



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
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In Reply Refer To:
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FEB 07 2011

Instruction Memorandum No. 2011-061
Expires: 09/30/2012

To: All Field Offices

From: Director

Subject: Solar and Wind Energy Applications – Pre-Application and Screening

Program Area: Right-of-Way Management, Solar and Wind Energy.

Purpose: This Instruction Memorandum (IM) provides updated guidance on the review of right-of-way applications for solar and wind energy development projects on public lands administered by the Bureau of Land Management (BLM).

Policy/Action: This IM updates the Solar Energy Development Policy (IM 2011-003) issued October 7, 2010, and the Wind Energy Development Policy (IM 2009-043) issued December 19, 2008. The BLM's policy is to facilitate environmentally responsible development of solar and wind energy projects on public lands, in accordance with the provisions of Secretarial Order 3285A1 (Secretarial Order) dated March 11, 2009, as amended February 22, 2010. Such development must also be consistent with protection of areas and resources of national interest, including the BLM National Landscape Conservation System, units of the National Park System, National Forest System, national wildlife refuges, and other specially designated areas that protect wildlife, visual, cultural, historic or paleontological resource values. 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. In order to achieve these goals, the BLM will require all prospective applicants to schedule and participate in at least two pre-application meetings with the BLM before filing an application for solar or wind energy development. In addition, if not previously held, meetings will also be required for any existing applications where a Notice of Intent (NOI) has not already been issued or the environmental review process has not been initiated for a project. This "Smart from the Start" approach is consistent with the goals of the Secretarial Order to facilitate environmentally responsible development of solar and wind energy projects on

the public lands and the Secretary's affirmative duty to protect areas and resources of national interest.

Pre-Application Discussions

Applications for proposed solar and wind energy development projects are processed as rights-of-way under Title V of the Federal Land Policy and Management Act (FLPMA) and Title 43, Part 2800 of the Code of Federal Regulations (CFR). The processing of solar and wind energy development right-of-way applications must comply with the BLM's planning, environmental, and right-of-way regulatory requirements.

The right-of-way regulations encourage prospective applicants to schedule a pre-application meeting with the BLM before filing an application for a proposed solar or wind energy development project on the public lands (43 CFR 2804.10(a)). The purpose of the pre-application meeting, as generally outlined in the regulations, is to identify potential environmental and siting constraints, determine whether lands are available for proposed right-of-way uses, discuss potential alternative site locations, discuss timeframes for processing proposed applications, inform applicants of financial obligations in processing an application, and to facilitate coordination with Federal, state, tribal and local government agencies.

The pre-application process can help identify necessary studies of environmental, wildlife, visual resource, and cultural resources or other information that may be needed; assess public interest and concerns; identify other existing authorized uses within or near the project area; and allow for possible consideration of potential alternative site locations and project configurations before a right-of-way application is submitted to the BLM. The pre-application process provides an opportunity to direct development away from lands with high conflict or sensitive resource values towards low conflict areas such as previously disturbed sites, areas adjacent to previously disturbed or developed sites, and locations that minimize construction of roads and/or transmission lines.

The pre-application process also allows the BLM to understand the interests and objectives of the applicant, including any constraints or flexibility with respect to the proposal (e.g., timing or location constraints based on loan guarantees, power purchase agreements, or transmission connections) and any consideration that has been given to siting on non-federal lands. Other federal agencies (e.g., National Park Service, U.S. Fish & Wildlife Service, Department of Defense, Forest Service, or U.S. Army Corps of Engineers), tribes, and state and local agencies (e.g., state fish and game agencies), as appropriate, will be invited to participate in the pre-application process to ensure issues and concerns can be given full consideration early in the process. The BLM encourages State and Field Offices to establish consultation or coordination agreements with other Federal, state, and local agencies and with Tribal governments to facilitate this process.

The pre-application process can also provide the opportunity to initiate early discussions with grazing permittees that may be affected by the proposed project (43 CFR 4110.4-2(b)). These pre-application discussions can inform the permittee of the proposed solar or wind energy development project, discuss how the proposed project may impact grazing operations, address

possible mitigation or compensation strategies, and encourage the permittee to participate in the future environmental review process for the project if a right-of-way application is submitted to the BLM.

The BLM will document pre-application activities, for both existing and new applications, as part of the project file for a renewable energy right-of-way, and summarize this information in the environmental review document prepared for the project. This information may also be summarized during scoping meetings and other public meetings that are part of the environmental review process (with appropriate care and consideration given to any proprietary information or information of a sensitive nature). By thoroughly describing the pre-application activities, the public will have a better understanding of the preliminary review and modifications that went into developing the project proposal and alternatives that are being analyzed in the environmental review document. It is also important to document the existing decisions that are used to guide pre-application activities. For example, pre-application work often involves modifying an applicant's preliminary project proposal to bring it into conformance with existing law, regulations and policy, and with the existing BLM land use plan. These land use plan decisions protect important resource values and resource uses and were developed through an extensive public process. Through tiering and incorporation by reference (40 CFR 1502.20 and 1502.21) the environmental review document can apply these prior resource analyses to the evaluation of alternatives for the right-of-way application and provide a basis for deciding which alternatives warrant detailed study.

Pre-application activities can be incorporated into an environmental review document as part of the background information for the proposed action. This information should also be reflected in the alternatives section of the environmental review document, either as part of the alternatives considered but eliminated from further analysis, or as an alternative that is given detailed consideration in the environmental review document.

Requirement for Pre-Application Meetings

To ensure compliance with the purpose of the regulations, the BLM will require that all prospective applicants schedule and participate in at least two pre-application meetings with the BLM before the BLM will accept a right-of-way application for a proposed solar or wind energy development project on the public lands. The BLM will not accept any new solar or wind energy development right-of-way application without holding the pre-application meetings required by this IM. In addition, meetings will also be required for any existing applications where a NOI has not already been issued or the environmental review process has not been initiated for a project. These pre-application meetings will be required for all wind energy development applications, but are discretionary for wind energy site testing applications. The BLM authorized officer may determine that additional pre-application meetings are necessary before the BLM will accept a right-of-way application.

The purpose of the first pre-application meeting with the BLM is to discuss the general project proposal, the status of BLM land use planning in the area, the potential land use and siting constraints, the potential environmental issues in the area, the potential alternative site locations for the project, and to discuss the BLM right-of-way application process.

The purpose of the second pre-application meeting is to initiate and ensure early coordination with Federal, state, tribal and local government agencies as required by the regulations (43 CFR 2804.10(b)). This coordination will enhance the consideration and protection of the resources and values associated with shared landscapes and other resources that may be affected by a proposed solar or wind energy development project on the public lands. This coordination must be initiated prior to the BLM's acceptance of a right-of-way application and before significant resources are committed to the processing of an application. This dialogue provides an opportunity to discuss potential environmental and siting constraints and modify the proposed project as appropriate before an application is accepted by the BLM. For example, the Fish and Wildlife Service could use this meeting to advise project applicants of any guidance applicable to the proposed project, including guidance related to golden eagles, the Migratory Bird Treaty Act, or the Endangered Species Act.

The BLM will work with the prospective applicant in scheduling the pre-application meeting with the other land managers and stakeholders as required by this IM. The other land managers and stakeholders include parties such as:

- Federal agencies (e.g., Bureau of Reclamation, Department of Defense, Fish and Wildlife Service, Forest Service, and National Park Service).
- Managers of adjacent or proximate BLM field offices and National Landscape Conservation System units.
- Tribal governments.
- State agencies (e.g., State Land Department, State Parks, and State Fish and Game).
- County and local government agencies (e.g., county jurisdictions, managers of municipal watersheds and local parks).

Review and Screening of New and Existing Applications

The BLM will not accept a solar or wind energy development right-of-way application without holding the pre-application meetings required by this IM. Based on the discussions during the pre-application meetings and the recommendations of affected Federal, state, tribal, and local government land managers, the BLM authorized officer may recommend that an application not be filed for the proposed project or that a proposed project be modified prior to submission of an application. If a proposal does not avoid areas where development would cause significant impacts to sensitive resources and values that are the basis for special designations or protections, the BLM may exercise its discretion to not accept and to reject the application. Additionally, no application will be processed until an applicant has submitted a complete right-of-way application with sufficient detail to initiate the environmental analysis and review process, and the applicant has provided cost recovery fees as required by the regulations (43 CFR 2804.14).

The BLM will review all new and existing solar and wind energy development right-of-way applications for land use plan conformance (43 CFR 1610.5-3). In cases where solar or wind energy development proposals are not in conformance with an existing BLM land use plan, it may be appropriate to amend the land use plan concurrently with processing the application

using the same environmental review process. Projects that would require major land use plan revisions should be avoided. Projects in the California Desert District may be consistent with land use classifications in the California Desert Conservation Area (CDCA) Plan but may require minor amendments to identify the specific site as suitable for renewable energy development.

Applications for solar and wind energy development projects that are within specially designated areas that are closed to right-of-way applications or within BLM National Landscape Conservation System units (other than the California Desert Conservation Area) will not be accepted and will be rejected. The BLM may also exercise its discretion to not accept and to reject an application if a proposed project is determined, in consultation with other appropriate Federal land management agencies, to have the potential to cause unacceptable impacts to important resources and values, including impacts to specially designated areas.

Although the BLM may accept a solar or wind energy development right-of-way application, it retains the discretion to prioritize the processing of such applications. The right-of-way regulations (43 CFR 2804.25) define the processing timeframes for right-of-way applications, but also provide authority to the BLM authorized officer to notify the right-of-way applicant in writing of the reasons for delays in processing an application. The BLM has the discretion to screen applications for environmental or resource conflict issues and to prioritize the processing of applications based on those considerations.

The BLM's goal is to encourage and facilitate environmentally responsible development of solar and wind energy projects on the public lands, consistent with the provisions of the Secretarial Order. The screening and prioritization process provides an opportunity to direct development away from lands with high conflict or sensitive resource values and towards low conflict areas such as previously disturbed sites, areas adjacent to previously disturbed or developed sites, and locations that minimize construction of new roads and/or transmission lines. Applications in high conflict areas will be more difficult to process and require a greater level of consultation, analysis, and mitigation to resolve issues or may not be feasible to authorize. Such applications may be given a lower priority for action. Applications with fewer resource conflicts are anticipated to be easier and thus less costly and time-consuming for BLM to process. Projects that avoid impacts to specially designated areas will be given a higher priority for processing. However, it should be noted that an application that may have initially been identified as a project in a low conflict area, may later through additional surveys and data collection be determined to be in an area with greater resource conflict issues. These project applications could later be determined to be a lower priority for processing.

The BLM will use the following screening criteria to assist in prioritizing the processing of solar and wind energy development right-of-way applications.

Screening Criteria

Low Potential for Conflict – timely or expedited authorizations possible:

- Lands specifically identified for solar or wind energy development in BLM land use plans;

- Previously disturbed sites or areas adjacent to previously disturbed or developed sites;
- Locations that minimize construction of new roads and/or transmission lines;
- Lands adjacent to designated transmission corridors;
- Lands currently designated as Visual Resource Management Class IV;
- Lands identified as suitable for disposal in BLM land use plans.

Medium Potential for Conflict – projects that have resource conflicts that can potentially be resolved:

- Designated BLM special management areas, including ACEC areas, that provide for some limited development;
- Lands with wilderness characteristics outside Wilderness and Wilderness Study Areas that have been identified in an updated wilderness characteristics inventory;
- Right-of-way avoidance areas;
- Areas where project development may adversely affect properties listed in the National Register of Historic Places or areas with sensitive cultural and/or historic resource values and other designated areas such as National Natural Landmarks and National Historic Landmarks;
- Areas where project development may adversely affect National Historic and Scenic Trails and National Recreation Trails;
- Sensitive habitat areas, including important eagle use areas, priority sage grouse habitat, riparian areas, or areas of importance for Federal or state sensitive species;
- Lands currently designated as Visual Resource Management Class III;
- Department of Defense operating areas, including areas with significant radar, airspace, or land use conflicts;
- Areas where project development may adversely affect lands acquired for conservation purposes;
- Developed recreation sites and/or facilities;
- Projects with proposed groundwater uses within groundwater basins that have been over appropriated by state water resource agencies.

High Potential for Conflict – more complex projects that will require a greater level of consultation, analysis, and mitigation to resolve issues or may not be feasible to authorize:

- 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, National Forest System, and the BLM National Landscape Conservation System), which may be adversely affected by development;
- Lands adjacent to Wild, Scenic and Recreational Rivers and river segments determined eligible/suitable for Wild or Scenic River status if project development may have significant adverse effects on sensitive viewsheds, resources, and values;
- Designated critical habitat for federally threatened and/or endangered species if project development is likely to result in the destruction or adverse modification of that critical habitat;

- Designated critical habitat for federally threatened and/or endangered species if project development is likely to result in the destruction or adverse modification of that critical habitat;
- Lands currently designated as Visual Resource Management Class I or Class II;
- Right-of-way exclusion areas;
- Lands currently designated as no surface occupancy (NSO) in BLM land use plan prescriptions.

These screening criteria will be used by the BLM to assist in prioritizing the processing of and in determining what actions to take on new and existing solar and wind energy development right-of-way applications. The processing of applications with the least environmental resource conflicts should facilitate the development of environmentally responsible solar and wind energy projects on the public lands, consistent with the provisions of the Secretarial Order. Applications with low resource conflicts would generally be considered projects that can more easily be processed by the BLM. Applications with high resource conflicts would generally be considered to be more difficult to process.

Timeframe: This policy is effective immediately.

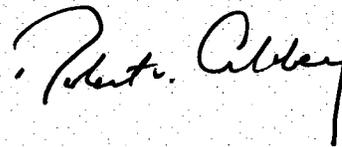
Budget Impact: Implementation of this policy will have some budget impact on work associated with pre-application meetings that are not covered by cost recovery fees under the right-of-way program. Cost recovery fees are collected after a right-of-way application is submitted and a cost recovery agreement is established with the applicant (43 CFR 2804.14). There are currently no provisions in the right-of-way regulations for pre-application fees. However, this IM will assist in prioritizing the processing of applications and is anticipated to reduce overall workloads. The processing of solar and wind energy development right-of-way applications are subject to the cost recovery provisions of the right-of-way regulations.

Background: As part of an overall strategy to develop a diverse portfolio of domestic energy supplies for the future, the Energy Policy Act of 2005 (Public Law 109-58, August 8, 2005) encourages the development of renewable energy resources on the public lands, including solar and wind energy projects. Section 211 of the Energy Policy Act encourages approval of at least 10,000 megawatts of non-hydropower renewable energy projects on the public lands by 2015. Secretarial Order 3285A1 established the development of environmentally responsible renewable energy as a priority of the Department of the Interior. This IM helps ensure the accomplishment of these goals and provides for the most efficient and effective processing of solar and wind energy development right-of-way applications.

Manual/Handbook Sections Affected: This IM establishes policy that will be incorporated into BLM Manual 2801, Right-of-Way Management, and Handbook H-2801-1 during the next revision.

Coordination: The BLM state offices and the Department reviewed and provided input to this policy prior to its finalization.

Contact: If you have questions, please contact Michael Nedd, Assistant Director for Minerals and Realty Management, at 202-208-4201, or your staff may contact Ray Brady, Renewable Energy Policy Team, at 202-912-7312, or ray_brady@blm.gov.

A handwritten signature in black ink, appearing to read "Robert C. Albery". The signature is written in a cursive style with a large initial "R" and "A".