APPENDIX A:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, INTERIM WIND ENERGY DEVELOPMENT POLICY

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

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To: All Field Officials

From: Director

Subject: Interim Wind Energy Development Policy

Program Area: Right-of-Way Management, Wind Energy

Issue: This Instruction Memorandum (IM) provides interim guidance on processing right-of-way applications for wind energy site testing and monitoring facilities, as well as applications for wind energy development projects on public lands administered by the Bureau of Land Management (BLM).

Background: The President's National Energy Policy encourages the development of renewable energy resources, including wind energy, as part of an overall strategy to develop a diverse portfolio of domestic energy supplies for our future. The BLM prepared a National Energy Policy Implementation Plan that included a variety of tasks related to the development of energy resources on the public lands, including renewable energy resources. The Implementation Plan and specific tasks were previously distributed by Information Bulletin No. 2001-138, dated August 15, 2001, and IM No. 2002-011, dated October 12, 2001. While the current contribution of renewable energy resources to our energy supply is relatively small, wind energy and other renewable energy generating sectors of our economy are the fastest growing in the United States. Continued growth in wind energy development will be extremely important in delivering larger supplies of clean, domestic power for America's growing economy.

The United States has significant potential for wind energy development, especially on Federal lands in the west. The recent extension of the Federal wind energy production tax credit and a variety of State-level tax credits and other incentives, including renewable energy portfolio standards in several States, has generated a renewed interest in commercial wind energy projects

on Federal lands. The BLM currently administers some 25 wind energy right-of-way authorizations on public lands in California and Wyoming that encompass a total of approximately 5,000 acres and generate a total of about 500 megawatts of electrical power. The interest in wind energy development has recently increased and new project proposals on public land have been identified in several States. These existing project proposals and future proposals will create a significant workload that will demand a commitment of resources and a priority to the timely and consistent processing of right-of-way applications for the use of public lands for wind energy site testing and monitoring activities and for commercial wind energy development.

Policy/Action:

Inventory and Planning: It is BLM's general policy to encourage the 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. These 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. However, commercial wind energy development activities in some cases 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. In both cases, however, right-of-way applications for wind energy site testing and monitoring or wind energy development projects will be processed in a timely manner.

Wind energy development provides many environmental advantages over other types of energy resource development, however, wind energy development also results in some adverse impacts, including visual resource impacts and wildlife and wildlife habitat disturbance. Wind energy projects also require some infrastructure such as access roads, transmission lines, and other support facilities. Although land use plans combined with appropriate levels of environmental analysis will be used to assess individual wind energy project proposals, the BLM's overall wind energy policy is to minimize negative impacts to the natural, cultural, and visual resources on the public lands. Negative impacts can be minimized by avoiding special management areas with land use restrictions, avoiding major avian (bird) migration routes and areas of critical habitat for species of concern, establishing siting criteria to minimize soil disturbance and erosion on steep slopes, utilizing visual resource management guidelines to assist in proper siting of facilities, avoiding significant historic and cultural resource sites, and mitigating conflicts with other uses of the public lands.

In areas where land use plans are being revised there may be benefits to specifically address wind resource potential, public concerns, and opportunities for wind energy development within the land use planning area. Supplemental planning guidance regarding wind energy and rights-of-way is provided by IM No. 2002-196, dated June 25, 2002. 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. A programmatic amendment to one or more land use plans could also potentially be used to address wind energy resources on a larger scale.

The BLM and the Department of Energy's National Renewable Energy Laboratory (NREL) have established a partnership to conduct an assessment of wind energy and other renewable energy resources on public lands in the western U.S. The objective of this collaborative effort is to assist in the inventory of high-potential wind energy resources to support BLM land use planning efforts. This GIS-based assessment and analysis information is available through the BLM National Science and Technology Center (NSTC) or available from the Department of Energy internet site (www.eren.doe.gov/windpoweringamerica/where is_wind.html). Information on renewable energy resources, including wind energy, 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 affects of other resource uses on wind energy resources. The National Wind Coordinating Committee also has information available on an internet site (www.nationalwind.org/pubs/permit/permitting2002) that can assist in the permitting and environmental review process associated with wind energy right-of-way applications on the public lands.

The U.S. Fish and Wildlife Service is currently developing guidelines to assist the wind industry in avoiding or minimizing impacts on wildlife by wind energy development. These guidelines contain a procedure for pre-development evaluation of potential wind resource areas based on their impact on wildlife, and recommendations for siting, designing, constructing, and operating wind turbines within areas with wind energy resource potential. A draft of the guidelines will be available in the fall of 2002. The pre-development evaluation procedure was developed by a team of Federal, state, university and industry biologists to rank potential wind development sites in Montana, and is already in use in that area. That process is being modified for use nationwide by the Fish and Wildlife Service. BLM Field Offices will be provided a copy of the guidelines and are encouraged to use this tool when it becomes available for evaluating areas for potential wind energy development.

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, Section 2802 of the Code of Federal Regulations (CFR). 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 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 2803.6-5 and the provisions of this IM beyond the initial 3-year term; 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 projects will be submitted using Form SF-299, Application for Transportation and Utility Systems and Facilities on Federal Land, consistent with the requirements of 43 CFR 2802.3. The BLM authorized officer should encourage wind energy applicants to schedule preapplication meetings (43 CFR 2802.1) with 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 and rental fees as required by 43 CFR 2808.1 and 43 CFR 2803.1-2. 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.

Right-of-way applications for wind energy site testing and monitoring or for wind energy development projects will be identified as a high priority Field Office workload and will be processed in a timely manner. This priority is consistent with the President's National Energy Policy and adequate resources should be provided to review and process the application. The processing time frames for right-of-way applications as required by BLM Manual 2801.35 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 30-day time frame, consistent with the requirements of the Manual. The Manual requires that the authorized officer notify the right-of-way applicant in writing if processing will take longer, the reasons for the delay, and an estimate of the time frame for processing the application. The BLM Washington Office (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.

Authorizations:

1) Right-of-Way Grants for Site Specific Wind Energy Testing and Monitoring Facilities: A site-specific right-of-way grant (Form 2800-14) will be used to authorize small individual site-specific meteorological towers and instrumentation facilities. The term of a site-specific right-of-way grant will be limited to 3 years and will not be extended or renewed. 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 (43 CFR 2801.1-1(a)(2)).

Rental: The annual 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 include no additional rental fee for the acreage of each site location. The area authorized for these facilities shall be the minimum necessary for construction and maintenance of the temporary facility. 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 2803.1-2(a)).

2) Right-of-Way Grants for Wind Energy Site Testing and Monitoring Facilities that Encompass a 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 2803.6-5) will be used to authorize wind energy site testing and monitoring facilities that encompass a site testing and monitoring 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 an amended right-of-way application (43 CFR 2803.6-1) and Plan of Development (POD) to BLM for review, analysis, and separate approval for any future wind energy development. The interest retained by the holder of the 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 has established no right to development and is required to submit a separate application to 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 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 will be issued for an initial term of 3 years. This term will be extended or renewed (43 CFR 2803.6-5) only if an amended right-of-way application and POD is submitted for a wind energy development project prior to the end of the 3-year term of the initial grant. The requirement for

submittal of a POD with the amended right-of-way application is consistent with the provisions of 43 CFR 2802.4(h). The holder of the site testing and monitoring right-of-way grant is required to submit, prior to the end of the 3-year term of the grant, an amended 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.)

Rental: The annual 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. 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 for 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 2803.1-2(a)).

Each type of site testing and monitoring authorization will contain appropriate stipulations, including but not limited to road construction and maintenance, vegetation removal, and number and location of wind monitoring sites. Biological and cultural resource surveys and studies may also be required during the term of the site testing and monitoring authorization to collect information for future resource assessments. A bond is discretionary by the authorized officer (43 CFR 2803.1-4), 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 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 an amended right-of-way application for development is submitted, to support the environmental analysis and review of the proposed development. This data becomes public information for analysis and decision making purposes related to the processing of the amended 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 2803.6-3). 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 2802.3(a)(4) and 43 CFR 2802.4(a)(5)). A partial assignment of a site testing and monitoring authorization shall not hinder the BLM management of the authorization or the associated public lands.

3) Right-of-Way Grants 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 access roads, electrical and transmission facilities, and other support facilities. The lands involved in the 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, 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. 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, this setback requirement may be reduced to 1.5 times the total height of the wind turbine. Further, no turbine shall be positioned closer than 1.5 times the total height of the wind turbine to the right-of-way boundary in any other direction.

The wind energy development right-of-way authorization will contain appropriate stipulations, including but not limited to road construction and maintenance, vegetation removal, a POD for wind turbine installation and operations, wildlife and avian resources mitigation and monitoring, and site reclamation.

The right-of-way holder should also be encouraged, through terms and conditions of the right-of-way authorization, to work with 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 footpaths among the turbines, onsite 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.

A bond is discretionary by the authorized officer (43 CFR 2803.1-4), but will usually be required for wind energy development right-of-way grants to ensure compliance with the terms and conditions of the authorization and the requirements of the regulations, including reclamation. The reclamation provisions within the POD should include not only removal of turbines and other structures, but also the rehabilitation of access roads and the revegetation of disturbed areas. The amount of the reclamation bond will consider potential reclamation and administrative costs to BLM. Bonds in the amount of $2,500 per wind turbine have recently been required for most wind energy development projects on public lands.

The term of the grant is not limited by the regulations, however, the terms of most existing grants for major wind energy development projects recognize the overall costs and useful life of wind energy facilities (43 CFR 2801.1-1 (h)) and are generally in the range of 30 to 35 years. The grant may be renewed consistent with the provisions of the regulations (43 CFR 2803.6-5). 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: Rent for commercial wind energy development right-of-way grants will consist of two components: 1) an annual minimum rent and 2) an annual production rent once the project is in commercial production. The rent for any calendar year shall not be less than the minimum rent.

Minimum Rent: The annual minimum rent for a commercial wind energy development right-of-way grant on public land will be $2,365 per megawatt and is based on the total anticipated installed capacity of the wind energy project on public land based on the approved Plan of Development (POD), a capacity factor of 30 percent, a royalty of 3 percent, and an average purchase price of $0.03 per kilowatt hour. These factors only apply to the calculation of the minimum rent and do not establish any basis for the calculation of actual production rental fees during commercial wind energy operations. The minimum rent is a fixed Bureauwide rent based on the following formula:

> Annual minimum 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:

> Annual minimum 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.

> The annual minimum rent will be phased in as follows:
>
> First year - 25 percent of the total minimum rental fee or $591 per megawatt;
> Second year - 50 percent of the total minimum rental fee or $1,182 per megawatt;
> Third year - 100 percent of the total minimum rental fee or $2,365 per megawatt.

The full annual minimum rental fee will apply at any time prior to 3 years, upon the start of commercial operations of the project. The minimum rental fee is paid annually, in advance, on a calendar year basis consistent with the regulations (43 CFR 2803.1-2(a)).

Production Rent: In addition to the minimum rent, a wind energy production rental fee will be required as part of the development right-of-way grant and will apply for any operations greater than the annual minimum rent. The wind energy production rental fee formula will be determined by the authorized officer at the time of issuance of the right-of-way grant using comparative market surveys, appraisals, or other reasonable methods. The site-specific appraisal

will use a percent of gross proceeds methodology based on actual sale prices of electricity and market supported royalty rates. Gross proceeds will include any revenue from the sale of wind energy production from public land, including revenue from the sale of production credits (Renewable Energy Credits). The BLM will discourage the use of a separate "turbine installation fee" (an additional one time payment for each turbine installation) as part of the wind energy production rental fee.

Any production rental fee, above the annual minimum rent, will be paid by the holder of the development right-of-way grant 30 days after the end of the calendar year based on the actual production during the calendar year. The holder of the right-of-way grant shall provide, with the rental payment, documentation of the amount of power produced for the calendar year and evidence of gross income received from that production. Information provided by the holder on compensation provisions of a Power Purchase Agreement or other financial information will be held as proprietary by BLM and will be protected to the extent allowed by Federal law.

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 2803.1-2 (b)(1)).

The right-of-way grant may be assigned consistent with the provisions of the regulations (43 CFR 2803.6-3). 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 2802.3(a)(4) and 43 CFR 2802.4(a)(5)). A partial assignment of the grant shall not hinder the BLM management of the grant or the associated public lands.

All final decisions issued by the Authorized Officer in connection to the authorization of any of the above described wind energy projects are appealable under 43 CFR part 4 (43 CFR 2804.1(a)). It should also be noted that right-of-way grants are issued as full force and effect decisions (43 CFR 2804.1(b)) and will remain effective during any appeal period.

Competitive Interest: The right-of-way regulations (43 CFR 2803.1-3) provide authority for offering public lands under competitive bidding procedures for wind energy right-of-way authorizations. However, except for the limited competitive procedure identified below, site testing and monitoring or wind energy development right-of-way applications will be processed on a first come basis. The processing of wind energy right-of-way applications on a first come basis is consistent with the President's National Energy Policy and will encourage the access to public lands for renewable energy resource assessments and development. BLM will only initiate a competitive process if a land use planning decision has specifically identified an area for competitive leasing, or if two applicants have current Power Purchase Agreements or Interconnect Agreements with utility transmission providers for a specific project area. If two applicants can provide adequate documentation of current Power Purchase Agreements or

Interconnect Agreements, BLM will actively encourage the applicants to form a joint partnership or cooperative agreement which establishes compatible use of the site between the applicants. If the applicants choose not to form a joint partnership or cooperative agreement, BLM will initiate a competitive process to determine the successful applicant. Competitive bidding will follow the procedures required by the regulations.

As indicated above, wind energy right-of-way applications will be handled on a first come basis. An applicant, however, must submit a complete and acceptable application and provide a cost recovery payment to BLM to establish a priority application. Pending applications will be processed consistent with the guidance provided by this IM prior to the acceptance of new applications for the same lands, unless the new applicant can provide adequate documentation of a current Power Purchase Agreement or Interconnect Agreement. The holder of a right-of-way grant for site testing and monitoring of a site testing and monitoring project area is required to submit, prior to the end of the 3-year term of the grant, an amended right-of-way application for wind energy development to retain an interest in the project area. The lands within the grant area will not be available for other wind energy right-of-way applications. If the holder of the site testing and monitoring right-of-way grant does not submit an amended right-of-way application for development, prior to the end of the 3-year term of the site testing and monitoring right-of-way, the site testing and monitoring right-of-way grant will terminate and the lands will be available for other wind energy applications.

Due Diligence: Some concerns have been raised 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 the development of wind energy on the public lands. These concerns can be mitigated by applying the applicant qualification requirements of the regulations (43 CFR 2802.3(a)(4) and 43 CFR 2802.4(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 that the application include information on the applicant's technical capability to construct, operate, and maintain the wind energy facilities (43 CFR 2802.3(a)(4)). 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 also be able to 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 2802.4(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 an amended right-of-way application and Plan of Development is submitted for a wind energy development project prior to the end of the 3-year 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 Plan of Development. 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 Plan of Development, the holder shall provide BLM just 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 Plan of Development, the right-of-way holder shall provide BLM just 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 provisions 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 2803.4(b)). The rental fee provisions outlined in this IM also mitigate to some extent the concerns regarding due diligence.

Environmental Review:

1) Site Testing and Monitoring Application: The scope of the environmental analysis required by the National Environmental Policy Act (NEPA) for a wind energy site testing and monitoring right-of-way 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. However, the potential impacts to avian (bird) and bat species from the installation of meteorological towers and associated guy wire supports should be addressed in the environmental analysis. The analysis will require compliance with the requirements of the Endangered Species Act, the Migratory Bird Treaty Act, the National Historic Preservation Act and other appropriate laws.

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 reasonable 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 reasonable 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 reasonable foreseeable activities that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis.

In some instances, the level of analysis for site testing and monitoring may be completed with a land use plan conformance determination and a Determination of NEPA Adequacy (DNA), rather than a categorical exclusion or environmental assessment record and Finding of No Significant Impact. Guidance on the use of the DNA process for the review of temporary wind energy site testing and monitoring facilities is found in IM 2001-062, dated December 29, 2000.

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 an amended right-of-way application for any wind energy development project. The right-of-way regulations (43 CFR 2803.6-1) require that the application be submitted and processed consistent with the provisions of 43 CFR 2802 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 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. These are not connected actions under the CEQ NEPA regulations (40 CFR 1508.25), as the site testing and monitoring authorization does not automatically trigger any wind energy development project. The site testing and monitoring activities can proceed regardless of whether any future right-of-way application is received for a wind energy development proposal and regardless of any decision that may be made by BLM regarding that application. The site testing and monitoring authorization is independent of any application that may be made in the future for wind energy development.

2) Commercial Wind Energy Development Application: The scope of the NEPA analysis and the compliance requirements with the Endangered Species Act, the Migratory Bird Treaty 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 avian, bat or other wildlife use areas.

The reasonable foreseeable development discussion in the environmental analysis for a 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 reasonable foreseeable projects that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis. A comprehensive Environmental Assessment (EA) will usually be required, however, an Environmental Impact Statement (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.

Although wind energy facilities may not have as significant an adverse impact on surface resources compared to other conventional electrical generation or energy production facilities, there is some concern over adverse noise impacts of rotor blades, visual resource impacts, and potential avian and bat issues. Many of these problems have been resolved or greatly reduced through technological development and the proper siting of wind energy turbines. Potential avian and bat mortality remains a concern of many individuals, however, the use of non-perch towers, new blade designs and reduced rpm rotation has reduced these potential adverse impacts. Raptor impacts from wind energy facilities can be a potential concern. In particular, wind energy turbines located on ridges and upwind slopes can utilize the same updrafts that are commonly used by soaring birds, including but not limited to raptors. Each proposed development site, however, is unique and will require an analysis of avian and bat concentration and movement patterns to determine the potential effects from wind energy development. This analysis should include an examination of the proposed development site to identify major avian and bat feeding, roosting and resting areas, including raptor use areas and Important Bird Areas (IBAs), as well as wetlands, rookeries, and low-level flight paths. This analysis should determine appropriate setbacks to protect these important avian and bat habitats. Care should be taken to identify the ranges and movement patterns of avian and bat species, including threatened and endangered species and other species of management concern. Current information on avian issues is available from the Department of Energy's National Renewable Energy Laboratory (NREL), National Wind Technology Center internet site (www.nrel.gov/wind/avian.html). Information on visual resource management requirements that may assist in addressing wind energy siting issues is available from the BLM National Science and Technology Center (NSTC) internet site (www.blm.gov/nstc/VRM).

LR 2000 Data Entry: A new commodity code (974) has been established to identify wind energy related right-of-way authorizations and to track these uses within LR 2000. Please refer to IM No. 2002-189, dated June 13, 2002, for guidance on the use of this new commodity code.

Time Frame: Effective immediately upon receipt. This interim 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. However, pending applications and existing wind energy right-of-way authorizations may be amended at the request of the applicant or the holder to include the provisions of this IM. This includes the opportunity for the holder of a right-of-way grant for site testing and monitoring to submit an amended right-of-way application and Plan of Development to 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.

Budget Impact: The application of this interim policy will have some impact on budget. The BLM's proposed FY 2003 budget includes some increased funds for energy related workload, including wind energy, and the development of the FY 2004 budget has identified wind energy workload needs. However, wind energy right-of-way applications are subject to the cost recovery provisions of the regulations and most applications for a development right-of-way will probably meet the criteria for full cost recovery. In addition, 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 under the existing FLPMA regulations.

Manual/Handbook Sections Impacted: This Instruction Memorandum and policy affect BLM Manual 2801, Right-of-Way Management and Handbook H-2801-1.

Coordination/Contacts: This interim policy was developed with the assistance of a BLM wind energy working group of Field Office representatives and coordinated at the BLM Assistant Director level. BLM State Offices and the U.S. Forest Service were also provided an opportunity to review the policy and provide input prior to finalization. The Department of Energy, National Renewable Energy Laboratory and the BLM National Science and Technology Center provided assistance in addressing technical issues. Wind energy issues have also been the focus of a series of Renewable Energy conferences held by the Department of the Interior and the BLM and also discussions with the Western Governor's Association. The Western State Land Commissioners Association was also provided an opportunity to provide comments on the policy issues. Contacts were also made with wind energy industry representatives and other external groups to discuss wind energy issues.

For Further Information: Any questions concerning the content of this IM should be directed to the WO, Lands and Realty Group 350 and the attention of Ray Brady, Group Manager at (202) 452-7773 or by Email at ray_brady@blm.gov.

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