



United States Department of the Interior



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Instruction Memorandum - NV-SNDO-2019-002

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To: All Employees, Southern Nevada District Office (SNDO)

From: Timothy Z. Smith
District Manager, Southern Nevada District Office

Subject: Evaluating Expressions of Interest for Solar Projects on Avoidance/Variance Lands under the Solar and Wind Rule

Program Area: Lands & Realty

Purpose: The purpose of this Instruction Memorandum (IM) is to clarify application processing, including competition, for utility-scale solar projects on public lands identified through land use planning as “avoidance/variance” (variance), which are avoidance areas for utility-scale solar energy rights-of-way. While variance lands are outside of designated leasing areas, as that term is used in 43 CFR Part 2800, they are not excluded from utility-scale solar development. This IM will describe the process by which initial expressions of interests are evaluated for suitability, resource conflict, and potential right-of-way competition.

Timeframe: This IM is effective immediately.

Budget Impact: Minimal. Informal solar consultation meetings with each applicant should be less than two hours, and considered part of normal customer service.

Background: In 2016, the BLM issued a final rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections*, 81 Fed. Reg. 92,122 (Dec. 19, 2016) (“Solar and Wind Rule”), that among other things provides direction on how BLM will process solar applications within variance areas. Approximately 966,000 acres, or 30 percent of the SNDO has been identified as solar variance lands in the 2012 Solar Programmatic Environmental Impact Statement (PEIS) and Record of Decision (ROD).

The SNDO continues to receive expressions of interest from industry for utility-scale solar energy projects in areas identified as variance in the Solar PEIS ROD. Currently, the SNDO has received approximately 30 expressions of interest on variance sites. None of the expressions of interest to date have included a complete application, including an approved plan of development (POD), for projects on variance lands. Some sites of interest overlap or are adjacent to each other. Many locations have high resource conflicts and/or are inconsistent with the Resource Management Plan. Examples of such include overlap with land disposal areas near communities, lands annexed by local municipalities, wildlife connectivity corridors, designated utility corridors, or special recreation management areas.

Under the Federal Land Policy and Management Act (FLPMA) and the Solar and Wind Rule, the BLM has discretion to deny right-of-way applications prior to completing the National Environmental Policy Act (NEPA) process, pursuant to 43 CFR 2804.25 and 2804.26. When deciding to deny a right-of-way application, the BLM must have a reasoned basis supported by the administrative record. The BLM makes each such decision on a case-by-case basis, in coordination with the Office of the Solicitor.

The Solar and Wind Rule also allows BLM broad discretion to prioritize applications as high, medium, or low for processing. This allows the BLM to prioritize proposed projects that are located in areas with lower resource conflicts and higher public benefit.

One of the Department of the Interior's priorities is to restore trust and be a good neighbor. The BLM ensures that local governments from state, county, and city are kept informed when BLM receives expressions of interest for solar development. The BLM coordinates with the local governments as early as possible, pursuant to the PEIS and ROD. Although local governments do not have 'veto' power over BLM actions, their planning needs, present and future, must be taken into consideration to prevent conflicts and maintain good working relationships.

Finally, the Solar and Wind Rule provides BLM broad discretion to utilize a competitive process when issuing rights-of-way for solar projects on variance lands, **including by doing so on BLM's own initiative**. Currently, over 90 percent of the expressions of interest to develop solar on variance lands have been in Clark County. By this IM, the BLM has the discretion that any expression of interest that is suitable to move forward with solar development in Southern Nevada District be processed through the variance competitive process, especially in Clark County. Otherwise, the BLM will not competitively offer lands for which the BLM has accepted a complete application, approved POD, as determined by the Authorized Officer, and entered into a cost recovery agreement.

Pivotal to understanding this milestone of "application acceptance" (which triggers a variance-no-compete status) is whether the application and POD have deficiencies that need to be addressed, pursuant to 43 CFR 2804.25. See Exhibits 1 and 2 for minimum application and POD requirements.

Policy/Action: The following describes SNDO's approach to evaluating expressions of interest that will front-load important information, allow the BLM and the applicant to make informed decisions prior to the formal process, and promote competition to best benefit the public.

Solar project consultation

- Before the BLM accepts any SF299 application, application fees, or reviews a plan of development, the BLM will request two solar consultation meetings with the applicant. These requested meetings are separate from the two preliminary application review meetings required under 43 CFR 2804.12(b)(4). The main objective of the consultation meetings are to evaluate the suitability of site for utility-scale solar development.
- The applicant will provide BLM a spatial map (Geographic Information System (GIS) shapefile or google map) and a brief project description.
- In advance of solar consultation meeting #1, the BLM will review the information submitted by applicant relating to the proposed project area. Using the spatial information, the BLM will incorporate relevant resource information and generate a map of the project. The BLM will send the map to the applicant and the appropriate local government (city, county, etc.) contact, and request from the latter a written response within 15 days.
- The objective of solar consultation meeting #1 is for all parties to get a common understanding of the project boundaries as well as the constraints/opportunities of the site location. BLM will instruct the applicant to contact the local jurisdiction to discuss the proposed project and get local support or non-objection (as stated above, the local jurisdiction will already have been notified by BLM). BLM will provide to the applicant the local government point of contact information.
- The objective of solar consultation meeting #2 will be to review the results of communication with the local government and discuss the project further.
- BLM anticipates that these two solar consultation meetings should be completed within 30 days of receiving the applicant's spatial information on the variance site (depending on how quickly the applicant reaches out to the local jurisdiction).

Application Evaluation

Low Conflict Area

- After the solar consultation meetings, BLM may determine that the site has low conflict for solar development. The applicant will then submit their SF299 application, an initial plan of development (POD), and \$15/acre application fee. BLM will serialize the application and establish a cost recovery account (CRA). The BLM will evaluate in a timely manner where the project fits within BLM's priorities and will notify the applicant in writing, within the initial 60-day processing period, of the estimated processing time,

pursuant to 43 CFR 2804.25 (d). The BLM will review the application and initial POD, utilizing the cost recovery funds. BLM requires that the application and initial POD be sufficiently detailed to reflect substantial progress in the processing of a right-of-way application, pursuant to 43 CFR 2804.25 (c). BLM will notify the applicant by letter when BLM considers the application package complete. An application package is considered complete once the BLM has received all required documents (Exhibit 1), an approved POD (Exhibit 2), any additional information pursuant to 43 CFR 2804.12(f), and all required information has been verified with no significant deficiencies identified. Prior to initiating the NEPA process, the applicant must complete two preliminary application review meetings, studies, inventories, and reports. Up until the time that an application package is considered complete, BLM can consider other applications (see Evaluation for Competition on Variance Lands) on the same site or vicinity.

High Conflict Areas and/or Incompatibility with Other Uses

- After the solar consultation meetings, the BLM may determine that the site has high conflict for solar development or is inconsistent with the RMP. The BLM may find that the local jurisdiction does not support the project or the project is incompatible with their future planning; the site may be incompatible with other needs, such as recreation; or the site may interfere with wildlife corridors. The BLM may then recommend that the applicant withdraw its expression of interest in the variance area and not move forward with an application. If the applicant agrees, the BLM will document that the applicant has agreed to withdraw the expression on interest.
- If the applicant disagrees with BLM's recommendation and still wants to move forward, in spite of BLM's recommendation, resource conflicts, and/or a lack of local support, then BLM will accept the application, serialize the project, collect the \$15 per acre application fee, and set up the CRA. However, BLM will inform the applicant that there is a risk of BLM denying the application, with rationale, prior to initiating the NEPA process. Should BLM deny the application, the BLM will refund to the applicant the balance remaining in the CRA, minus BLM expenditures. Application denial is pursuant to 43 CFR 2804.25 and 2804.26, and is appealable.

Evaluation for Competition on Variance Lands – When might BLM evaluate a project for competition?

BLM supports competition whenever appropriate and will document information from a variety of sources to establish whether an area has interest from multiple companies, including applications, maps, phone calls, and emails. Applications do not have to directly overlap to establish competitive interest. As stated above, BLM may determine that expressions of interest in low conflict areas in the Southern Nevada District, especially Clark County, could be processed for variance competition.

The amount of time between when an SF299 application and preliminary POD is submitted and when the application is considered complete will depend on several variables:

1. Where the project fits in BLM's priorities: if the project is considered a low priority, BLM may not initiate work on the project until higher priority work is completed, pursuant to 43 CFR 2804.25 (d).
2. Whether the applicant completes the SF299 and POD in a timely fashion, both must contain sufficient information to inform BLM on the "who, what, how, why, when, and where" a project will be constructed (43 CFR 2804.25 (c) and Exhibits 1 and 2).

Important Consideration – During the time between application submission and acceptance, the BLM can consider other applications for the same area. A critical milestone is when BLM sends a notification letter to the applicant that their application and POD are complete and have been accepted.

Once BLM accepts an application, has an approved POD, and an established cost recovery account, then the project area will not be considered for variance competition.

The process for competitive variance is as follows:

- Competitive Variance Criteria – Per the Solar and Wind Energy Final Rule:
 - More than one expression of interest in a general location.
 - Expressions of interest do not need to overlap, but do need to be in a general geographic location.
 - Expressions of interest can be in the form of applications, maps, phone calls, emails, etc. and must be well documented.
 - The timing of more than one expression of interest, for competitive variance, must be prior to BLM accepting a completed application and sending the notice of acceptance to the applicant.
 - Once BLM has a completed application, the competitive variance does not apply.
- Competitive Variance Process
 - Follows 43 CFR§2804.30 procedures, including setting fair market value of the parcel(s).
 - Notice of Interest will be published in the Federal Register
 - Notice of Auction

Coordination: The SNDO developed this IM in coordination from the BLM Nevada State Office (NSO), BLM Washington Office (WO-300), and Office of the Solicitor (Sol). BLM will post this policy on the BLM-SNDO website. The SNDO will continue to coordinate with local governments, NSO, WO, and Sol in the implementation of this IM.

Attachments:

Exhibit 1 - Application Requirements

Exhibit 2 – Plan of Development Requirements

Variance Evaluation Flow Chart