCHASE OF REAL PROPERTY

The requirements for the acquisition, use, management, and disposal of real property acquired under a AML Pilot grant are established under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (P.L. 91-646) (49 CFR Part 24). Other applicable provisions are also found in sections 407 and 409 of SMCRA (30 U.S.C. 1237, 30 U.S.C. 1239), and OSMRE regulations referenced in 30 CFR Part 879.

Real property means land or an interest in land, such as an easement. Real property may include land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment. OSMRE recognizes that on rare occasions it may be necessary to acquire land using AML Pilot funds to facilitate the accelerated economic development of a Pilot project. State/Tribal AML programs should clearly demonstrate in the proposal that acquisition of the property is necessary to achieve the goals of the AML Pilot project.

Whenever a State/Tribal Program is seeking approval to use AML Pilot funds to purchase an interest in real property, the SF-429-B, *Request to Acquire, Improve, or Furnish*, must be submitted to OSMRE. All aspects of the purchase must be in compliance with applicable laws and regulations relating to real estate purchases.

When such purchases occur, while OSMRE does not typically become the owner of the land, OSMRE does retain an interest. At a minimum, that interest is to ensure that State/Tribal AML Program maintains the land in accordance with the purpose and conditions set out in the financial assistance award. When the land is no longer needed, or utilized, for that purpose, in accordance with 2 CFR Part 200, the State/Tribal AML Program must dispose of or revert title to the land in accordance with award documents, deed, or other legal instrument.

Designation as Recipient/Sub-recipient

The State/Tribal AML Program that receives an AML Pilot grant which funds the purchase of real property will always be designated the recipient. Any other State/Tribal Agency, local government, institution of higher education, or non-profit organization that holds title to real property purchased using AML Pilot funds will be designated a sub-recipient. It is incumbent upon the State/Tribal AML Program, as the recipient, to provide the sub-recipient with all relevant terms and conditions of the AML Pilot grant.

Fair Market Value & Appraisals

The Federal contribution from the AML Pilot funds to the purchase price of the property must not exceed the appraised fair market value. Real property that will be purchased with funds from financial assistance actions must be appraised in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or the “Yellow Book”)* by an independent real property appraiser licensed or certified by the state in which the property is located. A property appraisal by a state-certified

appraiser shall be prepared for the acquisition of the subject property. The appraiser should be certified for all general property appraisals (49 CFR Part 24.103).

Deed of Transfer

The deed of transfer must specify that the property will be used for the purposes of the Pilot project. If the non-Federal entity dissolves or is unable to continue managing the property as intended, the property must be transferred (with the original deed restrictions) to another non-Federal entity with the same goals. The new non-Federal entity must continue to operate and maintain the property as appropriate. The deed of transfer must also specify that if the property is no longer needed for the purposes stated in the deed, the owner will notify and consult with State/Tribal AML Program and DOI/OSMRE for appropriate disposition instructions.

Tracking Data on Real Property

OSMRE requires that the State/Tribal AML Program submit a report annually on the status of real property acquired using AML Pilot funds for the period of time in which the Federal government retains an interest. If the interest in the land will be held for less than 15 years, reports must be submitted annually. If the interest in the land will be held for 15 years or more, then the recipient must submit reports annually for the first three years and then every five years thereafter (2 CFR Part 200.329).

X. REPORTING REQUIREMENTS

This program is deemed by Congress as a “pilot” and involves the significant expenditure of Federal funds. As such, OSMRE is obligated to report to Congress and the public on the use of AML Pilot funds, as well as the benefits derived from their use. To this end, OSMRE will compile an Annual AML Pilot Program Report that will evaluate the economic impact of the Program and the status of AML Pilot projects within each State and Tribe. To assist OSMRE in preparing this report, each State and Tribal AML Program will be required to provide information on their AML Pilot projects to OSMRE no later than September 30 of each year. In addition to regular grant performance reporting, State and Tribal AML programs are required to submit the following information:

- A list of AML Pilot projects that received AML Pilot Grants for each funding year.
- A summary of the process used by each State/Tribe to solicit, develop and select projects.
- Current status of each AML Pilot project, including:
 - AML Pilot funding amount requested vs. actual amount received;
 - All other funding source(s) leveraged (e.g., in-kind services, private contribution, AML grants, etc.);
 - Total amount expended on the project to date and the amount expected to be spent;
 - Project partners;
 - Economic benefits/performance measures accomplished to date;
 - Expected benefits/outstanding performance measures to be accomplished and timelines for completion.

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If you have any questions or need additional assistance, please contact Sterling Rideout or Yolande Norman at 202-208-4264 or your servicing OSMRE Field Office