

Next, we have some questions for our panelists that were sent to us from the field.

Stephen, how does the Solar PA apply (or does it?) to ongoing high priority solar applications submitted before the Solar PEIS was completed?

The Solar PA, like the Solar PEIS, applies only to new utility-scale solar energy development as defined in the Record of Decision or ROD. The ROD and Final PEIS both state that any pending applications will be processed under existing policies and procedures.

Pending applications are those submitted within proposed variance and/or exclusion areas BEFORE the publication of the Supplement to the Draft Solar PEIS (October 28, 2011) OR any applications filed within proposed Solar Energy Zones (SEZs) BEFORE June 30, 2009. In these cases, we meet our obligations under Section 106 by following the 36 CFR Part 800 regulations.

Any “new” applications will be subject to the program elements adopted by the Solar PEIS ROD, including the Design Features listed within Appendix A of the Final Solar PEIS. That is to say, the procedures of the Solar PA will apply to new solar applications within the SEZs filed AFTER June 30, 2009 OR any solar applications within variance and/or exclusion areas filed AFTER the publication of the Supplement to the Draft Solar PEIS (October 28, 2011).

Details can be found in the Resources Section

Kathy, what happens if we receive a solar application that covers or affects both public lands and non-public lands?

Technically, the Solar PA only applies to federal lands. If an application comes in for a single project using a combination of federal and non-federal lands, we would apply the “rule of reason” like we do for other undertakings. If the federal portion was critical for the overall viability of the project, we would consider it a single undertaking and require survey, avoidance, or treatment of historic properties on the non-federal portion as a condition for obtaining a ROW grant. It would be up to the BLM, in negotiation with the SHPO and other appropriate state agencies to decide how much of the provisions of the Solar PA to require for the non-federal portion of the project. It is possible that a new PA would have to be negotiated.

This is similar to large land exchanges or transmission projects. If the project is not economically viable and wouldn't happen without the use of the BLM lands, then we most likely would require compliance with Section 106 for all of the lands affected, regardless of ownership status.

Ann, how do these procedures relate to existing BLM-SHPO Protocols?

The Section 106 procedures outlined in the PA supersede steps enumerated within individual state protocols. So, for basic Section 106 compliance procedures, you put down the protocol and follow the Solar PA. Having said that, however, the Solar PA does have flexibility built into it to allow State BLM and SHPOs to agree on State-Specific Procedures or MOUs to fine-tune the consultation process.

Individual SHPOs and State BLMs will be discussing what local agreements maybe needed, such as professional standards, survey procedures, or consultation steps with individual tribes, and will be incorporated by attachment to the Solar PA. Such State-Specific Agreements will only be attached locally to the Solar PA if both the SHPO and the State BLM agree. Also, in some states, state-specific procedures will be added as supplements to the BLM State Manuals.

And, again, these agreements, while they may establish professional standards or fine-tune consultation procedures with tribes, are not intended to fundamentally alter the Section 106 process laid out in the Solar PA.

Based on what we discussed earlier, Stephen, what is the status of the new regulations governing performance bonding and when will they take effect?

As mentioned earlier, when establishing bond amounts and conditions, the BLM-authorized officer shall require coverage of all expenses tied to cultural resources identification, protection, and mitigation. Such bonding provides the financial means to protect and secure cultural resources and complete studies and documentation in case an applicant withdraws or terminates a project prematurely.

The BLM is now preparing new regulations governing bonding procedures. Following an internal evaluation and surname process, the BLM transmitted the Proposed Rule to the Office of Management and Budget (OMB) in March of 2013. OMB had 90 days to examine it. The BLM anticipates publishing the Proposed Rule in June 2013 in the *Federal Register* for public review and issuing the Final Rule in 2014.

Ann, to what extent can these procedures be tailored to meet local standards/conditions if this is agreeable to both the BLM and the SHPO?

Some BLM offices have negotiated agreements, or MOUs, with Indian tribes to clarify what types of projects, geographical locations, and/or site types the two wish to consult about, as well as specify consultation steps they'll follow. Where those agreements already exist, BLM will want to preserve them under this Solar PA. Also, some State BLMs and SHPOs have existing MOUs or other agreements governing professional standards, rules for proper completion of site forms, encoding instructions, inventory report standards, and so on, and these could all be incorporated under the Solar PA locally as State-Specific Procedures. BLM will also have the flexibility to create new MOUs or Procedures of this nature, as needed, if the SHPO, BLM, and/or the tribes agree.

Kathy, are the Post-Review Discovery procedures any different in the Solar PA from what we require now by other public land use applicants?

The short answer is NO. Through the Record of Decision for the Solar Energy Program, the BLM has established design features for cultural resources. These include the commitment to provide training and educational programs for solar company workers to reduce occurrences of disturbances, vandalism and harm to historic properties. The BLM may require monitors if construction will be occurring in areas known to have potential for sites, but where sites were not

visible on the surface. BLM ROW grants generally carry standard stipulations that outline local procedures for unanticipated discovery. The Solar ROD also established performance and reclamation bonding that includes cultural resources provisions.

A specific design feature addresses unexpected discovery of cultural resources during any phase of development, and requires reporting to the BLM authorized officer immediately. Work will be halted and the area will be protected to ensure the resources are not further disturbed while they are being evaluated, and protection or mitigation can be negotiated and implemented.

BLM will do an evaluation of significance in consultation with the SHPO, and possibly tribes, and agree to a plan of work for recovery. If cultural items covered by NAGPRA are unearthed, we will negotiate with the appropriate tribes and take their concerns into account in developing a recovery plan. BLM will authorize the necessary recordation, data recovery and analysis of materials.

If the site location can be avoided by further construction activities and stabilized, that is the preferred option. In most cases, however, we are usually committed to a program of salvage data recovery once a site is exposed in the middle of an industrial zone like a solar field.

Nancy, will the procedures in the Solar PA always be followed? Under what circumstances would the Advisory Council expect to see these procedures changed?

For the foreseeable future, Section 106 consultation on solar project proposals in the 6 affected states will either follow the regs at 36 CFR Part 800 when the Advisory Council participates in consultation, or follow the Solar PA. If after working in this way for some time we discover there are issues that aren't adequately addressed in the Solar PA, we might then consider amending it. These kinds of issues may come out in the annual reports or through applying the PA. For example, the signatories might want to change the PA if :

- We inadvertently missed something that we all agree is important

- We phrased something in a confusing way and want to make sure it is crystal clear what was meant

- We find new ways of making the process more efficient and want to incorporate them

- We find part of the process just isn't working as we anticipated and need to revise it to make it work better

- The solar program changes and we revise the PA to keep up with those changes

We never know where the problems lie until we have worked with an agreement for some time. Like the National Programmatic Agreement which was revised after 10 years, all these big umbrella agreements need to be reexamined and refreshed after some time. The duration for the Solar PA is 20 years, but I'd expect some changes before that time has passed.

Stephen, please share with us any final thoughts before we wrap things up
Creation of large-scale multiple-state agreements such as the Solar PA is never easy.

However, the Consulting Parties have agreed to a predictable Section 106 process that clearly defines the roles and decision-making of the consulting parties.

Section 106 measures within the Solar PA fall in between the more streamlined steps for routine small-scale undertakings covered in BLM-SHPO Protocols and the full set of procedures enumerated within 36 CFR Part 800 regulations.

It balances the need for efficiency with adequate consultation for these complex undertakings.

The Solar PA is not a stand-alone document. The BLM will also be following current policies governing the Pre-Application and Plan of Development processes. They include steps to involve the public, Indian tribes, and SHPOs in our decision-making.

Any questions regarding the interpretation of this Solar PA should be directed towards your state's Deputy Preservation Officer.

The use of this and updated training courses, along with annual reporting, will ensure that the Solar PA is being applied properly and is modified as needed to meet future needs of the solar and cultural programs.

This concludes our presentation on the Solar Programmatic Agreement. I would like to thank our panelists, Stephen Fosberg, Kathy Pedrick, Nancy Brown, and Ann Howard for participating in this training. We have benefited greatly from their knowledge and expertise and hope that this training has been helpful. On behalf of the National Training Center....thanks for watching and have a great day.