



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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EMS TRANSMISSION
Instruction Memorandum – NV-SNDO-2020-001
Expires: 1/1/2022

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

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

Subject: Prioritization of Solar and Wind Right-of-Way Applications in the Southern Nevada District in accordance with the regulations at 43 CFR §2804.35.

Program Area: Lands & Realty

Purpose: The purpose of this Instruction Memorandum (IM) is to clarify how the BLM SNDO will implement the regulations at 43 CFR §2804.35 for wind and solar right-of-way applications. These are applications submitted in areas outside of designated leasing areas subject to the regulations at 43 CFR §2809. For solar, these applications are located on lands designated as “avoidance/variance” (variance lands) in the Las Vegas Resource Management Plan. This IM will create a standard process to increase consistency with all applicants and transparency for the general public.

Timeframe: This IM is effective immediately.

Budget Impact: None.

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 and wind applications. The Solar and Wind Rule also discussed and codified BLM IM 2011-061 which stated, “Early coordination and careful review of proposed renewable energy projects with Federal, state, tribal and local government agencies before committing significant resources to the processing of solar and wind energy development right-of-way applications will assist the BLM in identifying and prioritizing those applications that have the fewest resource conflicts and the greatest likelihood

of success in the permitting process” and “Applications with fewer resource conflicts are anticipated to be easier and thus less costly and time-consuming for BLM to process.”

To help identify resource conflicts and potential issues with new solar and wind project proposals, the SNDO implemented IM NV-SNDO-2019-002 titled: “Evaluating Expressions of Interest for Solar Projects on Avoidance/Variance Lands under the Solar and Wind Rule”. This IM described the procedures the BLM would follow from the time a project was first presented to the time an application was submitted, including participating in two preliminary application meetings to discuss the feasibility of the proposed project and coordinating with local governments. After receiving multiple applications, the SNDO determined that additional guidance was needed in order to create a clear and consistent process for reviewing those applications and prioritizing them as low, medium, or high priority as required by the regulations in 43 CFR §2804.35.

Policy/Action: Applications for wind and solar projects filed under 43 CFR §2804.12 will be processed in accordance with the regulations at 43 CFR §2804.25. The regulations at 43 CFR §2804.25(e)(2)(ii) state that solar and wind projects will be subject to the screening criteria at 43 CFR §2804.35.

To clearly and consistently implement the screening criteria at 43 CFR §2804.35, the BLM will prepare a SNDO Renewable Energy Project Priority Determination Worksheet (attached) for each application and will give the application a priority of low, medium, or high based on compliance with relevant regulations, local considerations and resource concerns as described in the attached worksheet. Applicants will be informed of their priority level in writing.

When the BLM has determined that it is ready to start processing a specific application, the applicant will be notified in writing per 43 CFR §2804.25. For solar energy projects that are subject to the variance process, the written notification will be the commencement of that process. After completion of the steps in the variance process, including public outreach and agency coordination, those applications determined appropriate for processing will be submitted to the BLM Washington Office for Director’s concurrence.

Applications filed prior to the publication of the *Supplement to the Draft Solar Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States* (October 28, 2011), will be subject to this IM in accordance with the *Approved Resource Management Plan Amendments/Record of Decision (ROD) for Solar Energy Development in Six Southwestern States*. Section B.1.2 of the ROD states: “When processing these applications, the BLM will consider its current policies and procedures (e.g., IM 2011-060 [BLM 2011a] and IM 2011-061 [BLM 2011b]), including interagency coordination with DOI agencies, or other applicable policies and procedures that the BLM might adopt in the future.”

Until the BLM notifies the applicant in writing that the agency is ready to start processing a specific application, any monetary investment by the applicants to conduct activities such as resource surveys, geotechnical investigations or public outreach will be entirely at the risk of the company.

The following describes how the priority level will affect when and if a project will be processed.

- A low priority application may not be feasible to process.
- A medium priority application is given priority over a low priority application.
- A high priority application is given processing priority over medium and low priority applications. Projects proposed in the Amargosa Solar Energy Zone will be prioritized above other high priority applications that BLM has not yet begun to process.
- Processing of leases in designated leasing areas under the 43 CFR §2900 regulations, will be prioritized over right-of-way applications for solar and wind projects filed under the 43 CFR §2800 regulations, even those prioritized as high priority projects.

BLM may re-categorize the application's priority level based on new information received through surveys, public meetings, or other data collection, or after changes to the application.

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 SNDO may use the Priority Determination Worksheet to provide the reasoned basis for denying an application.

Coordination: The SNDO developed this IM in coordination with the BLM Nevada State Office, and Office of the Solicitor. BLM will post this policy on the BLM-SNDO website.

Attachment: SNDO Renewable Energy Project Priority Determination Worksheet

SNDO Renewable Energy Project Priority Determination Worksheet

Project Name:

Date:

BLM Serial Number:

Purpose: The purpose of this worksheet is to identify landscape level constraints for Solar and Wind project proposals in the Bureau of Land Management (BLM) Southern Nevada District Office (SNDO) and to prioritize the solar or wind proposal based on known resource conflicts.

This worksheet is divided into four sections. These sections evaluate each proposed solar or wind project submitted to the Southern Nevada District Office (SNDO). The sections in this worksheet are as follows:

- Section 1 identifies the prioritization of projects based on regulations (43 CFR §2804.35).
- Section 2 are local (SNDO) considerations.
- Section 3 identifies specific resources issues.
- Section 4 identifies the priority decision.

Section 1 – Regulation Compliance

The regulatory compliance criteria below come from 43 CFR §2804.35. When completing the following form, if something is marked present or further clarification is needed please note it in the table at the end of Section 2 or if resource specific within Section 3 notes.

Low-Priority Criteria ¹		Present	Not Present
1)	Lands near or adjacent to lands designated by Congress, the President, or the Secretary for the protection of sensitive viewsheds, resources, and values (e.g., units of the National Park System, Fish and Wildlife Service Refuge System, some National Forest System units, and the BLM National Landscape Conservation System), which may be adversely affected by development.		
2)	Lands near or adjacent to Wild, Scenic, and Recreational Rivers and river segments determined suitable for Wild or Scenic River status, if project development may have significant adverse effects on sensitive viewsheds, resources, and values.		
3)	Designated critical habitat for federally threatened or endangered species, if project development may result in the destruction or adverse modification of that critical habitat.		
4)	Lands currently designated as Visual Resource Management Class I or Class II.		
5)	Right-of-way exclusion areas.		

¹ Lands currently designated as no surface occupancy for oil and gas development in BLM land use plans was removed from the low-priority criteria. This removal is due to the vagueness in the Las Vegas 1998 RMP.

Medium-Priority Criteria:		Present	Not Present
6)	BLM special management areas that provide for limited development, including recreation sites and facilities.		
7)	Areas where a project may adversely affect conservation lands, including lands with wilderness characteristics that have been identified in an updated wilderness characteristics inventory.		
8)	Right-of-way avoidance areas.		
9)	Areas where project development may adversely affect resources and properties listed nationally such as the National Register of Historic Places, National Natural Landmarks, or National Historic Landmarks.		
10)	Sensitive habitat areas, including important species use areas, riparian areas, or areas of importance for Federal or State sensitive species.		
11)	Lands currently designated as Visual Resource Management Class III.		
12)	Department of Defense operating areas with land use or operational mission conflicts.		
13)	Projects with proposed groundwater uses within groundwater basins that have been allocated by State water resource agencies.		

High-Priority Criteria:		Present	Not Present
14)	Lands specifically identified as appropriate for solar or wind energy development, other than designated leasing areas.		
15)	Previously disturbed sites or areas adjacent to previously disturbed or developed sites.		
16)	Lands currently designated as Visual Resource Management Class IV.		
17)	Lands identified as suitable for disposal in BLM land use plans.		

Section 2 – Local Considerations

The following considerations are specific to the Southern Nevada District. The selection of “present” for any of the local considerations can change the project priority. These local considerations take into account, but are not limited to, the following secretarial orders, policy, regulation, and laws, and BLM priorities.

- 43 CFR §2804.35
- Approved Resource Management Plan Amendments/Record of Decision for Solar Energy Development in Six Southwestern Statesⁱ
- 1998 Las Vegas Resource Management Planⁱⁱ
- Department of the Interior Prioritiesⁱⁱⁱ
- Bureau of Land Management Leadership Priorities^{iv}
- United States Fish and Wildlife Species List^v
- Nevada State Species List^{vi}
- BLM Sensitive Species List^{vii}

Local Considerations		Present	Not Present
18)	Development is located in the Southern Nevada Public Land Management Area (SNPLMA) Boundary		
19)	Development is located near the proposed Southern Nevada Supplemental Airport		

20)	There is a Solar Energy Zone or Designated Leasing Area within the district that could be used.		
21)	Development is located in areas where project development may adversely affect lands acquired for conservation (e.g., SNPLMA Environmentally Sensitive Land Acquisitions such as the Perkins Ranch acquisition near the Moapa, Nevada).		
22)	The proposed project supports economies of local Tribes		
23)	The proposed project supports the economy of Nye County		
24)	Development is located within an area identified for disposal		
25)	Development is located within a utility corridor		
26)	Development is located within lands withdrawn from ROW authorizations		
27)	Development is located within lands segregated from ROW authorizations.		
28)	Development is located over another Solar or Wind Application		
29)	Development may not be compatible with an existing grant, easement, lease, license, or permit.		
30)	Development is located outside of BLM jurisdiction		
31)	Development is located on private lands		
32)	Development is located in a USFWS least cost desert tortoise corridor.		
33)	Development is located in or adjacent to desert tortoise translocation areas		
34)	Development is located over existing or active mining claims or community pit		
35)	Development is located over or within 1000 meters of natural surface water, springs, riparian areas or wetlands		
36)	Development is located within a hydrogeographic basin where groundwater withdrawal could potentially impact groundwater dependent natural resources.		
37)	Development is located over lands containing sensitive soil resources.		

When completing Sections 1 and 2, if something is marked present or further clarification is needed please include here. Please place the number in the first column that corresponds to the number in Sections 1 and 2. If the presence or clarification is resource specific provide the justification or clarification in Section 3.

Clarifications/Justifications	

Section 3 – Resource Considerations

This section identifies the proposed projects resources conflicts. This section is to be completed by BLM resource specialists using existing data and knowledge of the area. The resource conflicts identified in this section can change the priority of the project.

Desert Tortoise
<p><i>Considerations:</i></p> <ul style="list-style-type: none"> • Based on vegetation, soil type, and/or previous surveys, whether the project is proposed in areas expected to occur in low, medium or high density tortoise habitat. • Whether the project is proposed in relatively undisturbed habitat. • Whether the project is located in a tortoise genetic connectivity corridor (least cost tortoise corridor) • The availability of an area to translocate desert tortoise within the same recovery unit from the proposed project site.
<p><i>Description of Issues:</i></p>
Other Federally Listed, State Listed, and BLM Sensitive Species Constraints
<p><i>Considerations:</i></p> <ul style="list-style-type: none"> • Whether there are other Federally Listed, State Listed, and BLM Sensitive Species expected to occur at the site or have the potential to be directly or indirectly affected by the proposed project.

Botany
<p><i>Considerations:</i></p> <ul style="list-style-type: none"> • Whether the project will occur in or adjacent to habitat for any sensitive or state or federally listed species or Clark County MSHCP protected plant species. • Whether the project occurs in major portion (>10% of any population group) of habitat for BLM sensitive plant species or MSHCP protected plant species • Whether the project occurs in any habitat for federally endangered plant species OR Project occurs in habitat (> 5% of any population group) for state endangered plant species.
<p><i>Description of Issues:</i></p>

Weed Constraints

Considerations:

- Whether there are non-native and/or noxious weed species present or adjacent to the project area.
- Whether the project activity is likely to result in the establishment of noxious/invasive weed species.
- Whether the spread of non-native and/or noxious weed species would result in impacts to the surrounding areas and whether that would have impacts to important areas such as Critical Habitat Units, ACECs, sensitive plant habitat, NCA's, National Monuments, etc.

Description of Issues:

Cultural and Native American

Considerations:

- Whether there are isolated documented sites and sites within 1000 meters of the project area.
- Whether there are ineligible archaeological sites and possible Native American cultural or religious sites, including high potential areas like river terraces or springs.
- Whether there are eligible archaeological resources that require treatment and known Native American Cultural or religious sites.
- Whether there are significant eligible intact sites and undisturbed human burials.

Description of Issues:

Recreation

Considerations:

- The level of casual use recreation.
- Types and numbers of special recreation permits in the area.
- Whether the proposed project area occurs within a Special Recreation Management Area identified in a Land Use Plan that is managed specifically for recreation opportunities.
- The proposed project area occurs within a Special Recreation Management Area identified in a Land Use Plan that is managed specifically for recreation opportunities, and has developed recreation facilities (trailheads, kiosks, staging areas), in addition to having special recreation permitted activities.

Description of Issues:

Range / Grazing
<p><i>Considerations</i></p> <ul style="list-style-type: none">• Whether the project area is located in any active grazing allotment.• Whether the development of the solar facility make grazing impossible within the active allotment (development of key forage areas or key water sites).• Whether the project is in an allotment where Clark County has purchased the grazing preference to protect desert tortoise under the MSHCP (Arrow Canyon, Arrow Canyon in Battleship Wash, Beacon, Bunkerville, Crescent Peak, Christmas Tree Pass, Gold Butte, Hen Springs, Ireteba Peaks, Jean Lake, McCullough Mountain, Mesa Cliff, Roach Lake, Table Mountain, Toquop Sheep, Upper Mormon Mesa, White Basin).
<p><i>Description of Issues:</i></p>

Section 4 - Priority Decision

Priority Decision	
Based on the BLM screening criteria found in 43 CFR 2804.35, and additional resource considerations, the project priority category has been determined to be:	

Justification:

[Fill in appropriate Manager Name], Date
Field Manager
[Appropriate] Field Office

Concurrence / Non-Concurrence

[Fill in appropriate Manager Name], Date
District Manager
Southern Nevada District

ⁱ BLM. 2012a. "Approved Resource Management Plan Amendments/Record of Decision for Solar Energy Development in Six Southwestern States." October.

ⁱⁱ BLM. 1998. "Record of Decision for the Approved Las Vegas Resource Management Plan and Final Environmental Impact Statement." October.

ⁱⁱⁱ <https://www.doi.gov/ourpriorities>

^{iv} <https://blmspace.blm.doi.net/wo/600/commtools/SitePages/Leadership%20Priorities.aspx>

^v <https://ecos.fws.gov/ecp0/reports/species-listed-by-state-report?state=NV&status=listed>

^{vi} <http://heritage.nv.gov/species/process.php>

^{vii} <https://www.blm.gov/policy/nv-im-2018-003>