

GUIDANCE FOR PROJECT ELIGIBILITY UNDER THE ABANDONED MINE LAND ECONOMIC REVITALIZATION PROGRAM FOR FISCAL YEAR 2024

I. OVERVIEW

Only projects funded exclusively by the FY 2024 AMLER Program will follow the guidance in this document. Projects funded in whole or in part by AMLER funds from FY 2023 and earlier will utilize the [FY 2023 AMLER Guidance](#). OSMRE is available as a technical resource to assist States and Tribes as needed or requested for any aspect of the AMLER Program.

Pursuant to the Consolidated Appropriations Act, 2024 (Pub. L. No. 118-42), the Department of the Interior's (DOI) Office of Surface Mining Reclamation and Enforcement (OSMRE) has made \$130 million in Fiscal Year (FY) 2024 Abandoned Mine Land Economic Revitalization (AMLER) Program funding available as payments to certain States and federally recognized Indian tribes with approved reclamation plans under section 405 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for economic and community development in conjunction with the priorities described in section 403(a) of SMCRA. Of the \$130 million available, \$86,000,000 will be divided equally and distributed to the three Appalachian States with the greatest amount of unfunded Priority 1 and Priority 2 AML problems as delineated in OSMRE's AML inventory data as of September 30, 2023, while \$33,000,000 will be divided equally and distributed to the three Appalachian States with the subsequent greatest amount of unfunded Priority 1 and Priority 2 AML problems. Accordingly, \$86,000,000 will be distributed in equal amounts among Kentucky, Pennsylvania, and West Virginia (\$28.667 million each), while \$33,000,000 will be distributed in equal amounts among Alabama, Ohio, and Virginia (\$11 million each). In addition, each of the three Tribes with approved AML reclamation plans, the Hopi Tribe, Crow Tribe, and Navajo Nation, will receive an equal portion of \$11 million (\$3.667 million each).

As State/Tribal AML Programs must spend FY 2024 AMLER funds on economic and community development in conjunction with the priorities described in section 403(a) of SMCRA, the AMLER Program presents an opportunity for local communities and States/Tribes to return coal mining impacted areas to productive reuse and achieve the economic and community development goals identified for the community and/or region.

The purpose of this guidance document is to assist State/Tribal AML Programs in making lawful use of the funds provided. This guidance is intended to ensure that projects meet the economic and community development criteria, as the current AML program does not require such criteria. As such, the AMLER Program offers a non-traditional approach to the reclamation of impacted pre-SMCRA coal-mined 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 AMLER Program to projects that will offer the greatest benefits for communities. The AMLER Program 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 AMLER Program:

- 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 AMLER funds. Formerly permitted mine sites reclaimed after August 3, 1977, that are adjacent to, or connected with, an eligible AMLER project may be included in AMLER funding. Consistent with 30 C.F.R. § 874.16, any person or entity that is in violation of SMCRA is not eligible for AMLER funding.

III. ECONOMIC AND COMMUNITY DEVELOPMENT

Economic and community development can either (1) be incorporated as part of the project itself (Category A projects), or (2) primarily involve reclamation activities that 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 (Development Associated with AML Reclamation):

A Category A project includes both an eligible project as defined in Section II and economic and community development activities associated with the eligible project, and the project is likely to result in positive, measurable economic and community development outcomes.

To provide accountability for FY 2024 AMLER payments, State/Tribal AML Programs are encouraged to report economic benefits and performance measures associated with projects funded using FY 2024 AMLER payments (see Section XI). The Consolidated Appropriations Act, 2024, does not specify criteria or metrics by which projects are evaluated and OSMRE recognizes that the metrics for productive reuse will vary based on the type of project selected; however, 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 short-term measures associated with economic development activities (e.g., infrastructure construction) that are included in the project itself. The following are examples of measures a State/Tribe may consider including in their report:

- Jobs created (beyond those jobs necessary to conduct reclamation);
- Businesses created or served;
- 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;
- Households served;
- Reclamation achieved (e.g., acres reclaimed, waters improved, improved revegetation, methane reduced, etc.);
- New or existing workers or students served; and
- Number of visitors (overnight and daytime).

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

A Category B project is 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 where the project is conducted.

Such “favorable conditions” may be demonstrated by any 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; or
- Documentation of community support for the project. Examples include letters from non-profit organizations, businesses, and local governments, as well as documentation of community outreach efforts (such as notices of public meetings), and public comment periods.

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 AMLER 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. The project application demonstrates support for the trail system from local residents and community groups. The project is also consistent with a Comprehensive Economic Development Strategy 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 B Project:** This project will reclaim 10 acres of abandoned mine land, which 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. Support for the community center from local community groups and residents is documented, and potential funding sources for construction of the community center are identified in the application. Appropriate project partners, such as job/career training center partner and an internet company to provide service to the facility have been identified.*

***Examples of Unacceptable Projects:** 1) The project is not located on or adjacent to an unreclaimed or previously reclaimed AML site; and/or 2) there is no current or future economic and community development associated with the project.*

IV. USE OF FUNDS AND LEVERAGING OTHER FUNDING SOURCES

FY 2024 AMLER funds are being provided to AMLER States and Tribes as payments. In this context, payments differ from the grants that have been issued for the AMLER Program in previous FYs. For FY 2024, eligible States and Tribes will need to comply with some, but not all, of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In particular, eligible States and Tribes will need to comply with 2 C.F.R. §§ 200.0 – 200.1, 200.100 – 200.113, 200.303,

200.331 - 200.333, 200.500 – 200.521). In addition, any interest earned on FY 2024 AMLER payments must be remitted to OSMRE for inclusion in the Abandoned Mine Reclamation Fund (AML Fund). See U.S. General Accounting Office (GAO), GAO-06-382SP, *Principles of Federal Appropriations Law* 10-79 (2006) (GAO Red Book); see also 1 Comp. Gen. 652 (1922).

States, Tribes, and local communities have the flexibility to use AMLER funds for both the reclamation of impacted lands and waters and brick and mortar needs related to the end-use development project. The AMLER 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 AMLER projects.

Where additional 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 AMLER Program funding. In particular, States and Tribes are encouraged to review opportunities for leveraging funds and other resources made available by other Federal offices, such as the [Appalachian Regional Commission](#) (ARC) and the [Economic Development Administration](#) (EDA).¹ While matching funds are not required to be eligible for AMLER financial assistance, OSMRE recommends that State and Tribal programs encourage applicants to leverage other public and private resources or to provide in-kind contributions, to demonstrate project viability and broader stakeholder buy-in. A non-exhaustive list of examples of funding combinations includes:

- **AMLER \$ + Private \$**
Additional funds could demonstrate economic and community development associated with an AML site. States and Tribes are solely fiscally responsible for tracking and monitoring the FY 2024 AMLER direct payment and any other additional private funding source(s) for the project.
- **AMLER \$ + AML \$**
Monies will need to be tracked separately. OSMRE's existing account structure can accommodate tracking of the AML portion which States and Tribes must ensure appropriate alignment of these expenditures. States and Tribes are also solely fiscally responsible for tracking and monitoring the FY 2024 AMLER payment portion.
- **AMLER \$ + Infrastructure Investment and Jobs Act (IIJA; Pub. L. No. 117-58) AML \$²**
Monies will need to be tracked separately. OSMRE's existing account structure can accommodate tracking of the IIJA portion which States and Tribes must ensure appropriate alignment of these expenditures. States and Tribes are also solely fiscally responsible for tracking and monitoring the FY 2024 AMLER payment portion.
- **AMLER \$ + ARC \$**
Combining, coordinating, or matching AMLER funds with ARC funds could demonstrate economic and community development associated with an AML site. AMLER funds or other AML funds can be used as matching funds for projects funded by ARC. States and Tribes are solely fiscally responsible for tracking and monitoring the FY 2024 AMLER payment and any other additional ARC funding source(s) for the project.

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

² The IIJA authorized and appropriated \$11.293 billion for deposit into the AML Fund, of which \$10.873 billion will be distributed as grants to eligible States and Tribes on an equal annual basis (approximately \$725 million a year) over a 15-year period beginning in FY 2022.

- **AMLER \$ + EDA \$**
Combining, coordinating, or matching AMLER funds with EDA funds could demonstrate economic and community development associated with an AML site. States and Tribes are solely fiscally responsible for tracking and monitoring the FY 2024 AMLER payment and any other additional EDA funding source(s) for the project.
- **AMLER \$ + USDA \$**
Opportunities for combining, coordinating, or matching AMLER funds with USDA rural development funds in certain areas may also be available. States and Tribes are solely fiscally responsible for tracking and monitoring the FY 2024 AMLER payment and any other additional USDA funding source(s) for the project.

V. DEVELOPING AMLER PROJECTS

Each State/Tribal AML Program is responsible for soliciting, selecting, developing, and approving eligible AMLER projects funded exclusively from FY 2024 AMLER payments. OSMRE encourages States and Tribes to ensure that each AMLER project includes a description of how, when, where, and for what reclamation, economic development, or community development purposes AMLER funds will be used. States/Tribes should ensure that project proposals include 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 ensure that project proposals include information about any intended subrecipient of AMLER payments. Eligible subrecipients are typically limited to State, Tribal, and local governments, economic development organizations, local communities, and non-government organizations. These subrecipients may subcontract project-related activities. As noted in Section II, any person or entity that is in violation of SMCRA, at the time of contract award, is not eligible for AMLER funding.

State/Tribal AML Programs are encouraged to work with their local economic development authorities and local communities on AMLER project proposals. AMLER projects funded exclusively from FY 2024 AMLER payments are not subject to OSMRE preliminary vetting, NEPA review, or issuance of an Authorization to Proceed (ATP).

VI. PUBLIC ENGAGEMENT

State/Tribal AML Programs are encouraged to use best practices for public engagement in the solicitation, selection, development, and reporting of AMLER projects. Such practices include:

- Hosting public meetings with in-person and virtual attendance options to provide information to and receive input from the public, such as soliciting project ideas and proposals and providing information about the AMLER Program and how to apply for funding;
- Maintaining a dedicated AMLER webpage with agency contact information for members of the public who have questions or need additional information, as well as information regarding funded AMLER projects;
- Using both print and social media for all public communications; and
- Partnering with organizations that facilitate public outreach and communication, including State, Tribal, and local economic development programs.

OSMRE encourages States and Tribes to document public outreach efforts.

VII. PROJECT BENEFITS, EXPECTED OUTCOMES OR PERFORMANCE MEASURES

States and Tribes are urged to demonstrate the success of their AMLER projects by tracking and reporting on as many economic and environmental measures as practical. States/Tribes can identify, track, and define the success of projects in many ways. State/Tribal AML Programs are also encouraged to provide an annual report on the economic benefits and performance measures associated with projects funded under FY 2024 AMLER payments (see Section XI). Examples of significant measures of success are provided below:

- Jobs created (beyond those jobs necessary to conduct reclamation);
- Businesses created or served;
- 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;
- Participants served;
- Organizations served;
- Increased, enhanced, or restored infrastructure system capacity (includes energy capacity, broadband accessibility);
- Communities served;
- Households served;
- Reclamation achieved (e.g., acres reclaimed, waters improved, improved revegetation, methane reduced, etc.);
- Housing units constructed or rehabilitated;
- New or existing workers or students served;
- Number of visitors (overnight and daytime); and
- Quantifiable recreational opportunities created

VIII. COMPLIANCE WITH ENVIRONMENTAL STATUTES

Projects funded entirely by FY 2024 AMLER payments or projects funded with a combination of FY 2024 AMLER payments and private monies do not require compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* Other environmental statutes that do not require a discretionary Federal action, such as the Endangered Species Act (ESA), will continue to apply. For ESA purposes, because there is no longer a Federal action that triggers the Federal consultation requirement under section 7, if a State, Tribe, or project applicant is unable to avoid take (to harass, hunt, shoot, capture, trap, kill, collect, wound, harm, or pursue an ESA-listed species, or attempt any of these activities), they must coordinate with the U.S. Fish and Wildlife Service (USFWS) for recommended avoidance or minimization measures. If take is still anticipated after incorporation of any measures from the USFWS, the State, Tribe, or project applicant must apply under section 10 of the ESA to obtain an incidental take permit. Any take that occurs in the absence of or that exceeds an incidental take permit would be a violation of section 9 of the ESA. Refer to the [USFWS's website on Habitat Conservation Plans](#) for additional information.

However, if a project is funded with FY 2024 AMLER payments and AML fee-based or IIJA AML funds, NEPA will continue to apply, as will section 7 of the ESA and section 106 of the National Historic Preservation Act. If a project is funded with FY 2024 AMLER payments and Federal funds provided by another agency, please coordinate with the other agency to determine how to comply with the applicable environmental statutes.

IX. BUILD AMERICA, BUY AMERICA ACT

The Build America, Buy America (BABA) Act requires the head of each Federal agency to ensure that "none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Pub. L. No. 117-58, § 70914. The BABA Act allows the head of each Federal agency to waive its requirements under certain circumstances. *Id.* Consequently, BABA Act terms and conditions must now be included in all subawards and all contracts or purchase orders for work or products unless an active BABA waiver applies. For current DOI BABA Act waivers, please refer to the list at: <https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>. Additional general information about complying with the BABA Act is available from the DOI Office of Grants Management at: [doi.gov/grants/buyamerica](https://www.doi.gov/grants/buyamerica).

X. FISCAL RESPONSIBILITY

Although FY 2024 AMLER funds are being provided to AMLER States and Tribes as payments instead of grants, States and Tribes must still ensure that they have adequate fiscal controls and monitoring in place for these Federal funds. Payments are considered financial assistance under the Federal Grants and Cooperative Agreement Act (FGCAA); therefore, some, but not all, provisions of the Uniform Administrative Guidance will remain in effect for States and Tribes as outlined in 2 CFR Part 200. For example, the following will continue to apply:

- **2 C.F.R. Part 200 Subpart A (§§ 200.0 – 200.1) – Acronyms and Definitions.**
- **2 C.F.R. Part 200 Subpart B (§§ 200.100 – 200.113) - General Provisions:**
Among other things, this subpart details the purpose and applicability of the regulations. It also provides for conflict of interest policies and mandatory disclosures.
- **2 C.F.R. Part 200 Subpart D (§ 200.303) - Post Federal Award Requirements - Internal Controls:**
Details the responsibilities of the non-Federal entity to maintain effective internal controls over the Federal award and ensure compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- **2 C.F.R. Part 200 Subpart D (§§ 200.331 – 200.333)- Post Federal Award Requirements - Subrecipient Monitoring and Management:**
 - **§ 200.331 - Subrecipient and Contractor Determination:**
Details some of the characteristics a pass-through entity (i.e., State/Tribe) must look at to decide whether an ‘agreement’ that allows for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. This is to effectively distinguish the roles inherent to a subaward or a contract.
 - **§ 200.332 - Requirements for Pass-Through Entities:**
Details the responsibility of the pass-through entity (i.e., State/Tribe) to ensure the subrecipient has a complete description of award/subaward information; and to comply with Federal awarding Agency terms, conditions, and requirements that flow down to subrecipients.
 - **§ 200.333 - Fixed Amount Subawards:**

Details that with prior written approval from the Federal awarding agency, a pass-through entity (i.e., State/Tribe) may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold.

- **2 C.F.R. Part 200 Subpart F (§§ 200.500 – 200.521) - Audit Requirements:**
Provides standards for the audit of non-Federal entities expending Federal awards.

For projects funded exclusively by FY 2024 AMLER payments, State and Tribal AML Programs are responsible for ensuring that the acquisition and improvement of the real property and/or movable machinery and equipment is necessary to achieve the goals of the AMLER Program. States and Tribes should ensure that each project proposal clearly demonstrates that the acquisition of the property is necessary to achieve the goals of the AMLER Program. All aspects of the purchase must comply with applicable laws and regulations.

Designation as Recipient/Subrecipient

The State/Tribal AML Program that receives an AMLER payment that 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 AMLER funds will be designated a subrecipient. It is incumbent upon the State/Tribal AML Program, as the recipient, to provide the subrecipient with all relevant terms and conditions of the AMLER payment.

XI. REPORTING REQUIREMENTS

Only projects funded exclusively by the FY 2024 AMLER Program will follow the reporting guidance detailed in this section. Projects funded by AMLER funds from FY 2023 and earlier will use the [FY 2023 AMLER Guidance](#). OSMRE is obligated to report to Congress and the public on the use of AMLER funds, as well as the benefits derived from their use. To this end, OSMRE will compile an Annual AMLER Program Report that will evaluate the economic impact of the Program and the status of AMLER projects within each State and Tribe. To assist OSMRE in preparing this report, each State/Tribal AML Program is encouraged to provide a detailed annual program narrative on fund expenditures which should include a status update of each approved AMLER project selected by the State/Tribe funded by a FY 2024 payment. State/Tribal AML Programs are encouraged to submit the following information:

- A list of AMLER projects that received funding from the FY 2024 AMLER payments.
- A summary of the process used by each State/Tribe to solicit, develop, and select projects.
- Current status of each AMLER project, including:
 - AMLER 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;
 - Environmental benefits/performance measures accomplished to date;
 - Expected benefits/outstanding performance measures to be accomplished and timelines for completion; and
 - The status of any real property purchased for AMLER approved activities.

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If you have any questions or need additional assistance, please contact your servicing OSMRE Field Office