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BUREAU OF LAND MANAGEMENT
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To: All Field Offices
From: Director
Subject: Solar and Wind Energy Applications – Due Diligence

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

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

Policy/Action: This IM updates the Solar Energy Development Policy (IM 2011-003) issued October 7, 2010 and the Wind Energy Development Policy (IM 2009-043) issued December 19, 2008. The BLM's policy is to facilitate environmentally responsible development of solar and wind energy projects on the public lands, consistent with the provisions of Secretarial Order 3285A1 dated March 11, 2009, as amended February 22, 2010. However, the BLM wants to avoid the potential for land speculators to file applications for solar or wind energy rights-of-way on the public lands that may hinder other applicants with serious interests in the potential development of solar or wind energy resources on the public lands. These concerns can be mitigated by applying the applicant qualification requirements of the right-of-way regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)), requiring the timely submittal of a Plan of Development (POD) consistent with the requirements of the regulations (43 CFR 2804.25), and informing project applicants at the time an application is filed that right-of-way applications are not assignable interests under 43 CFR 2807.21.

Applicant Qualifications

The right-of-way regulations (43 CFR 2804.12(a)(5)) require all solar and wind energy applications to include information on the financial and technical capability of the applicant to construct, operate, maintain and decommission the project. The BLM has also included a section in the outline of the required POD for both solar and wind development projects, that requires a discussion of the financial and technical capability of the applicant. The POD outline for both

solar and wind energy development projects is included as a link on the BLM solar and wind energy websites. In addition, the regulations (43 CFR 2804.26(a)(5)) also provide authority to the BLM to deny any application where the applicant cannot demonstrate the technical or financial capability to construct the project or operate the facilities within the right-of-way. The BLM authorized officer should place a priority on the review of pending applications and reject any applications where the applicant cannot demonstrate the technical or financial capability required by the regulations.

A variety of factors should be considered in determining whether an applicant has the financial and technical capability to construct, operate, maintain, and decommission a project. Applicant qualifications can be demonstrated by international or domestic experience with solar or wind energy 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 and the environmental review and clearance process. Applicants in bankruptcy or with other financial difficulties would generally present financial risk and should be required to provide additional information regarding financial capability. Failure to provide such additional information can be the basis for the BLM authorized officer to reject the application pursuant to the regulations (43 CFR 2804.26(a)(5)). Further evidence of financial and technical capability can include conditional commitments of DOE loan guarantees; confirmed power purchase agreements; engineering, procurement and construction (EPC) contracts; and supply contracts with credible third-party vendors for the manufacture and/or supply of key components for the solar or wind energy project facilities.

During the assessment of technical and financial capability, the BLM authorized officer should also inform applicants that such requirements are continuous during the application process and the BLM may periodically seek confirmation of these requirements. The BLM authorized officer should additionally inform applicants that such technical and financial capability will become a condition of any right-of-way authorization, and failure to sustain technical and financial capability for the development of an approved project could be grounds for termination of the authorization.

Plan of Development – Due Diligence

The BLM requires that a POD be submitted for all solar and wind energy development right-of-way applications, consistent with the provisions of 43 CFR 2804.25(b). The BLM will not accept a POD that is simply a conceptual plan of development. The POD must be of sufficient detail to provide the basic information necessary to begin the environmental analysis and review process for a proposed solar or wind energy project on the public lands. It is critically important that due diligence be demonstrated by the applicant in the timely submittal of an acceptable POD to ensure that the BLM processes those applications that are most likely to result in appropriate renewable energy development on the public lands. The BLM authorized officer should place a priority on the review of pending applications and reject any applications where the applicant has not demonstrated due diligence in the completion and submittal of an acceptable POD to the BLM for review.

The BLM requires the submittal of a complete POD for wind development projects prior to the end of the initial 3-year term of a wind energy site testing authorization (IM 2009-043). If a wind energy development right-of-way application and a POD are submitted prior to the end of the initial term of a site testing authorization, the site testing authorization can be extended for an additional 3-year term to allow for the processing of the development application. The development application and the request for an extension of the site testing authorization are required to be submitted at least 90-days prior to the end of the term of the site testing authorization. If a POD has not been submitted prior to the end of the 3-year term, a new wind energy site testing application would be required to be submitted to the BLM for processing. Existing authorized meteorological towers may be authorized to remain on the site for a reasonable period of time during the processing of a new site testing application. If there are other expressions of interest or applications in the area, the BLM authorized officer may decide to reject the application due to a lack of due diligence in perfecting an application for wind development and make the area available for other applications.

The BLM authorized officer initiates the due diligence process by requesting, in writing, submittal of a complete POD to the BLM for review. The applicant will be requested to provide the POD within 90 days. If the applicant does not respond within 90 days, or if the applicant has responded and the information is not sufficient, the BLM authorized officer will send a second written request with a 60-day response. A final 30-day show cause letter will be provided to the applicant prior to issuing any decision to reject the application for failure to respond pursuant to the regulations (43 CFR 2804.26(a)(6)).

Timeframe: This policy is effective immediately.

Budget Impact: The application of this policy will have minimal budget impact. The processing of solar and wind energy development right-of-way applications are subject to the cost recovery provisions of the right-of-way regulations (43 CFR 2804.14).

Background: As part of an overall strategy to develop a diverse portfolio of domestic energy supplies for our future, the Energy Policy Act of 2005 (Public Law 109-58, August 8, 2005) encourages the development of renewable energy resources on the public lands, including solar and wind energy projects. Section 211 of the Energy Policy Act encourages approval of at least 10,000 megawatts of non-hydropower renewable energy projects on the public lands by 2015. Secretarial Order 3285A1, signed on March 11, 2009, and amended on February 22, 2010, established the development of environmentally responsible renewable energy as a priority of the Department of the Interior. This IM helps ensure the accomplishment of these goals and provides for the most efficient and effective processing of solar and wind energy development right-of-way applications.

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

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

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

A handwritten signature in black ink, appearing to read "Robert C. Cibley". The signature is written in a cursive style with a large initial "R" and a long, sweeping tail on the "y".