

# MITIGATION PAYMENT REQUIREMENTS

## NY-Sun Projects in State Certified Agricultural Districts



### MITIGATION PAYMENT REQUIREMENTS

#### NY-Sun Projects in State Certified Agricultural Districts

NYSERDA has adopted an approach to address concerns relating to solar development and the protection of agricultural lands in State Certified Agricultural Districts. Projects receiving NY-Sun incentive awards from NYSERDA may be responsible for making an agricultural mitigation payment to a designated fund based on the extent to which the solar project footprint, defined as the Facility Area, overlaps with land classified as Mineral Soil Groups 1-4<sup>1</sup>, as further described below.

The Mitigation Payment Requirements are only applicable to NY-Sun projects in designated New York State Agricultural Districts that have submitted interconnection applications (Step 3 of the Standardized Interconnection Requirements) on or after November 1, 2020. No payment related to agricultural mitigation or easement is or will be required regarding any project submits an interconnection application prior to November 1, 2020, including those that have received or shall receive NY-Sun incentives awards.

#### Definitions

The Facility Area is defined as all land area occupied during the commercial operation of the generation facility, the associated interconnection equipment and, if applicable, energy storage equipment. Generally, this will include all areas within the facility's perimeter security fence(s) and the applicable facility related improvements outside of fenced areas. The Facility Area shall include the area "inside the fence" of the project including all fencing inclosing the mechanical equipment such as the solar arrays, inverters, location of any combiner boxes, fuses, switches, meters, distribution boards, monitoring systems such as Balance of Systems components, interconnection equipment, and stormwater controls. The Facility Area shall additionally include improvements of the project "outside of the fence" including access roads, parking areas, stormwater controls and other permanent facilities, or structures installed at the Facility Area, except vegetative landscape screenings or appropriately buried utilities such as electrical conductors or conduit(s).

Mineral Soil Groups (MSG) is defined by the NYS Department of Agriculture and Markets for each soil type in each county identified by the United State Department of Agriculture, and are used to classify the state's agricultural lands based upon soil productivity and capability. Each county in New York State has a listing of all soil types present in the county that is associated with a specific MSG 1 through 10. MSG 1-4 are defined as being the most productive soils for agricultural use.

The Mitigation Value per Acre is defined as the dollar value for MSG 1- 4 according to the document entitled "[Agricultural Assessment Values Per Acre](#)" as prepared annually by the NYS Department of Taxation and Finance, corresponding to the year of application/proposal to NYSERDA.<sup>2</sup>

---

<sup>1</sup> <https://agriculture.ny.gov/land-and-water/tax-credits-and-agricultural-assessments#agricultural-assessment-information>

<sup>2</sup> The Agricultural Assessment Values per Acre document is available from the NYSDTF: <https://www.tax.ny.gov/pdf/publications/orpts/current-year-ag-values.pdf>.

The Mitigation Fund Payment is the calculated amount described below, which acts as the estimated benchmark that the Proposer would expect to pay based on the proposed site configuration (Facility Area), knowledge of on-site conditions, and before any other action to decrease this payment amount. Payment amounts may be adjusted through consultations with the AGM regarding co-agricultural opportunities, and based on the final site configuration (reduced or expanded Facility Area acreage).

- For projects with Facility Areas that exceed 30 acres of overlap with MSG 1-4, the Mitigation Fund Payment must be estimated and included by the NY-Sun Participating Contractor as part of the Notice of Intent (NOI) Submission Form, and will be confirmed by NYSERDA prior to the approval of an award. The actual Mitigation Fund Payment, due at Commercial Operation Date, or deferred in accordance with an accepted Agricultural Co-Utilization Plan, will be determined by NYSERDA based on the actual site footprint and any actual Facility Area overlap with MSG 1-4.
- For projects that propose to implement an Agricultural Co-Utilization Plan, the mitigation fee may be deferred and potentially forgiven.
- The Mitigation Payment shall not exceed the estimated Mitigation Fund Payment value at the time of an award, unless the proposed project layout is substantively revised or expanded to increase to the Facility Area's footprint on MSG 1-4.
- The Mitigation Fund Payment will not increase due to a subsequent reclassification of MSG 1-4 or changes in the Mitigation Value per Acre after a successful application is made.

### **Mitigation Fund Calculation**

NY-Sun Participating Contractors submitting applications for ground-mounted projects located within State Certified Agricultural Districts will be required to identify the MSG units for the entire acreage within the defined Facility Area using the most recent annual NYS Agricultural Land Classification for the county(ies) where the proposed facility is located. If the total acreage of the Facility Area occupied by MSG 1-4 can be demonstrated by the Contractor as being 30 acres or less, no Mitigation Fund Payment will be required by the Contractor.

If the final occupied acreage of the Facility Area on MSG 1-4 exceeds 30 acres, the Mitigation Fund Payment will be calculated by:

1. Finding the MSG 1-4 total acreage that the Facility Area occupies;
2. Assigning the appropriate Mitigation Value per Acre for each of the MSG 1-4 in the Facility Area and then multiplying those respective values by the total acres of each respective MSG 1-4;
3. Summing the total dollar value associated with each MSG 1-4; and
4. Multiplying this total dollar value by the proportion of the overall parcel(s) acreage that will be converted to the Facility Area.

For example, if the entire parcel(s) is being converted, the Mitigation Fund Payment is the total sum of dollar value associated with each MSG 1-4. If 20% of the total parcel(s) acreage is converted by the Facility Area, the Mitigation Fund Payment would be 20% the total dollar value associated with each MSG 1-4. If 25% of the total parcel(s) acreage already hosts existing PV arrays with a separate and unique point of interconnection, and another 25% of the total

parcel(s) acreage is being converted by the Facility Area, the Mitigation Fund Payment would be 50% of the total dollar value associated with each MSG 1-4.

The estimated Mitigation Fund Payment is a benchmark from which Contractors are encouraged to work with the AGM to implement mitigation measures that retain or introduce agricultural productivity within the Facility Area and/or the total parcel area upon which the project is sited, and/or to modify the proposed Facility Area to minimize the facility's occupation of MSG 1-4, which may result in a reduction of the Mitigation Payment amount.

**Stacked Projects** - For projects where NYSERDA submits an NOI to AGM on or after March 22, 2023, where two or more projects (where each project is greater than 1 MWdc) are abutting and located on parcel(s) of real property that are owned by the same landowner(s), the NOI reviews for those projects may be aggregated, even if the projects have separate points of interconnection. In such stacked project situations where it is unknown which project may become operational first, the date of application for interconnection to estimate the appropriate proportion for each individual project will be utilized. For clarity, the overall parcel acreage converted to the Facility Area is to be incremental for each unique project's Mitigation Fund Payment calculation.

NYSERDA has provided Contractors with mapping resources ([the interactive map is available here](#)) to assess the level of overlap that their Facility Area is expected to have on MSG 1-4. All areas of the map displayed in green and labeled as "Mineral Soil Groups" are classified as MSG 1-4, and overlap on these areas in excess of 30 acres of the final Facility Area will trigger the mitigation mechanism described above. The data in the interactive map is also available in downloadable files at [here](#).

NYSERDA has also provided an Agricultural Mitigation Estimate Calculator, which Contractors should use to estimate what payment a project may be subject to based on the Facility Area as currently proposed. The Calculator contains instructions within to allow Contractors to estimate their potential Mitigation Fund Payment, and is available at [nyserderda.ny.gov/solar-contractor-resources](https://nyserderda.ny.gov/solar-contractor-resources).

### **Agricultural Co-Utilization Plan**

NYSERDA will allow contractors to submit Agricultural Co-Utilization Plans to seek to defer and/or offset or eliminate the Mitigation Payment. Such Agricultural Co-Utilization Plans must demonstrate agricultural viability for the first five years of the project's operation. Such Agricultural Co-Utilization Plans must be submitted for NYSERDA acceptance, which will include NYSERDA's consultation with AGM. Agricultural Co-Utilization Plans will include a list of projected costs that the contractor proposes to offset its Mitigation Payment, subject to NYSERDA approval in consultation with AGM. Agricultural Co-Utilization Plans must propose a viable agricultural co-utilization use for the NYSERDA contract delivery term, the term of the contract between NYSERDA and the Contractor, however the contractor will receive credit after the initial five-year term, if accepted by NYSERDA in consultation with AGM.

Acceptable co-utilization practices shall involve production of crops, livestock, or livestock products, according to AML 25-AA 301(2). In the event a solar contractor proposes a new co-agricultural practice that does not include the production of "crops, livestock and

livestock products” as defined above, NYSERDA will consult with AGM prior to accepting such practice. In order to be eligible for a deferred Agricultural Mitigation Payment, contractors must submit an agricultural co-utilization plan at least 180 calendar days prior to commencement of construction activities related to the project. AGM shall provide feedback to NYSERDA on the contractor’s proposed agricultural co-utilization plan within twenty calendar days of AGM’s receipt of the same. NYSERDA may also seek additional feedback from third parties with relevant expertise.

In accordance with an accepted Agricultural Co-Utilization Plan, the contractor will be required to submit annual reports to NYSERDA at an interval established by NYSERDA and will be required to submit a final report on the implementation of the Agricultural Co-Utilization Plan after the fifth anniversary of COD. Such reports will identify gross expenditures made by the contractor to implement the accepted Agricultural Co-Utilization plan, up to 85% of those gross expenditures may be used to offset any Mitigation Payment that was due at COD but deferred as anticipated herein. Annual and final reports must include, at a minimum, gross expenditures, gross revenues, net revenues, lessons learned, and photo documentation of the practices discussed. NYSERDA will make all such reports publicly available.