



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
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Instruction Memorandum No. 2011-059  
Expires: 09/30/2012

To: All Field Offices

From: Director

Subject: National Environmental Policy Act Compliance for Utility-Scale Renewable Energy  
Right-of-Way Authorizations

**Program Area:** National Environmental Policy Act, Lands and Realty.

**Purpose:** The purpose of this Instruction Memorandum (IM) is to reiterate and clarify existing Bureau of Land Management (BLM) National Environmental Policy Act (NEPA) policy to assist offices that are analyzing externally-generated, utility-scale renewable energy right-of-way applications. It includes examples and guidance applicable to renewable energy right-of-way applications that supplement information in the BLM's NEPA Handbook (H-1790-1). Utility-scale renewable energy projects are distinct from many other types of land and realty actions due to their size and potential for significant resource conflicts, as well as the priority that has been placed on them by the Department of the Interior (DOI).

**Policy/Action:**  
New Energy Frontier

The DOI and the BLM are working with local communities, Tribes, state regulators, industry, and other Federal agencies in building a clean energy future by providing sites for environmentally sound development of renewable energy on public lands. The Energy Policy Act of 2005 (Title II, Section 211) establishes a goal for the Secretary of the Interior to approve 10,000 megawatts (MWs) of electricity from non-hydropower renewable energy projects located on public lands. Further, Secretarial Order 3285A1 dated March 11, 2009, as amended February 22, 2010, establishes the development of environmentally responsible renewable energy as a priority for the DOI.

The BLM relies on industry to identify renewable energy technologies and general project locations and configurations that are technically and economically viable given current market conditions, renewable portfolio standards, technological advancements, and transmission access. Through pre-application activities, and as the NEPA analysis for a proposed project proceeds,

the BLM works with applicants, federal land and resource management agencies, and stakeholders in identifying appropriate project locations that conform with federal law, regulation, and policy, and with existing land use plans, minimizing the need for land use plan amendment.

#### Disclosing Pre-application Activities in the NEPA Process

As described in IM No. 2011-061, pre-application activities are an essential part of the BLM right-of-way application and NEPA process for utility-scale renewable energy projects. It is important that offices incorporate pre-application activities in their NEPA documents and discuss this information in scoping meetings and other public meetings that are part of the NEPA process. Pre-application activities can be incorporated into a NEPA document in a variety of ways. For example, this information can be included as part of the background information for the proposed action. This information should also be reflected in the alternatives section of the NEPA document, either as part of the alternatives considered but eliminated from further analysis, or as an alternative that is given detailed consideration in the NEPA document (see Alternatives section below). It is also important to identify in the NEPA document any existing decisions that were relied upon to guide pre-application activities.

#### Purpose and Need

The purpose and need statement as a whole describes the problem or opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action. The purpose and need statement in a NEPA document for a renewable energy right-of-way application must describe the BLM's purpose and need for action, not the applicant's interests and objectives (BLM NEPA Handbook Section 6.2). The applicant's interests and objectives, including any constraints or flexibility with respect to their proposal, help to inform the BLM's decision and cannot be ignored in the NEPA process. The applicant's interest and objectives should be described in the NEPA document (e.g., in the background section or in the project description). This information will help determine which alternatives are analyzed in detail through the NEPA process and may also provide a basis for eliminating some alternatives from detailed analysis.

For most renewable energy projects the BLM's purpose and need for action will arise from the BLM's responsibility under the Federal Land Policy and Management Act (FLPMA) to respond to a right-of way application requesting authorized use of public lands for a specific type of renewable energy development. The purpose and need statement should also describe the BLM's authorities and management objectives with respect to renewable energy and public lands (see example below). Additionally, offices should include a description of the BLM's decision(s) to be made as part of the purpose and need statement to help establish the scope of the NEPA analysis (BLM NEPA Handbook Section 6.2). In responding to a right-of-way application the BLM may decide to deny the proposed right-of-way, grant the right-of way, or grant the right-of-way with modifications. In accordance with the right-of-way regulations, modifications may include modifying the proposed use or changing the route or location of the proposed facilities (43 CFR 2805.10(a)(1)).

The following purpose and need statement is provided as an example. Changes in the statement as written are expected based on project-specific circumstances including appropriate reference to land use plans or other management objectives or policies for an area (e.g., Secretarial Order

3310, dated December 22, 2010, Protecting Wilderness Characteristics on Lands Managed by the BLM). In some situations, distinguishing the “purpose” from the “need” as two separate aspects of the purpose and need statement may provide an opportunity to better clarify why the BLM is proposing an action (BLM NEPA Handbook Section 6.2).

*Example:*

*In accordance with FLPMA (Section 103(c)), public lands are to be managed for multiple use that takes into account the long-term needs of future generations for renewable and non-renewable resources. The Secretary of the Interior is authorized to grant rights-of-way on public lands for systems of generation, transmission, and distribution of electric energy (Section 501(a)(4)). Taking into account the BLM’s multiple use mandate, the purpose and need for the proposed action is to respond to a FLPMA right-of-way application submitted by [Company X] to construct, operate, maintain, and decommission a [type of energy] facility and associated infrastructure on public lands administered by the BLM in compliance with FLPMA, BLM right-of-way regulations, and other applicable Federal laws and policies. This proposed action would, if approved, assist the BLM in addressing the management objectives in the Energy Policy Act of 2005 (Title II, Section 211) which establish a goal for the Secretary of the Interior to approve 10,000 MWs of electricity from non-hydropower renewable energy projects located on public lands. This proposed action, if approved, would also further the purpose of Secretarial Order 3285A1 (March 11, 2009) that establishes the development of environmentally responsible renewable energy as a priority for the Department of the Interior.*

*The BLM will decide whether to deny the proposed right-of-way, grant the right-of-way, or grant the right-of-way with modifications. Modifications may include modifying the proposed use or changing the route or location of the proposed facilities (43 CFR 2805.10(a)(1)).*

Alternatives

In accordance with NEPA, the BLM must explore alternative means of meeting the purpose and need for the action. For a renewable energy right-of-way application, alternatives will include denying the application (the No Action Alternative) and granting the application as submitted by the applicant following the pre-application process (the Proposed Action). The BLM must consider other reasonable alternatives through the NEPA process, including modifications to the right-of-way application as submitted, that meet the purpose and need for the action and provide a clear basis for choice among options (40 CFR 1502.14). Alternatives should be developed to address unresolved resource conflicts, including those under the stewardship of other Federal agencies. “Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant” (Question 2a, Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981). The nature and number of alternatives analyzed in detail in the NEPA process will vary by project.

For renewable energy rights-of-way, there are many different types of alternatives that are considered by the BLM and the applicant during pre-application activities and that are suggested to the BLM by external parties through scoping and comments on the draft NEPA document. These alternatives typically include: modified site configurations (e.g., varied turbine or solar panel layouts, or different configurations for support and access facilities), modifications to the proposed technology (e.g., wet vs. dry cooling), different technologies (e.g., photovoltaic vs. concentrated solar power), other BLM land locations, non-Federal land locations, reduced project footprint/MW, and phased construction.

The BLM must develop a well-supported rationale when deciding if such alternatives are reasonable and whether to analyze them or eliminate them from detailed analysis (40 CFR 1502.14(a)). The BLM may eliminate an alternative from detailed analysis for a variety of reasons, including, for example, if the alternative does not respond to the BLM's purpose and need, if the alternative is not technically or economically feasible (as informed by the applicant's interests and objectives), or if the alternative is inconsistent with the existing management prescriptions for the area as set forth in the governing land use plan (BLM NEPA Handbook Section 6.6.3). There may be multiple reasons why an alternative is eliminated from detailed analysis. All reasons that support the BLM's decision to eliminate an alternative from detailed analysis should be disclosed in the NEPA document. The determination of whether and how a given alternative is carried forward for analysis in the NEPA process will vary by project.

#### Other BLM Lands

For some renewable energy rights-of-way applications, there may be multiple locations on BLM lands identified through internal and/or external scoping that meet the purpose and need for action and reduce environmental impacts as compared to the application under consideration. If such locations are technically and economically feasible and cannot be eliminated from detailed analysis for other valid reasons, they should be fully analyzed as alternatives in the NEPA process. If there is a pending right-of-way application on an alternative BLM site that has been identified for analysis, the BLM will have to determine whether to fully analyze the location as an alternative. In deciding whether a site with a pending right-of-way application should be analyzed in detail, the BLM must determine whether the pending application can be rejected (e.g., because the applicant has not demonstrated due diligence in perfecting the application; see IM No. 2011-060). If the applicant with the pending application on alternative BLM lands has demonstrated due diligence, the BLM may decide not to fully analyze those lands as an alternative.

#### Non-Federal Lands

The BLM will not typically analyze a non-Federal land alternative for a right-of-way application on public lands because such an alternative does not respond to the BLM's purpose and need to consider an application for the authorized use of public lands for renewable energy development. However, all non-Federal land alternatives considered by the BLM and the applicant during the pre-application process, including previously disturbed lands, and the rationale why they were not pursued by the agency and/or the applicant should be summarized in the NEPA document (IM No. 2011-061).

Non-Federal land alternatives may also be addressed in other state or Federal agency environmental documents that are appropriate for incorporation by reference or for adoption by the BLM (40 CFR 1502.21, 1506.3).

#### Different Technologies

The BLM will not typically analyze an alternative for a different technology when a right-of-way application is submitted for a specific technology (e.g., evaluate a photovoltaic alternative for a concentrated solar power application) because such an alternative does not respond to the BLM's purpose and need to consider an application for the authorized use of public lands for a specific renewable energy technology. However, all technologies considered by the BLM and the applicant during the pre-application process, and the rationale the applicant should be summarized in the NEPA document (IM No. 2011-061).

If, through discussions with the applicant, the BLM determines that the applicant has flexibility with respect to the proposed technology or is uncertain about a specific technology, it may be appropriate to fully analyze an alternative for a different technology. This may help reduce the need to supplement the NEPA analysis if changes in technology are made later in the process.

#### Distributed Generation

Distributed generation refers to the installation of small-scale renewable energy facilities (typically solar) at individual locations at or near the point of consumption (e.g., use of solar photovoltaic panels on a business or home to generate electricity for on-site consumption). Distributed generation systems typically generate less than 10,000 kilowatts. Current research by the Department of Energy indicates that development of both distributed generation and utility-scale renewable energy development will be needed to meet future energy needs in the United States, along with other energy resources and energy efficiency technologies.

The BLM can dismiss an alternative for distributed generation from detailed analysis because it does not respond to the purpose and need to consider an application for the authorized use of public lands for a specific renewable energy technology. Additionally, the Energy Policy Act of 2005 established a goal for the Secretary of the Interior to approve 10,000 MWs of electricity from non-hydropower renewable energy projects located on public lands. The Act reflects Congress's conclusion that installation of renewable energy technologies on the public lands capable of producing at least 10,000 MWs is appropriate. Given the current state of the technology, only utility-scale renewable energy generation projects are reasonable alternatives to achieve this level of renewable energy generation on public lands. Furthermore, the BLM has no authority or influence over the installation of distributed generation systems, other than on its own lands. The BLM is evaluating the use of distributed generation at individual sites through other initiatives (Executive Order 13514 and DOI implementing actions).

The BLM may elect to analyze in detail an alternative that might otherwise be eliminated to assist in decision-making, including potential amendments to an existing land use plan (BLM

NEPA Handbook Section 6:6.1). For example, in limited circumstances, the BLM may choose to evaluate a non-Federal land alternative or an alternative technology that is raised through scoping to the extent necessary to support a decision regarding the pending application. In such cases, the resulting analysis may be restricted by the amount of information available for an alternative technology and/or location (e.g., no plan of development will likely exist). The BLM should make clear in the NEPA document that such information is lacking (40 CFR 1502.22; see BLM NEPA Handbook Section 6.7.2 for additional information).

The BLM must independently evaluate the information submitted by an applicant regarding the proposed action and potential alternatives (40 CFR 1506.5(a)). The BLM should seek the assistance of other Federal, State and/or local agencies in evaluating such information for renewable energy development. For example, the Department of Energy has agreed to provide the BLM assistance in assessing the technical and/or economic feasibility of project proposals and potential alternatives, as well as confirm information provided by wind and solar energy developers (contact BLM Washington Office WO-350 for more information).

#### Impact Analysis for Nationally Designated Systems or Units

NEPA documents for wind and solar energy rights-of-way must present an integrated analysis of whether and how the direct, indirect, and cumulative impacts of a proposed action and alternatives may affect nationally designated systems or units. These include, but are not limited to, units of the National Park Service (NPS) and other areas under NPS administration (e.g., National Historic Trails); Fish and Wildlife Service Refuges; units of the U.S. Forest Service; and designated Wilderness and other units of the National Landscape Conservation System. As appropriate, this analysis should be presented in the NEPA document so that it is easily identifiable to the public (e.g., as a summary section for each alternative). To avoid duplication, cross-referencing to applicable impact sections of the NEPA document is encouraged.

**Timeframe:** Effective upon issuance.

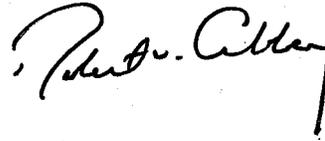
**Budget Impact:** None.

**Background:** In reviews of Environmental Impact Statements (EIS) prepared for recent renewable energy projects, specifically EISs for solar energy right-of way applications, concerns have been raised regarding the project purpose and need statements and the range of alternatives, especially with regard to alternative site locations. In order to assist field offices with the NEPA compliance process, it was determined that a reiteration and clarification of existing NEPA guidance, with a focus on renewable energy lands and realty actions, was necessary.

**Manual/Handbook Sections Affected:** This IM does not affect any manual/handbook sections; it is intended for use in conjunction with the BLM NEPA Handbook (H-1790-1). References to specific sections of the Handbook have been included in the IM.

**Coordination:** This policy was coordinated with the Office of the Solicitor; the Renewable Resources and Planning, and Minerals and Realty Management directorates; the National Park Service; the Fish and Wildlife Service; and the Department of the Interior.

**Contact:** If there are any questions concerning this IM, please contact Ed Roberson, Assistant Director, Renewable Resources and Planning, 202-208-4896; Ray Brady, Energy Policy Team, 202-912-7312 or ray\_brady@blm.gov; or Shannon Stewart, Senior Planning and Environmental Analyst, Washington Office Division of Decision Support, Planning and NEPA (WO-210), at 202-912-7219, or shannon\_stewart@blm.gov.

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