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BUREAU OF LAND MANAGEMENT
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To: All Field Officials
From: Director
Subject: Wind Energy Development Policy
Program Area: Right-of-Way Management, Wind Energy Land Use Plan Amendments, Wind Energy

Purpose: This Instruction Memorandum (IM) provides guidance on implementing the Record of Decision for the Programmatic Environmental Impact Statement on Wind Energy Development and guidance on processing right-of-way applications for wind energy projects on public lands administered by the Bureau of Land Management (BLM).

Policy/Action: The BLM initiated the preparation of a Programmatic Environmental Impact Statement (EIS) in October 2003 to address the impacts of the future development of wind energy resources on public lands. The Programmatic EIS also addressed the establishment of policies and best management practices (BMPs) as mitigation measures for potential environmental impacts and addressed the amendment of individual BLM land use plans. The *Final Programmatic Environmental Impact Statement on Wind Energy Development on BLM-Administered Lands in the Western United States* was released on June 24, 2005, with publication of a Notice of Availability in the Federal Register. The 30-day public comment period on the Notice was completed with no protests filed on the Final EIS. The 60-day Governor's consistency review required by the BLM land use planning regulations was completed on August 24, 2005. The BLM submitted a Biological Assessment to the Fish and Wildlife Service (FWS) on July 28, 2005, to initiate the formal Section 7 consultation process for the Programmatic EIS. The FWS issued a Biological Opinion and non-jeopardy decision on November 30, 2005. A Record of Decision (ROD) was signed on December 15, 2005, to implement the BMPs and land use plan amendments identified in the Programmatic EIS. A Notice of Availability of the ROD was published in the Federal Register on January 11, 2006.

Information on the Programmatic EIS, the Biological Opinion, and the ROD are posted on the web at www.windeis.anl.gov. A copy of the ROD is attached to this IM as Attachment 1.

This IM replaces the Interim Wind Energy Development Policy (IM 2003-020), issued October 16, 2002, and implements the ROD signed on December 15, 2005. Issuance of the IM ensures consistency in the processing of right-of-way applications and the management of authorizations for wind energy development on public land. The IM addresses the amendment of land use plans to address wind energy development and the potential to tier future site-specific National Environmental Policy Act (NEPA) analyses to the Programmatic EIS.

Policies included in the ROD identify specific lands on which wind energy development would not be allowed; establish requirements for public involvement, consultation with other Federal and state agencies, and government-to-government consultation; define the need for project-level environmental review; establish requirements for the scope and content of the project-level Plan of Development (POD); and incorporate adaptive management strategies. The BMPs establish environmentally sound and economically feasible mechanisms to protect and enhance natural and cultural resources. They identify the issues and concerns that must be addressed by project-specific plans, during each phase of project development. Mitigation measures protecting these resources would be required to be incorporated into project-level PODs. These mitigation measures would include the programmatic BMPs, as well as the incorporation of additional mitigation measures contained in other existing and relevant BLM guidance, or developed to address site-specific or species-specific concerns.

Inventory and Planning: It is the BLM general policy, consistent with the National Energy Policy of 2001 and the Energy Policy Act of 2005, to encourage development of wind energy in acceptable areas. Wind energy site testing and monitoring activities are usually in conformance with and can be accommodated by existing land use plans without a need for a land use plan amendment. Existing land use plans identify wilderness and wilderness study areas, Areas of Critical Environmental Concern (ACEC), visual resource management areas, national scenic or historic trails, National Landscape Conservation System units, critical habitat areas, and other special management areas where land use restrictions apply to a variety of uses, including wind energy site testing and monitoring. Commercial wind energy development activities in some cases, however, may not be in conformance with existing land use plans and it may be appropriate to amend the land use plan as a concurrent action with the same analysis for the wind energy development proposal. Right-of-way applications for wind energy site testing and monitoring or for wind energy development projects will, however, be processed in a timely manner.

The BLM Land Use Planning Handbook (H-1601-1) requires that existing and potential development areas for renewable energy projects (including wind energy) be addressed in land use planning efforts (see Appendix C, Section E, Lands and Realty, of the Handbook). The Record of Decision (ROD) amended 52 BLM land use plans in Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. These land use plan amendments are identified in Attachment B of the ROD. The following actions are necessary at the Field Office level to document and acknowledge these amendments:

- 1) Add a copy of the Programmatic EIS and the ROD to the official Field Office records. These documents are the supporting documents for the land use plan amendment.
- 2) Announce the plan amendment through a periodic planning publication (Annual Program Summary, Planning Update, or Quarterly Planning Newsletter) or other appropriate public outreach materials. This announcement is a courtesy announcement only. The decision to amend the plan was made by the ROD. No protest or appeal is offered because there is no new decision.

Field Offices with existing land use plans that were not amended by the ROD, may amend their plans at anytime by following the requirements under 43 CFR 1610.5-5. Field Offices may tier to, or incorporate analysis from, the Programmatic EIS as appropriate under Chapter III of the BLM NEPA Handbook (H-1790-1) when considering a proposed plan amendment and prepare a separate decision document amending the existing plan. In most cases, this type of proposed action would be considered using an Environmental Assessment level plan amendment process to adopt the policies and BMPs of the Programmatic EIS and ROD. This is a new decision and is subject to protest. In other areas where land use plans will be revised in the future, the land use planning effort should address wind resource potential, public concerns, and opportunities for wind energy development within the land use planning area consistent with the BLM Land Use Planning Handbook (Appendix C). Field Offices are encouraged to incorporate wind energy resource development potential in these planning efforts to facilitate the processing of future wind energy applications. The land use plan revision process would address the environmental and local community issues associated with commercial wind energy. This would provide an opportunity to potentially reduce the amount of additional environmental review and documentation required to process a specific application in the future.

The Department of Energy's National Renewable Energy Laboratory (NREL) assisted the BLM in the preparation of the Programmatic EIS and provided an inventory assessment of wind energy resources on public lands in the Western States. The objective of this collaborative effort was to support the BLM land use planning efforts. Appendix B of the Programmatic EIS includes a set of wind resource potential maps for each BLM Field Office in each of the Western States. In addition, GIS-based assessment and analysis information is also available from the Department of Energy internet site at www.eere.energy.gov/windandhydro/windpoweringamerica. Information on wind energy resources is also available at www.energyatlas.org. Field Offices are encouraged to use this information as the inventory base for addressing wind energy resource development opportunities and to assess the effects of other resource uses on wind energy resources.

Applications: All wind energy and wind energy related facilities will be applied for 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 regulations cited in this IM refer to the recent right-of-way regulations which were published in the Federal Register on April 22, 2005, and became effective on June 21, 2005.

Wind energy site testing and monitoring will not be authorized by a land use permit under the 43 CFR 2920 regulations. Existing 2920 permits that may have previously been issued will, however, be recognized for the term of the existing permit.

Applications for a wind energy right-of-way grant may be submitted for one of the following three (3) types of wind energy projects:

- 1) a site-specific wind energy site testing and monitoring right-of-way grant for individual meteorological towers and instrumentation facilities with a term that is limited to 3 years;
- 2) a wind energy site testing and monitoring right-of-way grant for a larger site testing and monitoring project area, with a term of 3 years that may be renewed consistent with 43 CFR 2807.22 and the provisions of this IM beyond the initial term of the grant; and
- 3) a long-term commercial wind energy development right-of-way grant with a term that is not limited by the regulations, but usually in the range of 30 to 35 years.

Applications for any of the above types of projects will be submitted using Standard Form 299 (SF-299), Application for Transportation and Utility Systems and Facilities on Federal Land, consistent with the requirements of 43 CFR 2804.12. The BLM Authorized Officer should encourage wind energy applicants to schedule preapplication meetings (43 CFR 2804.10) with the BLM to assist in the preparation and processing of applications, identify potential issues and conflict areas, identify any environmental or cultural resource studies that may be needed, assess public interest and concerns, identify other authorized uses, identify other general recreation and public uses in the area, discuss potential alternative site locations, and discuss potential financial obligations that the applicant must be willing to assume. Early public notification and involvement of local communities and other interests is also important in increasing public acceptance and avoiding potential conflicts, especially in areas where other uses exist on the public lands.

All wind energy right-of-way applications and authorizations are subject to appropriate cost recovery fees (processing and monitoring) and rental fees as required by 43 CFR 2804.14, 43 CFR 2805.16, and 43 CFR 2806.10. The policy guidance on rental fees contained in this IM is based on comparable payment practices for existing wind energy right-of-way authorizations on Federal and non-Federal lands and was developed in consultation with BLM staff and others with appraisal expertise. Wind energy right-of-way authorizations are considered non-linear right-of-way grants and, therefore, are not subject to the requirements of 43 CFR 2806.23 regarding multi-year rental payments. However, by policy, the holder of a wind energy site testing and monitoring right-of-way grant may pay in advance the required rental fee for the entire term of the grant.

Right-of-way applications for wind energy site testing and monitoring or for wind energy development projects should be identified as a priority Field Office workload and will be processed in as timely a manner as possible. The processing timeframes for right-of-way applications as required by 43 CFR 2804.25 will be followed for all wind energy applications.

Site testing and monitoring right-of-way applications will usually be minor cost recovery category actions and should be processed within a 60-day timeframe, consistent with the requirements of 43 CFR 2804.25. The regulations require that the Authorized Officer notify the right-of-way applicant in writing if processing will take longer than 60 days, the reasons for the delay, and an estimate of the timeframe for processing the application. Additional guidance on processing timeframes for right-of-way applications is provided by Instruction Memorandum No. 2006-067, dated January 10, 2006. The BLM Washington Office, Division of Lands, Realty and Cadastral Survey (WO-350) will also assign a right-of-way Project Manager, if requested by the State Director, to coordinate the processing of any major wind energy development right-of-way application.

A bond will be required, by policy established in the ROD, for all commercial wind energy development projects to ensure compliance with the terms and conditions of the right-of-way authorization and the requirements of applicable regulatory requirements. The amount of the bond will consider potential reclamation and administrative costs to the BLM. Bonds in the amount of \$2,500 per wind turbine, considering salvage values of turbines and towers, have generally been required for wind energy development projects on public lands. However, the amount of the required bond will be determined during the right-of-way authorization process on the basis of site-specific and project-specific factors. A bond for site testing and monitoring authorizations will continue to be discretionary by the Authorized Officer (43 CFR 2805.12(g)).

Authorizations:

1) Right-of-Way Grant for Site-Specific Wind Energy Testing and Monitoring Facilities: A site-specific right-of-way grant (Form 2800-14) will be used to authorize individual meteorological towers and instrumentation facilities. The area authorized for these facilities shall be the minimum necessary for construction and maintenance of the temporary facility. The term of a site-specific right-of-way grant will be limited to 3 years, plus the additional time that will allow the grant to expire on December 31 of the final year of the authorization, consistent with the provisions of 43 CFR 2805.11(b)(2).

A site-specific right-of-way grant will not be extended or renewed beyond this term. A new right-of-way application would be required to be submitted if the holder of the site-specific right-of-way grant wishes to continue monitoring at the site. Numerous site-specific right-of-way grants for wind energy site testing and monitoring may be issued to various right-of-way holders in the same area and do not establish any exclusive or preferential rights regarding future wind energy development. In addition, the BLM retains the right to authorize other compatible uses of the public lands in the area.

Rental: The rental fee for a site-specific right-of-way grant for wind energy site testing and monitoring will be a minimum of \$50 per year for each meteorological tower or instrumentation facility location and includes no additional rental fee for the acreage of each site location. Some BLM Field Offices have existing site-location rental fees for temporary facilities on the public lands that can be used for wind energy site testing and monitoring facilities. In some cases these fees will exceed the minimum \$50 per year fee. The rental fee for a site testing and monitoring right-of-way grant is paid annually, in advance, on a calendar year basis consistent with the regulations (43 CFR 2806.12). However, by policy, the holder of a site-specific right-of-way grant may pay in advance the required rental fee for the entire term of the grant.

2) Right-of-Way Grant for a Wind Energy Site Testing and Monitoring Project Area: A right-of-way grant (Form 2800-14) that includes provisions for renewal beyond the 3-year term (43 CFR 2807.22) will be used to authorize wind energy site testing and monitoring facilities for a project area. The holder of the site testing and monitoring right-of-way grant retains an interest in the site testing and monitoring project area, but will be required to submit a separate right-of-way application (43 CFR 2807.20) and POD to the BLM for review, analysis, and separate approval for any future wind energy development. The interest retained by the holder of the site testing and monitoring right-of-way grant is only an interest to preclude other wind energy right-of-way applications during the 3-year term of the grant. The lands within the grant area will not be available for other wind energy right-of-way applications. The holder of the site testing and monitoring right-of-way grant for a project area establishes no right to development and is required to submit a separate right-of-way application for wind energy development to the BLM for analysis, review, and decision. The BLM retains the right to authorize other compatible uses of the public lands. The lands involved in the site testing and monitoring right-of-way grant for a project area will be defined by aliquot land descriptions and be configured to involve a reasonable amount of land that may support a possible right-of-way application for a wind energy development project in the future.

The site testing and monitoring right-of-way grant for the site testing and monitoring project area is issued for an initial term of 3 years, plus the additional time that will allow the grant to expire on December 31 of the final year of the authorization, consistent with the provisions of 43 CFR 2805.11(b)(2). This term can be extended or renewed (43 CFR 2807.22) for a term not to exceed an additional 3 years to allow for continued site testing and monitoring, only if a separate right-of-way application and POD is submitted for a wind energy development project prior to the end of the initial term of the grant. The requirement for submittal of a POD with the right-of-way application for the wind energy development project is consistent with the provisions of 43 CFR 2804.25. The holder of the site testing and monitoring right-of-way grant is required to submit, prior to the end of the initial term of the grant, a separate right-of-way application for development to retain the interest in the site testing and monitoring project area. (See the Due Diligence section of this IM regarding additional provisions for a site testing and monitoring right-of-way grant).

Site testing and monitoring facilities (meteorological towers) are not required to be placed on every parcel of public land involved in a project area to be able to assess the wind resource development potential of a project area. In some cases, an applicant may propose to place meteorological towers on adjacent private, state, or other land ownership with no meteorological towers on public land. The BLM has limited experience in evaluating the number and location of meteorological towers that may be needed to adequately assess the wind resources of a project area on public lands. The Department of Energy's NREL office in Denver is available to assist the BLM Field Offices in evaluating the applicant's proposal for the siting of meteorological towers if necessary. The BLM Field Office can request NREL assistance to evaluate the applicant's proposal to determine if the meteorological tower placement is such that the wind resources on public land can be sufficiently evaluated for future wind energy development. In order for NREL to evaluate the proposal, the Field Office will need to submit the following information: a topographic map of the area showing the boundary of the proposed project area, land ownership, proposed location and height of the meteorological towers, and access roads. The BLM Division of Lands, Realty and Cadastral Survey (WO-350) can provide the point of contact at NREL for these evaluations if requested.

If the evaluation determines that the meteorological tower placement on adjacent non-Federal land is capable of characterizing the wind patterns on public lands, then a NEPA document will need to be prepared describing the Federal action as the issuance of a right-of-way grant with limited activities on the public land. If the evaluation concludes that the proposal cannot adequately assess the wind patterns on public lands or the project area proposed is not consistent with good wind testing techniques, then the applicant should be notified of this finding and given the opportunity to amend the proposal. If the proponent does not amend the application to meet the recommendations provided by NREL, the BLM Authorized Officer can reject the application.

In cases where a right-of-way grant is issued for a site testing and monitoring project area and no meteorological towers are installed on public lands, the Due Diligence section of this IM will still require the proponent to install the meteorological towers on the non-Federal land within 12 months from the effective date of authorization. The holder shall provide the BLM with good cause as to the nature of any delay. The purpose of the Due Diligence provisions of the IM are to preclude land speculators from obtaining a right-of-way grant for a project area with valuable wind energy resources, with the potential to negatively impact the development of wind energy on public lands.

Rental: The rental fee for a site testing and monitoring right-of-way grant for a site testing and monitoring project area will be based on the total public land acreage of the project area included in the right-of-way grant. The rental fee for the total public land acreage of the grant will be \$1,000 per year or \$1 per acre per year, whichever is the greater. This rental fee is based on comparable fees on non-Federal lands. There is no additional fee for the installation of each meteorological tower or instrumentation facility located within the site testing and monitoring project area. This rental fee is based on the value of the use of the area for site testing and monitoring and the value of the option held by the holder that precludes other wind energy right-of-way applications during the 3-year term of the grant, comparable to similar option payments on private lands. The rental fee for a site testing and monitoring right-of-way grant is paid annually, in advance, on a calendar year basis consistent with the regulations (43 CFR 2806.12). However, by policy, the holder of a site testing and monitoring right-of-way grant may pay in advance the required rental fee for the entire term of the grant.

Each site testing and monitoring authorization will contain appropriate BMPs and may contain appropriate site specific stipulations, including but not limited to road construction and maintenance, vegetation removal, and number and location of wind monitoring sites. A bond is discretionary by the Authorized Officer, but will usually not be required for a site testing and monitoring authorization. If a bond is required, the amount of the reclamation bond will consider potential reclamation and administrative costs to the BLM.

The wind inventory data collected and held by the right-of-way grant holder is proprietary information and will be protected by the Privacy Act and may be withheld under the Freedom of Information Act to the extent allowed by Federal law. However, sufficient detailed wind data will be required to be provided to the BLM, at the time a separate right-of-way application for development is submitted, to support the environmental analysis and review of the proposed development. This data becomes public information to the extent allowed by Federal law and will be used for analysis and decision making purposes related to the processing of the right-of-way application for a wind energy development project. Biological and cultural resource studies and data collected by the right-of-way grant holder will also be required to be provided to the BLM and becomes public information to the extent allowed by Federal law.

Site testing and monitoring authorizations may be assigned consistent with the provisions of the regulations (43 CFR 2807.21). However, all assignments shall be approved by the BLM Authorized Officer and the qualifications of all assignees must comply with the Due Diligence section of this IM and the requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)). A partial assignment of a site testing and monitoring authorization shall not be approved if such action would hinder the BLM management of the authorization or the associated public lands.

3) Right-of-Way Grant for Commercial Wind Energy Development Facilities: A right-of-way grant (Form 2800-14) will be used to authorize all facilities, held by the holder of the grant, on the public lands related to a commercial wind energy development project. This authorization will include the wind turbine facilities, as well as the on-site access roads, electrical and distribution facilities, and other support facilities authorized by the wind energy development right-of-way grant. Other off-site facilities, such as electrical transmission and additional access roads may require a separate linear right-of-way authorization. The lands involved in the wind energy development right-of-way grant will be defined by aliquot legal land descriptions and be configured to minimize the amount of land involved, while still allowing an adequate distance between turbine positions and reasonable right-of-way boundaries. In the absence of any specific local zoning and management issues, no turbine shall be positioned closer than five (5) rotor-diameters from the center of the wind turbine to the right-of-way boundary in the dominant upwind or downwind direction to avoid potential wind turbulence interference issues with adjacent wind energy facilities, unless it can be demonstrated that site conditions, such as topography, natural features, or other conditions such as offsets of turbine locations, warrant a lesser distance. Further, for safety reasons, no turbine shall be positioned closer than 1.5 times the total height of the wind turbine to the right-of-way boundary. In cases where the applicant holds a long-term lease right on adjacent Federal or non-Federal lands for wind energy development or the adjacent non-Federal landowner provides a setback waiver, these minimum setbacks may be eliminated, allowing turbines to be placed closer to the right-of-way boundary.

The right-of-way holder should also be encouraged, through terms and conditions of the right-of-way authorization, to work with the BLM to increase the public acceptance and awareness of the benefits of wind energy development by providing information and public points of access near the development where safe and appropriate. These measures could include on-site interpretive resources, and photo locations. The BLM and right-of-way holder can provide a positive message on the responsible use of renewable resources and the multiple resource uses of the public lands.

The term of the grant is not limited by the regulations, but the terms of most existing grants for major wind energy development projects recognize the overall costs and useful life of wind energy facilities and are generally in the range of 30 to 35 years. The grant may be renewed for additional terms, consistent with the provisions of the regulations (43 CFR 2807.22). The BLM also retains the right to authorize other compatible uses of the public lands within the right-of-way grant during the term of the grant.

Rental: The rental fee for a commercial wind energy development right-of-way grant on public land is established at \$2,365 per megawatt of the total anticipated installed capacity of the wind energy project on public land based on the approved POD, a capacity factor of 30 percent, a royalty of 3 percent, and an average purchase price of \$0.03 per kilowatt hour. The rental fee is a fixed annual Bureauwide rent based on the following formula:

Annual rent = (Anticipated total installed capacity in kilowatts as identified in the approved POD) x (8760 hours per year) x (30 percent capacity factor) x (3 percent royalty) x (\$0.03 average price per kilowatt hour)

Example for one megawatt (1,000 kW) of anticipated total installed capacity on public land:

Annual rent = (1,000 kW) x (8760 hours) x (0.30 capacity) x (0.03 royalty) x (\$0.03 per kWh) or \$2,365 per megawatt of anticipated total installed capacity on public land.

The annual rental fee will be phased in as follows:

First year - 25 percent of the total rental fee or \$591 per megawatt;

Second year - 50 percent of the total rental fee or \$1,182 per megawatt;

Third year - 100 percent of the total rental fee or \$2,365 per megawatt.

The full annual rental fee will apply at any time prior to 3 years, upon the start of commercial operations of the project. The rental fee is paid annually, in advance, on a calendar year basis consistent with the regulations (43 CFR 2806.12). The BLM will discourage the use of a separate turbine installation fee (an additional one time payment for each turbine installation), a production rental fee, or other fees, as part of the wind energy rental fee. Any separate linear right-of-way authorizations issued for off-site facilities to support the wind energy project, such as electrical transmission lines, will be subject to the linear right-of-way rental provisions of 43 CFR 2806.20.

All wind energy right-of-way holders are subject to rent in accordance with this IM, unless they are specifically exempt from rent by statute or regulation. Some holders or facilities may be exempt from rent pursuant to the Rural Electrification Act of 1936, as amended (43 CFR 2806.14(d)).

The right-of-way grant may be assigned consistent with the provisions of the regulations (43 CFR 2807.21). However, all assignments are subject to approval by the BLM Authorized Officer and the qualifications of all assignees must comply with the Due Diligence section of this IM, and the requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)). A partial assignment of the grant shall not be approved if such action would hinder the BLM management of the grant or the associated public lands.

All final decisions issued by the Authorized Officer in connection with the authorization of any of the above described wind energy projects are appealable under 43 CFR part 4 (43 CFR 2801.10). It should also be noted that right-of-way grants are issued as full force and effect decisions (43 CFR 2801.10(b)) and will remain effective during any appeal period, unless stayed by the Interior Board of Land Appeals.

Competitive Interest: The right-of-way regulations (43 CFR 2804.23(c)) provide authority for identifying public lands under competitive bidding procedures for wind energy right-of-way authorizations. However, the BLM will only initiate a competitive process if a land use planning decision has specifically identified an area for competitive wind energy leasing. The Programmatic EIS and associated ROD did not identify any competitive wind energy leasing areas for any BLM land use plans; therefore, any competitive leasing areas would need to be identified through a separate local land use planning process. Site testing and monitoring or wind energy development right-of-way applications will, therefore, be processed on a first come basis. The BLM will encourage applicants who may have an interest in a common area to establish a partnership or cooperative agreement, if possible, which establishes compatible use of the site between the applicants. If the applicants choose not to form a partnership or cooperative agreement, the BLM will generally proceed ahead with the applicant who has submitted the first complete application and provided the processing cost recovery fees required by 43 CFR 2804.14.

Due Diligence: There are some concerns regarding the potential for land speculators to obtain right-of-way grants and control valuable wind energy resource areas, with the potential to negatively impact development of wind energy on public lands. These concerns can be mitigated by applying the applicant qualification requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)) and requiring certain due diligence provisions in the right-of-way authorization for site testing and monitoring or wind energy development.

The regulations clearly provide authority to require the application to include information on the applicant's technical capability to construct, operate, and maintain the wind energy facilities (43 CFR 2804.12(a)(5)). This technical capability can be demonstrated by international or domestic experience with wind energy projects or other types of electric energy related projects on either Federal or non-Federal lands. The applicant should provide information on the availability of sufficient capitalization to carry out development, including the preliminary study phase of the project, as well as the site testing and monitoring activities. Actual development or ownership of similar sized wind energy facilities or other types of electric energy related facilities within the last five years by the applicant would generally constitute evidence of financial capability. However, applicants in bankruptcy or other related financial difficulties may not be able to meet the due diligence provisions of the right-of-way authorization. The regulations provide the authority to deny the application if the applicant cannot demonstrate adequate technical ability to construct, operate, and maintain the wind energy facilities (43 CFR 2804.26(a)(5)).

Due diligence is encouraged by the limited 3-year term of the site testing and monitoring right-of-way authorization. The site testing and monitoring right-of-way grant for a site testing and monitoring project area can only be extended or renewed if a separate right-of-way application and POD is submitted for a wind energy development project prior to the end of the initial term of the grant. In addition, the site testing and monitoring authorization and the wind energy development authorization shall include a due diligence requirement for installation of facilities consistent with an approved POD. The following due diligence requirements will need to be included in the terms and conditions of either the site testing and monitoring authorization or the wind energy development authorization. If monitoring facilities, under a site testing and monitoring right-of-way authorization, have not been installed within 12 months after the effective date of the authorization or consistent with the timeframe of the approved POD, the holder shall provide the BLM good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward site monitoring activities. If construction of wind energy facilities, under a wind energy development authorization, has not commenced within 2 years after the effective date of the grant or consistent with the timeframe of the approved POD, the right-of-way holder shall provide the BLM good cause as to the nature of any delay, the anticipated date of construction, and evidence of progress toward commencement of construction. Failure of the holder to comply with the due diligence terms and conditions of either the site testing and monitoring authorization or the wind energy development authorization provides the Authorized Officer the authority to terminate the authorization (43 CFR 2807.17). The rental fee provisions outlined in this IM also mitigate to some extent the concerns regarding due diligence.

Environmental Review: The Programmatic EIS addressed a range of alternatives, including the proposed action which would implement a wind energy development program with establishment of a set of policies and BMPs for wind energy development on the public lands. The proposed action was selected as the "environmentally preferable" alternative and was carried forward into the ROD. The policies and BMPs are included in Attachment A of the ROD and are applicable to all wind energy activities on BLM-administered public lands. The BMPs establish environmentally sound and economically feasible mechanisms to protect and enhance natural and cultural resources. They identify the issues and concerns that need to be addressed by project-specific plans. Mitigation measures protecting these resources will be required to be incorporated into the project POD. These mitigation measures will include the specific programmatic BMPs, as well as additional mitigation measures contained in other existing and relevant BLM guidance or stipulations developed to address site-specific or species-specific concerns through project-level analysis.

To the extent that the Programmatic EIS addresses anticipated issues and concerns associated with an individual wind energy project, including potential cumulative impacts, the BLM will by policy tier off of the analysis in the Programmatic EIS and limit the scope of additional project-specific NEPA analyses. The site-specific NEPA analyses will include analysis of project site configuration and micro-siting considerations, monitoring program requirements, and appropriate site-specific stipulations. In addition, off-site compensatory mitigation may be appropriate to consider for some projects consistent with the policies in Instruction Memorandum No. 2005-069, dated February 1, 2005.

1) Site Testing and Monitoring Applications: The scope of the environmental analysis required for either a site-specific wind energy site testing and monitoring right-of-way application or a project area site testing and monitoring application includes direct, indirect, and cumulative effects of the proposed site testing and monitoring related facilities. The site testing and monitoring right-of-way authorization is for a limited term (3 years) and usually includes only a few wind monitoring towers with instruments attached to measure various meteorological parameters, such as wind speed, wind direction, and temperature at various heights above the ground. The footprint for each monitoring tower is small and the need for site clearances should be limited to the areas of proposed surface disturbance and associated areas of potential effect.

The environmental review should not address wind energy development facilities, as the installation of wind turbines are not proposed during site testing and monitoring. The reasonably foreseeable development discussions in the environmental analysis for a site testing and monitoring right-of-way application should focus on anticipated installation of additional wind monitoring facilities during the term of the right-of-way grant. Typically only a small number of wind energy site testing and monitoring authorizations ever lead to actual wind energy development projects. Therefore, the reasonably foreseeable development discussion should not focus on uncertain future development scenarios. However, the cumulative impacts of other wind energy site testing activities and any other reasonably foreseeable activities that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis.

The use of a Categorical Exclusion (CX) for the issuance of short-term right-of-way authorizations may be applicable to some site testing and monitoring locations. The relevant CX, established for the BLM in Departmental Manual 516, Chapter 11, Sec. 11.5, E(19) (DOI 2004), encompasses "issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition."

The holder of a site testing and monitoring right-of-way grant for a site testing and monitoring project area is limited in term to 3 years and the holder is required to submit a separate right-of-way application for any wind energy development project. The right-of-way regulations (43 CFR 2807.20) require that the application be submitted and processed consistent with the provisions of 43 CFR Subpart 2804 as a separate and distinct application. The holder of the site testing and monitoring right-of-way grant has established no right to development and is required to submit a separate application to the BLM for analysis, review, and decision. The proposed wind energy development project will be evaluated upon the submittal of an actual application for the development project. *Alliance to Protect Nantucket Sound, Inc. v. United States Department of the Army*, 288 F. Supp. 2d 64, 80 (D. Mass. 2003), *aff'd*, 398 F.3d 105 (1st Cir. 2005), supports the proposition that an authorization to collect wind data and an authorization to develop a wind energy development project are not "connected actions," as that term is defined at 40 CFR 1508.25. The court there held that the Army's authorization of a data tower in Nantucket Sound does not automatically trigger the authorization for a wind energy project; that information from the data tower was not required for the wind energy project but may be used if available and relevant; and that the data tower's utility does not depend on the ultimate authorization of the wind energy project. A contrary decision was reached in *Blue Ocean Preservation Society v. Secretary of Energy*, 754 F. Supp. 1450 (D. Hawaii 1991), so it is advisable to consult with the Solicitor's Office in complex cases.

2) Commercial Wind Energy Development Application: The scope of the NEPA analysis and the compliance requirements with the Endangered Species Act, the National Historic Preservation Act, and other laws for a wind energy development right-of-way application will be broader than a site testing and monitoring application, as the installation of wind turbines, access roads, and electrical transmission facilities will be addressed in the analysis. However, the footprint of wind energy facilities are typically smaller than other types of energy production facilities. The level of site clearances should be limited to the areas of proposed surface disturbances and associated areas of potential effect, including the access roads to wind turbine locations and the electrical transmission and other support facilities. The wind energy development facilities, however, may extend over a large geographic area and have a broad area of influence. The potential impact from these facilities may, therefore, extend beyond the small footprint of the individual wind turbine locations and it may be necessary to provide setbacks from important natural resource areas.

The reasonably foreseeable development discussion in the environmental analysis for a wind energy development project should focus on the potential for installation of additional wind turbines and increased production and electrical transmission from the project area. In addition, the cumulative impacts of other wind energy projects and any other reasonably foreseeable projects that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis. Project-specific environmental analyses for wind energy development tiered to the analyses conducted in the Programmatic EIS allow the project-specific analyses to focus just on the critical, site-specific issues of concern. An Environmental Assessment (EA) will usually be sufficient, but an EIS may be required if significant public controversy or a determination of significant adverse impacts is made. It may also be possible to combine the required environmental review process for a wind energy development project with applicable State or local environmental procedures for energy facility siting. This would both streamline the process and be consistent with Departmental policy on intergovernmental cooperation.

LR 2000 Data Entry: Commodity code (974) was established to identify wind energy related right-of-way authorizations and to track these uses within LR 2000.

Timeframe: Effective immediately upon receipt. This policy does not apply to wind energy site testing and monitoring authorizations or wind energy development projects authorized prior to the effective date of this IM. Pending applications, however, will be processed consistent with the provisions of this IM. Existing wind energy right-of-way authorizations may be amended at the request of the holder to include the provisions of this IM. This includes the opportunity for the holder of an existing right-of-way grant for site testing and monitoring to submit an amended right-of-way application and POD to the BLM for review, analysis, and separate approval for a future wind energy development project consistent with the provisions of this IM. Any amendment of an existing wind energy right-of-way grant that includes an adjustment of rental provisions consistent with this IM will be effective at the next billing date after the amendment. There will be no refund or credits applied for previous rental payments.

Background: As part of an overall strategy to develop a diverse portfolio of domestic energy supplies for our future, the National Energy Policy of 2001 and the Energy Policy Act of 2005 (Public Law 109-58, August 8, 2005) encourage the development of renewable energy resources, including wind energy.

The United States has significant potential for wind energy development, especially on Federal lands in the West. The Federal wind energy production tax credit, State-level tax credits and other incentives, including renewable energy portfolio standards in several states, have generated a strong interest in commercial wind energy projects on BLM-administered public lands. Project proposals on public land will create a workload that demands a commitment of resources and a priority to the timely and consistent processing of right-of-way applications for wind energy site testing and monitoring activities and for commercial wind energy development.

Budget Impact: The application of this policy will have some impact on budget. However, wind energy right-of-way applications are subject to the cost recovery provisions of the regulations and most applications for a long-term commercial wind energy development right-of-way will probably meet the criteria for full reasonable costs (43 CFR 2804.14(b)). In addition, the BLM monitoring activities are also subject to the cost recovery provisions of the regulations. Workload impacts should be clarified through the streamlined procedures identified by this IM and by the priority established for processing wind energy right-of-way applications. There is also a positive impact through the implementation of consistent procedures in the processing of wind energy right-of-way applications.

Manual/Handbook Sections Affected: This Instruction Memorandum and policy affect BLM Right-of-Way Management Manual 2801 and Handbook H-2801-1, and BLM Land Use Planning Handbook H-1601-1.

Coordination: This IM incorporates the policies and BMPs established by the Programmatic EIS and associated ROD. Preparation of the Programmatic EIS provided an opportunity for public comment and input on the proposed BLM wind energy program, policies and BMPs, and land use plan amendments. The land use plan amendment process also included a 60-day Governor's consistency review as required by the BLM land use planning regulations and completion of the Section 7 consultation process with the FWS. The ROD signed on December 15, 2005 was jointly signed by the Assistant Director, Minerals, Realty and Resource Protection (AD-300), and the Assistant Director, Renewable Resources and Planning (AD-200). The BLM State Offices were provided an opportunity to review the IM and provide input prior to finalization.

Contacts: Any questions concerning the content of this IM should be directed to the BLM Division of Lands, Realty and Cadastral Survey (WO-350). Points of contact for wind energy right-of-way questions include Rick Stamm at 202-452-5185 or Scott Powers at 406-896-5319.

Signed by:
Lawrence E. Benna
Acting, Director

Authenticated by:
Robert M. Williams
Division of IRM Governance, WO-560

1 Attachment
1 – Record of Decision (42 pp)

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