APPENDIX A

NOI PUBLISHED IN FEDERAL REGISTER

COMMENT DUE DATE: Your comments are best assured of having their full effect if received on or before February 18, 2003.

Dated: December 12, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director.

[FR Doc. 02–31912 Filed 12–18–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–49]

Notice of Proposed Information Collection: Comment Request; Applications for Housing Assistance Payments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a tollfree number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Applications for Housing Assistance Payments.

OMB Control Number, if applicable: 2502–0182.

Description of the need for the information and proposed use: Vouchers are submitted by owners/agents to HUD or their Contract Administrators (CA)/Performance Based Contract Administrators (PBCA) each month to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. In the instance of special claims, vouchers are submitted by owners/agents to HUD or their CA/PBCA to receive an amount of offset unpaid rents, tenant damages, vacancies, and/or debt service losses.

Agency form numbers, if applicable: HUD–52670; HUD–52670A, Part 1; HUD–52670A, Part 2; HUD–52671A/B/C/D.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 178,585; the number of respondents is 43,064 generating approximately 394,821 annual responses; the frequency of response is on occasion and monthly; and the estimated time needed to prepare the response varies from 20 to 30 minutes.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2002

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–31908 Filed 12–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–077–03–1430–ER–D025; IDI–33676]

Notice of Intent To Prepare an Environmental Impact Statement/Land Use Plan Amendment

AGENCY: Burley Field Office, Upper Snake River District, Bureau of Land Management (BLM), Cassia County, Idaho.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and to Amend the Cassia Resource Management Plan (RMP).

SUMMARY: Notice is hereby given that the BLM is proposing to prepare a land use plan amendment and environmental impact statement (EIS) to consider the proposed Cotterel Mountain Wind Energy Project (Project), located southeast of the town of Albion in Cassia County, Idaho. Windland, Inc. (Windland) of Boise, Idaho proposes to construct and operate the 200-megawatt (MW) wind-driven power generation facility. The EIS will analyze the potential environmental impacts of the construction and operation of the wind project itself, as well as related transmission facilities and roads. This planning activity would amend the Cassia RMP and deals with the 40,967 acres of public land in the Cotterel Mountain Management Area of the RMP and more specifically with approximately 4,600 acres running north and south along the ridge line of the mountain that would be directly affected by the proposed project. The planning process will comply with the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA). The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify specific issues and develop planning criteria. The scoping process will include an evaluation of the needs and interests of the public.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end 60 days after publication of this notice. Comments regarding issues and planning criteria should be received on or before the end of the scoping period at the address listed below. Public meetings or open houses will be held. In order to ensure local community

participation and input, public meetings will most likely be held in Albion, Burley and Boise, Idaho. Specific dates and locations for public participation will be published in local newspapers and broadcast on local community calendars. Meetings and open houses will provide opportunity for the public to work collaboratively with the BLM to identify issues to be addressed in the planning process.

ADDRESSES: Comments regarding the proposed development of a wind-driven power generation facility should be sent to: Project Manager, Cotterel Mountain Wind Project, Bureau of Land Management, Burley Field Office, 15 East 200 South, Burley, Idaho 83318. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: Windland, Inc., a Boise based company, is proposing to install approximately 130 wind turbines, each having a generating capacity between 1.3 and 1.8 megawatts, on a site covering approximately 7 square miles on the Cotterel Mountains southeast of Burley, Idaho. The proposed project area is within the Burley Field Office, Upper Snake River District of the BLM. The 130 turbines situated on towers approximately 250 feet in height would produce a maximum of 200 megawatts of power, enough to provide electricity for 40,000 homes. Power from the project would be collected by an underground cable system and then fed into one of two proposed substations to be located on the project site. The fenced substation sites would occupy approximately two to four acres each. From the substation sites, power from the project would then be transported to one of two existing 138-kilovolt (kV) power transmission lines that are in the vicinity of the proposed project area, via new overhead transmission facilities. Other facilities required as part of the proposed project are small pad mounted transformers located at the base of each wind turbine tower, access roads and one operation and maintenance building. The area permanently occupied by the project after final reclamation of disturbed areas would total approximately 68 acres. The project is scheduled to begin construction as early as June 2004, followed by commercial operation as early as November 2005 and would operate year-round for at least 30 years.

The purpose and need for the proposed project are to (1) provide wind-generated electricity from a site in Idaho to meet existing and future demands for electricity; and (2) to develop energy generation facilities that are consistent with the President's National Energy Policy which 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 the nation's future.

Public Participation: Potential issues that have been identified to date include, but are not limited to the following general categories: Wildlife (including birds); vegetation (including weeds and invasive plant species); threatened, endangered and sensitive species; public access; visual concerns; cultural resources; Tribal concerns; rangeland resources; geology and soils; hydrology; recreation resources; hazardous materials; air quality; noise; and socio-economics. The BLM has established a 60-day scoping period during which, affected tribes, landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the EIS. Scoping will help the BLM identify the full range of issues that should be addressed in the EIS. The Draft EIS/Draft plan amendment, which is scheduled for completion in the fall of 2003, will be circulated for public review and comment. The BLM will consider and respond in the Final EIS/proposed planned amendment to comments received on the draft. The Final EIS and proposed plan amendment are expected to be published early in 2004.

FOR FURTHER INFORMATION CONTACT: Scott Barker, Project Manager, Burley Field Office, 15 East 200 South, Burley, Idaho 83318, telephone (208) 677–6678.

Dated: October 28, 2002.

Theresa Hanley,

Burley Field Office Manager.

[FR Doc. 02–32060 Filed 12–18–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) has forwarded a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Crop Acreage and Yields and Water Distribution (Water User Crop Census Report [Form 7–332], and Crop and Water Data [Form 7–2045]), OMB Control Number: 1006–0001. We request your comments on the revised Crop Acreage and Yields and Water Distribution Forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before January 21, 2003.

ADDRESSES: Send comments regarding the information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be sent to Ms. Diana Trujillo, Bureau of Reclamation, Water Resources Office, D–5300, PO Box 25007, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the forms contact Diana Trujillo, Bureau of Reclamation, (303) 445–2914.

SUPPLEMENTARY INFORMATION: This is notice that a request for review, comment, and approval of a revised currently approved collection has been forwarded to OMB. A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 17, 2002 (67 FR 46998). No public comments were received by Reclamation.

We have revised the currently approved collection to reflect industry standards concerning units used to measure yields for certain crops (*i.e.*, using pounds instead of bales for cotton lint and using pounds instead of tons for hops). Other changes include:

- In Section II–e on both forms, "Acres irrigated by", we are adding the option to choose "Flood" along with the

APPENDIX B

INSTRUCTION MEMORANDUM 2003-20 FROM THE INTERIM WIND ENERGY DEVELOPMENT POLICY

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

October 16, 2002

In Reply Refer To:
2800 (WO 350) P
Ref. IB No. 2001-138,
IM No. 2002-011, IM No. 2002-189
and IM No. 2002-196

EMS TRANSMISSION 10/17/2002
Instruction Memorandum No. 2003-020
Expires: 09/30/2004

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.

Signed by:
Kathleen Clarke
Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

APPENDIX C

BLM BEST MANAGEMENT PRACTICES

BEST MANAGEMENT PRACTICES

These BMPs are a compilation of measures taken from the guide stipulations in BLM Manual Handbook H-2801-1, site-specific stipulations developed for other projects, and site-specific stipulations developed for this project. They are subject to change, and may be modified to include BMPs from BLM's National Programmatic Wind EIS.

PROJECT PLANNING, DESIGN AND COMPLIANCE

1. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with the plan(s) of development, which was (were) approved and made part of the grant on (date of grant). Any relocation, additional construction, or use that is not in accord with the approved plan(s) of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan(s) of development, shall be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.

2. The holder shall submit a plan or plans of development that describe in detail the construction, operation, maintenance, and termination of the right-of-way and its associated improvements and/or facilities. The degree and scope of these plans will vary depending upon (1) the complexity of the right-of-way or its associated improvements and/or facilities, (2) the anticipated conflicts that require mitigation, and (3) additional technical information required by the authorized officer. The plans will be reviewed, and if appropriate, modified and approved by the authorized officer. An approved plan of development shall be made a part of the right-of-way grant.

3. The holder shall contact the authorized officer at least 14 days prior to the anticipated start of construction and/or any surface disturbing activities. The authorized officer may require and schedule a preconstruction conference with the holder prior to the holder's commencing construction and/or surface disturbing activities on the right-of-way. The holder and/or his representative shall attend this conference. The holder's contractor, or agents involved with construction and/or any surface disturbing activities associated with the right-of-way, shall also attend this conference to review the stipulations of the grant including the plans(s) of development.

4. The holder shall designate a representative(s) who shall have the authority to act upon and to implement instructions from the authorized officer. The holder's representative shall be available for communication with the authorized officer within a reasonable time when construction or other surface disturbing activities are underway.

5. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.

6. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way without the prior written authorization of the authorized officer. Such authorization shall be a written notice to proceed issued by the authorized officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

7. The holder shall perform the necessary transportation studies and recommend a road standard to meet the purpose of the road. This standard and the topography, soils, and geologic hazards of the lands crossed will define the level of survey and design necessary. Accepted standards for road design, including the BLM Manual Section may be used.

8. The holder shall obtain the services of a licensed professional engineer to locate, survey, design, and construct the proposed road as directed by the authorized officer. The road design shall be based on the (1) width, (2) maximum grade, and (3) design speed of the road.

9. The holder shall submit standard or typical cross sections of the road to be constructed, maintained, or reconstructed as directed by the authorized officer. The cross sections should include, but are not limited to, the proposed road width, ditch dimensions, cut and fill slopes, and typical culvert installation.

10. As directed by the authorized officer, the completed subgrade shall be submitted to the Bureau for approval prior to the placement of any surfacing.

11. As directed by the authorized officer, surfacing shall be designed to accommodate anticipated loading and traffic volumes and shall provide for future maintenance.

12. The design and location of all facilities shall be approved by the authorized officer prior to construction.

13. The road proposed as part of this authorization shall be constructed and maintained in accordance with the BLM standards prescribed for a collector type road.

RESOURCE PROTECTION

1. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the

authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

2. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.

3. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).

4. The prevention and spread of noxious and invasive weeds is a high priority to nearby communities and BLM received numerous comments on weeds during public scoping. Under EO 13112, Federal agencies shall not fund, or authorize actions likely to cause or promote the introduction or spread of invasive species in the United States. Windland would prepare a noxious and invasive weed plan as part of the project. The weed plan would include preconstruction weed inventories and a post construction monitoring plan to prevent and treat the spread of weeds. Construction equipment would be cleaned and free of weeds prior to coming onto the construction site. Windland would locate an intermediate wash station midway through the project area to prevent lower elevation weed species from moving up the Cotterel ridgeline. Only certified weed free straw and hay would be used as mulch or for temporary erosion control measures.

5. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of

the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

SURVEY AND STAKING

1. The holder shall place slope stakes, culvert location and grade stakes, and other construction control stakes as deemed necessary by the authorized officer to ensure construction in accordance with the plan of development. If stakes are disturbed, they shall be replaced before proceeding with construction.

2. No surface disturbance or construction activity will be allowed within 100 feet of any cultural sites which are clearly marked as specified by the authorized officer. Any deviation from this requirement shall have the prior written approval of the authorized officer.

3. The holder shall set center line stakes to identify the location of the proposed road as directed by the authorized officer.

4. Cut and fill slope stakes shall be set as directed by the authorized officer.

5. The holder shall identify and physically mark the boundaries of all construction work areas (e.g., construction right-of-way, extra work space areas, storage and contractor yards, borrow and disposal areas, access roads, etc.) that would be needed for safe construction. The applicant must ensure that appropriate cultural resources and biological surveys have been conducted.

CONSTRUCTION MEASURES

1. Suitable topsoil material removed in conjunction with clearing and stripping shall be conserved in stockpiles within the right-of-way. Topsoil shall be stripped to an average depth of 4-6 inches. If deep soils are available, segregate 6-12 inches of topsoil and stockpile accordingly.

2. The holder will rip severely compacted areas to a depth of 12”. In areas where topsoil has been segregated, rip the subsoil before replacing the segregated topsoil.

3. Excavation and embankment quantities shall be balanced as nearly as design and construction considerations allow. Any waste and/or borrow needs shall be specifically identified by the holder.

4. Excess excavated, unsuitable, or slide materials shall be disposed of as directed by the authorized officer.

5. Waste rock from road and turbine pad construction would be hauled to the rock crushing plant to create material to be used for road surfacing. Excess rock would be hauled off site and disposed of at an approved facility.

6. Clearing and grubbing debris shall not be placed or permitted to remain in or under any embankment sections. Clearing and grubbing debris may be placed under waste material with a minimum of 3 feet of cover as directed by the authorizing officer.

7. Earthwork areas shall be cleared of vegetation and the topsoil stockpiled for future rehabilitation. Prior to fill construction, the existing surface shall be sloped to avoid sharp banks and allow equipment operations. No fills shall be made with water saturated soils. Materials shall be placed in uniform layers not to exceed 12 inches in thickness. Construction equipment shall be routed evenly over the entire width of the fill to obtain a thorough compaction.

8. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.

9. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of six (6) inches deep, the soil shall be deemed too wet to adequately support construction equipment.

10. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.

11. Construction holes left open over night shall be covered. Covers shall be secured in place and shall be strong enough to prevent livestock or wildlife from falling through and into a hole.

12. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.

13. Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All off-site borrow areas must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction or use of the site by holder shall be removed from the site. All waste disposal sites on public land must be approved in writing by the authorized officer in advance of use.

FENCING, CATTLEGUARDS AND CULVERTS

1. Cattleguards shall be 5 feet by 16 feet and as a minimum meet the requirements of BLM Manual Section 9113.25. They shall be set on (timber, precast concrete, cast-in-place concrete) bases at right angles to the roadway. Backfill around cattle guards shall be

thoroughly compacted. A bypass gate shall be built adjacent to each cattleguard structure. Gate materials, dimensions, and construction shall conform to the requirements as specified by the authorized officer.

2. Fences, gates, and brace panels shall be reconstructed to appropriate Bureau standards and/or specifications as determined by the authorized officer.

3. The holder shall furnish and install culverts of the gauge, materials, diameter(s), and length(s) indicated and approved by the authorized officer. Culverts shall be free of corrosion, dents, or other deleterious conditions. Culverts shall be placed on channel bottoms on firm, uniform beds which have been shaped to accept them and aligned to minimize erosion. Backfill shall be thoroughly compacted. No equipment shall be routed over a culvert until backfill depth is adequate to protect the culverts.

4. As directed by the authorized officer, construction stakes shall be set for each culvert to show location as well as inlet and outlet elevations, diameter, and length.

5. As directed by the authorized officer, the holder shall submit a complete culvert list to reflect the drainage plan for the road. The list shall include, but not be limited to, size(s), lengths, and locations of the culverts.

6. The minimum diameter for culverts shall be 18 inches.

7. All roads and parking areas shall be constructed to provide drainage and minimize erosion. Culverts shall be installed if necessary to maintain drainage. All areas to be used for roads and parking shall be surfaced with gravel.

8. Culverts and lateral ditches shall be staked for location, skew, and elevation as directed by the authorized officer.

ACCESS

1. Specific sites as identified by the authorized officer (e.g., archaeological sites, areas with threatened and endangered species, or fragile watersheds) where construction equipment and vehicles shall not be allowed, shall be clearly marked onsite by the holder before any construction or surface disturbing activities begin. The holder shall be responsible for assuring that construction personnel are well trained to recognize these markers and understand the equipment movement restrictions involved.

2. The holder shall provide for the safety of the public entering the right-of-way. This includes, but is not limited to, barricades for open trenches, flagmen/women with communication systems for single-lane roads without intervisible turnouts, and attended gates for blasting operations.

3. The holder shall permit free and unrestricted public access to and upon the right-of-way for all lawful purposes except for those specific areas designated as restricted by the authorized officer to protect the public, wildlife, livestock, or facilities constructed within the right-of-way.

4. Construction-related traffic shall be restricted to routes approved by the authorized officer. New access roads or cross-country vehicle travel will not be permitted unless prior written approval is given by the authorized officer. Authorized roads used by the holder shall be rehabilitated or maintained when construction activities are complete as approved by the authorized officer.

5. Existing roads and trails on public lands that are blocked as the result of the construction project shall be rerouted or rebuilt as directed by the authorized officer.

6. If 'cross country' access is necessary, clearing vegetation or grading a roadbed will be avoided whenever practicable. All construction and vehicular traffic shall be confined to the right-of-way or designated access routes, roads, or trails unless otherwise authorized in writing by the authorized officer. All temporary roads used for construction shall be rehabilitated after construction is completed. Only one road or access route will be permitted to each site requiring access.

7. The holder shall inform the authorized officer within 48 hours of any accidents on federal lands that require reporting to the Department of Transportation as required by 49 CFR Part 195.

8. Plan for safe and accessible conditions at all roadway crossings and access points during construction and restoration.

POWERLINE CONSTRUCTION

1. Unless otherwise agreed to by the authorized officer in writing, power lines shall be constructed in accordance to standards outlined in Avian Power Line Interaction Committee (APLIC). 1996. "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996". Edison Electric Institute and the Raptor Research Foundation. Washington, D.C. (see Attachment #1 – Excerpts and Figures from the above Cited Publication). The holder shall assume the burden and expense of proving that pole designs not shown in the above publication are "eagle safe". Such proof shall be provided by a raptor expert approved by the authorized officer. The BLM reserves the right to require modifications or additions to all power line structures placed on this right-of-way, should they be necessary to ensure the safety of large perching birds. Such modifications and/or additions shall be made by the holder without liability or expense to the United States.

2. The holder shall use nonreflecting lines and conductors at the following location(s): (to be determined)

3. The holder shall evenly spread the excess soil excavated from pole holes within the right-of-way and in the immediate vicinity of the pole structure.

ENVIRONMENTAL COLORATION

1. The holder shall coordinate with the authorized officer on the design and color of the towers, blades, poles and transmission lines to achieve the minimum practicable visual impacts.

2. All above-ground structures not subject to safety requirements or other painting requirements specified by the authorized officer, shall be painted by the holder to blend with the natural color of the landscape. The paint used shall be a color which simulates 'Standard Environmental Colors' designated by the Rocky Mountain Five-State Interagency Committee. The color selected for this right-of-way is (to be determined).

EARTHWORK AND EROSION CONTROL

1. The holder shall recontour disturbed areas, or designated sections of the right-of-way, by grading to restore the site to approximately the original contour of the ground as determined by the authorized officer.

2. The holder shall recontour the disturbed area and obliterate all earthwork by removing embankments, backfilling excavations, and grading to re-establish the approximate original contours of the land in the right-of-way.

3. The holder shall uniformly spread topsoil over all unoccupied disturbed areas. Spreading shall not be done when the ground or topsoil is frozen or wet.

4. The holder shall construct water bars on all disturbed areas to the spacing and cross sections specified by the authorized officer. Water bars are to be constructed to: (1) simulate the imaginary contour lines of the slope (ideally with a grade of one or two percent); (2) drain away from the disturbed area; and (3) begin and end in vegetation or rock whenever possible.
5. As directed by the authorizing officer, all road segments shall be winterized by providing a well-drained roadway by water baring, maintaining drainage, and any additional measures necessary to minimize erosion and other damage to the roadway or the surrounding public lands.

6. Temporary erosion and sediment control devices, including slope breakers and sediment barriers, will be installed promptly after soil disturbance. These devices will be inspected on a daily basis in areas of active construction; on a weekly basis in areas with no active construction; and within 24 hours of each 0.5-inch or greater rainfall. Temporary slope breakers (*e.g.*, hay bales, silt fence, earthen berms) will be constructed and maintained

according to the specifications and recommendations of the BLM. Windland will install temporary sediment barriers such as silt fence or staked straw bales, on either side of a water body channel across the width of the construction ROW; around spoil and topsoil stockpiles; and, at the edge of the ROW to contain topsoil or spoil material and flow of sediment into adjacent areas. Sediment barriers will be maintained as necessary to ensure effectiveness during construction. In steep terrain, temporary sediment barriers will be installed during clearing to prevent the movement of disturbed soil off the right-of-way. Temporary slope breakers consisting of mounded and compacted soil will be installed across the right-of-way during grading.

7. Surface water quality would be protected from impacts of construction with sediment barriers that would be maintained until satisfactory reclamation is established.

SEEDING AND MULCHING

1. The holder shall prepare a seedbed by (scarifying the disturbed area) (distributing topsoil uniformly) (disking the topsoil) as directed by the authorized officer.

2. The holder shall seed all disturbed areas with the seed mixture(s) listed below. The seed mixture(s) shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within 6 months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

   Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to ensure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the 2nd season after seeding. The authorized officer is to be notified a minimum of 14 days prior to seeding of the project.

   Seed Mixture

   - Species of Seed Variety Pounds/acre PLS (seed mix to be determined)
   - Total (to be determined) lbs/acre PLS
   - Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.

3. The holder will apply clean, weed-free straw mulch to all disturbed areas. Mulch will be applied concurrent with or immediately after seeding, where necessary to stabilize the soil surface and to reduce wind and water erosion. Mulch will be uniformly spread over at least 75 percent of the ground surface in disturbed areas to minimize the effects of water and wind erosion and to preserve moisture in areas requiring vegetation. Mulch will be anchored by disking or punching, depending the percent slope.

FIRE PROTECTION

1. The holder shall prepare a fire prevention and suppression plan, that shall be reviewed, modified and approved, as appropriate, by the authorized officer. The holder shall take into account such measures for prevention and suppression of fire on the right-of-way and other public land used or traversed by the holder in connection with operations of the right-of-way. Project personnel shall be instructed as to individual responsibility in implementation of the plan.

2. During construction, operation, maintenance, and termination of the right-of-way, during the period from July 1 to Sept. 15, vehicles, gas-powered equipment, and flues shall be equipped with spark arresters approved by the authorized officer.

3. The holder shall maintain a fire watch with fire-fighting equipment during construction at the following locations: (to be determined) as required by the authorized officer.

4. When requested by the authorized officer, the holder shall make his equipment already at the site with operators, temporarily available for fighting fires in the vicinity of the project. Payment for such services will be made at rates determined by the authorized officer.

LIABILITY AND BONDING

1. The holder shall be liable for damage or injury to the United States to the extent provided by 43 CFR Sec. 2803.1-4. The holder shall be held to a standard of strict liability for damage or injury to the United States resulting from fire or soil movement (including landslides and slumps as well as wind and water-caused movement of particles) caused or substantially aggravated by any of the following within the right-of-way or permit area:

    (1) Activities of the holder, including but not limited to construction, operation, maintenance, and termination of the facility.
    (2) Activities of other parties including but not limited to:

        (a) Land clearing and logging.
        (b) Earth-disturbing and earth-moving work.
        (c) Blasting.
        (d) Vandalism and sabotage.

The maximum limitation for such strict liability damages shall not exceed (to be determined) for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

This section shall not impose strict liability for damage or injury resulting primarily from the negligent acts or omissions of the United States.

2. The holder shall be responsible for repairing/replacing any resources lost by grazing permittees or the United States as a result of the project. Resources may include, but not be limited to, stock water pipelines, livestock, forage for livestock grazing, spring (water) production, and the ability to graze livestock. Any lost resources would be repaired or replaced in kind or by mutually agreed on compensation.

3. A bond, acceptable to the authorized officer, shall be furnished by the holder prior to the issuance of a notice to proceed or at such earlier date as may be specified by the authorized officer. The amount of this bond shall be determined by the authorized officer. This bond must be maintained in effect until removal of improvements and restoration of the right-of-way have been accepted by the authorized officer.

4. Should the bond delivered under this grant become unsatisfactory to the authorized officer, the holder, shall, within 30 days of demand, furnish a new bond.

ROAD AND CONSTRUCTION SITE MAINTENANCE

1. If snow removal from the road is undertaken, equipment used for snow removal operations shall be equipped with shoes to keep the blade two (2) inches off the road surface. Holder shall take special precautions where the surface of the ground is uneven and at drainage crossings to ensure that equipment blades do not destroy vegetation.

2. Holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer. (A regular maintenance program shall include, but is not limited to, blading, ditching, culvert installation, and surfacing).

3. Except rights-of-way expressly authorizing a road after construction of the facility is completed, the holder shall not use the right-of-way as a road for purposes other than routine maintenance as determined necessary by the authorized officer in consultation with the holder.

4. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. 'Waste' means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.

5. For the purpose of determining joint maintenance responsibilities, the holder shall make road use plans known to all other authorized users of the road. Holder shall provide the authorized officer, within 30 days from the date of the grant, with the names and addresses of all parties notified, dates of notification, and method of notification. Failure of the holder to share proportionate maintenance costs on the common use access road in dollars, equipment, materials, or manpower with other authorized users may be adequate grounds to terminate the right-of-way grant. The determination as to whether this has occurred and the decision to terminate shall rest with the authorized officer. Upon request, the authorized officer shall be provided with copies of any maintenance agreement entered into.

HAZARDOUS MATERIALS

1. The holder(s) shall comply with all applicable Federal, State and local laws and regulations, existing or hereafter enacted or promulgated, with regard to any hazardous materials, as defined in this paragraph, that will be used, produced, transported or stored on or within the R/W or any of the R/W facilities, or used in the construction, operation, maintenance or termination of the R/w or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the CERCLA of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the RCRA of 1976, as amended, 42 U.S.C. 6901 et seq. and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U. S. C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

2. The holder of right-of-way No. IDI-33676 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way.) This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

3. The holder shall submit its contingency plan to the authorized officer prior to scheduled start up.

    a. Include provisions for oil or other pollutant spill control.
    b. The agencies responsible for contingency plans in southern Idaho shall be among the first to be notified in the event of any pipeline system failure resulting in a spill of oil or other pollutant.
    c. Provide for restoration of the affected resource.

d. Provide that the authorized officer shall approve any materials or devices used for oil spill control and any disposal sites or techniques selected to handle oil, matter, or other pollutants.

e. Include separate and specific techniques and schedules for cleanup of spills of oil or other pollutants on land or waters.

4. The holder would not refuel any equipment within 500 feet of any live water source.

AIR QUALITY

1. The holder shall meet Federal, State, and local emission standards for air quality and shall submit for the authorized officer's review a technical report addressing criteria and methodology of how the proposed facility will be located and designed to meet said standards.

2. The holder shall furnish and apply water or other means satisfactory to the authorized officer for dust control.

3. The holder will be responsible for controlling dust by reducing travel speed and/or applying dust suppressants (e.g., magnesium chloride or other agency-approved materials). Dust will be considered a nuisance/hazard when a visible plume of dust extends more than 300 feet from the source and an estimated opacity exceeding 20 percent (objects partially obscured). Additional methods of dust control that may be used by the holder include, but are not limited to:

- Application of water or magnesium chloride to access roads or sections of the ROW as needed to suppress dust;
- Application of water to specific activities on the ROW that generate dust plumes (i.e., trenching or blasting);
- Curtailing of dust-generating activities during high winds;
- Implementation of mandatory speed limits on vehicles using access roads or traveling the ROW; and,
- Limitation of number of vehicles allowed on the ROW.

BLASTING

1. The holder would conduct pre and post blasting surveys of springs within 500 feet of the blast site. Ground vibrations would be monitored at the blast site and at these spring locations. If springs are damaged, the holder would replace a like amount of lost water or otherwise compensate the owner.

2. Limit blasting to the hours of 8 am to 5 pm M-F. Limit heavy truck traffic through communities to the same hours.

CIVIL RIGHTS

1. The holder of this right-of-way grant or the holder's successor in interest shall comply wit VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq*.) and the regulations of the Secretary of Interior issued pursuant thereto.

RIGHT-OF-WAY TERMINATION

1. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

RESPONSIBILITIES OF ENVIRONMENTAL INSPECTOR(S)

The Holder shall institute an environmental inspection program that shall be responsible for:

1. Ensuring compliance with the requirements of this Plan and the environmental conditions of the ROW grant authorization, the mitigation measures proposed by the applicant (as approved and/or modified by the ROW grant), other environmental permits and approvals.

2. Identifying, documenting, and overseeing corrective actions, as necessary to bring an activity back into compliance;

3. Verifying that the limits of all authorized construction work areas and locations of access roads are properly marked before clearing;

4. Verifying the location of signs and highly visible flagging marking the boundaries of sensitive resource areas, drainages, water bodies, or areas with special requirements along the construction work area;

5. Identifying erosion/sediment control and soil stabilization needs in all areas;

6. Ensuring that the location of dewatering structures and slope breakers will not direct water into known cultural resources sites or locations of sensitive species;

7. Verifying that trench dewatering activities do not result in the deposition of sand, silt, and/or sediment near the point of discharge into a drainage or water body. If such deposition is occurring, the dewatering activity shall be stopped and the design of the discharge shall be changed to prevent reoccurrence;

8. Ensuring that subsoil and topsoil are tested in areas to measure compaction and determine the need for corrective action;

9. Advising the Construction Contractor when conditions (such as wet weather) make it advisable to restrict construction activities to avoid excessive rutting;

10. Ensuring restoration of contours and replacement of topsoil;

11. Verifying that any soils or materials imported for use have been certified as free of noxious weeds;

12. Determining the need for and ensuring that erosion controls are properly installed, as necessary to prevent sediment flow into drainages, water bodies, sensitive areas, and onto roads;

13. Inspecting and ensuring the maintenance of temporary erosion control measures at least:

    a. on a daily basis in areas of active construction or equipment operation;
    b. on a weekly basis in areas with no construction or equipment operation; and
    c. within 24 hours of each 0.5 inch of rainfall;

14. Ensuring the repair of all ineffective temporary erosion control measures within 24 hours of identification;

15. Keeping records of compliance with the environmental conditions of the ROW grant, and the mitigation measures proposed by the applicant in the application submitted to the BLM; and

16. Identifying areas that should be given special attention to ensure stabilization and restoration after the construction phase.

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APPENDIX D

BEST MANAGEMENT PRACTICES SPECIFIC TO WILDLIFE

BEST MANAGEMENT PRACTICES SPECIFIC TO WILDLIFE

AVIAN/WILDLIFE MORTALITY

Turbines

- Implement lighting scheme to alert night migrants to turbines and as required by FAA regulations.

Power Lines

- Minimize the use of guy wires.
- Use bird deflectors on power transmission lines and especially within 1 mile of the Snake River.
- Use raptor deflector devices on all potential raptor perching structures.
- Install raptor perch prevention devices on aboveground power line poles.
- Avoid electrocution by placing sufficient space between power line wires.
- Aerial inspection of lines should be prohibited below 1,000 feet from November 15 through 15 March for wintering eagle protection.
- No graveled roads are allowed under transmission lines. Only unimproved 2-tracks may be used for maintenance.
- Follow guidelines for Avian Power Line Interaction Committee (1994) and take corrective actions as needed and as reviewed by the Steering Committee.

General Wildlife

- Place turbines at least 1/4 mile from golden eagle nests.
- Establish and sign speed limits for all vehicles on roads.

Effectiveness Monitoring

- The holder shall conduct fatality monitoring using methods that have been used at other constructed wind projects in the United States for a period of five years commencing at project start up. . The objective of the fatality monitoring is to estimate the number of avian or bat fatalities attributable to wind turbines and other project facilities at the proposed Cotterel Wind Power Project. Mortality will be measured by estimating the number of bird and bat carcasses in the project area whose death can be related to turbines, or other project features. All avian and bat carcasses located within survey areas, will be recorded and a cause of death determined, if possible, based on field examination.

- Carcass searches will be conducted at half of the turbines and other project facilities (substations, met towers, O&M facility) once every two weeks. Biologist trained in proper search techniques will conduct the searches. Data collected at other wind power projects have indicated that most birds and bats killed by striking turbines remain within approximately 205 feet of the turbine. Permanent (for a period of five years) square plots 410 feet on each side will be centered around each wind turbine tower. Search transects will e set at approximately 25-32 feet apart in the area to be searched.

- All carcasses located will be photographed as found and mapped on a detailed map of the project area. Carcasses will be labeled with a unique number. The U.S. Fish and Wildlife Service and the BLM will be notified by telephone or email when any carcass of a Federally listed species is found. A quarterly report will be prepared for the BLM presenting the results of each three month survey period. An annual report will be prepared summarizing the each years survey effort.

- If this monitoring identifies problem areas ("hot spots"), or areas where migratory bird and/or bat fatalities are in excess of those predicted in Chapter 4 of this document, the holder will extend the monitoring period for a term recommended by the technical steering committee and approved by the BLM authorized officer.

- The holder shall continue to conduct sage grouse lek studies in accordance with BLM protocols on leks that are within the project area for a term commensurate with the "Industry Standard" fatality monitoring described above.

HABITAT LOSS/DEGRADATION

Roads/Construction Pads/Fill/Transformers

- Rehabilitate habitats with native seedings in areas that were temporarily disturbed due to construction.
- Provide for on site inspection and monitoring of on site soil storage areas.
- Prior to removal of soils inspect proposed storage sites to determine that no sensitive plant or animal species or habitat is present.
- Stored native soils will be replaced on top of temporary use sites and will not be used as fill.
- Plant native seeds/year old sagebrush/other specialized plants in disturbed areas.
- Replace disturbed construction sites with native soil within the project area.
- Require native seed replacement where rehabilitation occurs within the project area.
- Collect native seeds from the project site for rehabilitation plantings.

General Wildlife

- Restrict all construction and operation/maintenance activities which occur within 0.5 miles of a lek between the hours of 4 am and 11 am during the lekking season (mid-March – mid-May.

INCREASED PUBLIC ACCESS

- Implement policies regarding poaching by workers.
- Post signs to indicate roads and trails for the public use.

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APPENDIX E

BLM INTERIM OFFSITE COMPENSATORY MITIGATION FOR OIL, GAS, GEOTHERMAL AND ENERGY RIGHTS-OF-WAY AUTHORIZATIONS

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

February 1, 2005

In Reply Refer To:
3100/2800/1790 (310/350)P

EMS TRANSMISSION 02/02/2005
Instruction Memorandum No. 2005-069
Expires: 09/30/2006

To: All State Directors and Field Managers

From: Director

Subject: Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal and Energy Rights-of-Way Authorizations

Purpose: This Instruction Memorandum (IM) outlines interim policy for the use of compensatory (offsite) mitigation for authorizations issued by the Bureau of Land Management (BLM) in the oil, gas, geothermal and energy right-of-way programs.

Background: Provisions of the Federal Land Policy and Management Act (FLPMA), including section 302(b) (43 U.S.C. §1732(b)), and of the Mineral Leasing Act, including section 17(g) (30 U.S.C. § 226(g)), provide BLM the authority to require mitigation in the oil, gas, geothermal and energy right-of-way programs. Mitigation measures are actions the Secretary can direct to prevent unnecessary or undue degradation of the public lands and protect surface resources in the approval of surface use plans. Mitigation measures are oftentimes proposed by proponents seeking BLM authorizations. These measures, as part of a proposed action, are analyzed as part of BLM's compliance with the National Environmental Policy Act (NEPA). Mitigation, as defined by the Council on Environmental Quality (CEQ) for NEPA purposes in 40 CFR 1508.20, may include one or more of the following:

> *"(a) Avoiding the impact altogether by not taking a certain action or parts of an action;*
> *(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;*
> *(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;*
> *(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and*

(e) ***Compensating*** *for the impact by replacing or providing substitute resources or environments."* (emphasis added)

This IM addresses the last category—offsite compensatory mitigation of impacts by replacing or providing substitute resources or environments. The application of this IM is further limited to the oil, gas, geothermal and energy right-of-way programs.

The last time the BLM addressed offsite mitigation in national policy was during promulgation of revisions to 43 CFR 3809-Surface Management regulations for locatable (hardrock) minerals, 65 FR 69998 (November 21, 2000). The BLM explained in the preamble that in the case of minerals, "BLM will approach mitigation on a mandatory basis where it can be performed on site, and on a voluntary basis, where mitigation (including compensation) can be performed offsite" 65 FR 69998 at 70012.

Because of recent interest expressed by cooperating agencies, State governments, and the public regarding offsite mitigation in the energy programs, the BLM is providing this policy guidance.

Attachment 1 defines terms used in conjunction with compensatory mitigation. Also, other Department of the Interior agencies have well-developed compensatory mitigation policies and procedures. A discussion of those programs is contained in Attachment 2.

Policy: The BLM will approach compensatory mitigation on an "as appropriate" basis where it can be performed onsite and on a voluntary basis where it is performed offsite. Further, this IM is not intended to establish an equivalency of mitigation policy by the BLM (i.e. acre for acre).

Since this policy generally adds a new dimension in mitigation practice for both BLM and public land users, it is being issued as interim guidance. The policy will be reviewed and updated prior to the expiration date of this IM. We anticipate both internal and external feedback that will lead to improvements and policy modification.

<u>General</u>

- This IM is applicable only to oil, gas, and geothermal authorizations and energy right-of-way authorizations granted by the BLM. Energy right-of-way authorizations include oil and gas pipelines, electric transmission lines, and wind and solar energy authorizations. The IM does not apply to any other BLM program or activity.
- When an applicant's offsite mitigation proposal is part of the plan of development for an approved permit or grant, that mitigation will pass from being a voluntary proposal to becoming a requirement of the authorization. The applicant becomes committed to the offsite mitigation component once the authorization is granted.
- Offsite mitigation may be considered after application of other forms of onsite mitigation including best management practices (see also "Limitations" section).
- The BLM continues to have an obligation to ensure that actions do not result in unnecessary or undue degradation to the public lands. 43 U.S.C. §302(b).
- Offsite mitigation is to be entirely voluntary on the part of the applicant.

- When offsite mitigation is being considered as a design feature of the applicant's submission, BLM NEPA analysis should: 1) evaluate the need for offsite mitigation, 2) consider the effectiveness of offsite mitigation in reducing, resolving, or eliminating impacts of the proposed project(s), and 3) comparatively analyze the proposal with and without the offsite mitigation.
- The BLM may identify other offsite mitigation opportunities to address impacts of the project proposal, but is not to carry them forward for detailed analysis unless volunteered by the applicant.
- When applying offsite mitigation, it must be implemented in a timely manner and generally for the same or similar impacted species or habitats (for example, sagebrush/grassland for sagebrush/grassland).
- Offsite mitigation need not be permanent but should be of duration appropriate to the anticipated impact(s) being mitigated.
- This IM does not establish an equivalency requirement for offsite mitigation (no 1:1 compensation ratio).
- Any existing mandatory offsite mitigation programs used by Field Offices are to be reviewed in light of this national policy, and modified as appropriate.
- Offsite mitigation that has resulted from a formal Section 7 or Section 106 consultation is not affected by this IM.
- In cases where offsite mitigation is applied to an authorization to reduce impacts to less than "significant" for NEPA purposes the offsite mitigation must be committed and a condition of approval in the authorization issued.
- Offsite mitigation must not infringe on or affect other property rights including those of any mineral lessee of the offsite tract without agreement of affected parties.
- Offsite mitigation associated with a split estate lease must be in agreement with IM 2003-131 Permitting Oil and Gas on Split Estate Lands and Guidance for Onshore Oil and Gas Order No. 1.

Resource Management Plans

Older land use plans may not mention compensatory or offsite mitigation. Omission of such discussion does not prohibit consideration of offsite mitigation in accordance with this IM.

Endangered Species Act Section 7 Consultation

As mentioned earlier, any consultation with the U.S. Fish and Wildlife Service is subject to the applicable regulations and procedures for Endangered Species Act (ESA) consultation efforts. Any mitigation measures developed as a result of ESA consultation are not affected by the policies and procedures for use of offsite mitigation outlined in this IM.

National Historic Preservation Act Section 106 Consultation

Application of this policy to cultural resources must be consistent with the BLM's National Historic Preservation Act (NHPA) Section 106 responsibilities and individual BLM/State protocols under the BLM National Programmatic Agreement (PA). This includes any required coordination with the State Historic Preservation Office, tribes and the Advisory Council on Historic Preservation (ACHP). There are inherent limitations to the applicability of offsite mitigation to resolution of adverse effects under Section 106 of the NHPA. Cultural resources are non-renewable and may be unique, and it may not be appropriate to mitigate loss of such resource values by attempting to identify and preserve an alternative equivalent one. This is particularly true when data recovery is used as mitigation for loss of a site important for its data value, since it may result in the destruction of two sites. There are exceptions; for instance, where treatment onsite is technically impossible and an offsite resource is also at risk, or where offsite data recovery is part of an established research design and management strategy that will include onsite work.

Livestock Forage Mitigation

Impacts to livestock forage as a result of energy development are typically addressed through onsite mitigation using direct reclamation or rehabilitation techniques to re-establish the lost vegetation.

Financial Contributions toward Mitigation

In some circumstances, BLM may accept volunteered monies to pay for a larger effort to mitigate the impact of multiple actions when it is infeasible to require individual applicants to manage specific mitigation efforts. Such monies are to be used for on-the-ground projects. In order to qualify as offsite mitigation, the funds collected must be identified for specific types of mitigation projects and either the BLM or other parties may be identified as responsible for implementation of the project(s). However, it is not BLM policy to waive or forego onsite mitigation of impacts through payment of monies.

Where the effectiveness of mitigation will depend on future contributions from other applicants, such contributions cannot form the basis for a Finding of No Significant Impact or compliance with a legal limitation on effects, such as those in the Clean Air Act.

Whenever monies are handled either directly or indirectly by the BLM, pursuant to section 307(c) of FLPMA, a signed cooperative agreement will be required before any funds can be received or transferred. If a third-party organization agrees to accept voluntary funds from an applicant for funding of mitigation projects, the affected BLM office will enter into cooperative agreements with the affected parties (see BLM Manual 1511 and Manual Handbook 1511-1). The parties to the agreement must include the cooperators and the party or parties responsible for project implementation.

Monetary compensation can be made directly to the BLM in accordance with a formal cooperative agreement and with prior approval of the appropriate State Director. Compensation also must be properly recorded on Form 4120-9 ("Proffer of Monetary Contributions") and deposited in the appropriate 7100 (usually 7122) account for redistribution for offsite activities to offset adverse impacts for a particular action or class of actions. These accounts require assignment of specific project codes to track the contributions and subsequent expenditures. State Office Budget staff can provide assistance in establishing the project codes.

Cooperative agreements must also address the following items:

- Authority to enter into a cooperative agreement;
- Disposition of excess funds, if any;
- Project codes and tracking of funds incoming and outgoing (especially in the case of multiple contributors);
- Administrative surcharges;
- Other agency rules and requirements for cooperators; and
- Adequacy of funds for specific mitigation projects.

Field Offices are required to use a cooperative approach in approving projects where compensation funds are involved. It is usually appropriate to involve cooperators (e.g., State Game and Fish agencies) and any other directly affected parties in determining the specific mitigation projects. It is never appropriate for third parties to make these determinations without direct, local BLM involvement in the specific mitigation project. In undertaking cooperative efforts, the BLM needs to ensure compliance with the Federal Advisory Committee Act (FACA), if applicable.

Should the mitigation program provide for public input on offsite mitigation projects or the application of funds, Field Offices should be certain to comply with FACA when establishing a committee to provide it advice as a group, as opposed to the views of individual participants.

Attachment 3 is a list of "frequently asked questions" and appropriate responses for implementing this policy.

Limitations

Even with the most effective, state-of-the-art onsite mitigation, oil, gas, geothermal and energy right-of-way authorizations can result in impacts to the environment. The BLM will mitigate onsite impacts to the maximum extent practicable. Offsite mitigation is only appropriate when the specific conditions of a proposed project make such mitigation appropriate.

While the voluntary application of offsite mitigation is the general rule, there are circumstances where negotiation would be appropriate. In cases where one or more applicants in a specific geographic location have volunteered to perform offsite mitigation, it could be appropriate for other applicants in the same area to apply the same or similar offsite mitigation.

Timeframe: This IM is effective upon issuance. In instances where NEPA documentation is near completion for an action (e.g., preliminary Draft Environmental Impact Statement (EIS) is in the final stages of review), implementation of this policy may be modified to fit the specific circumstances so as not to delay publication of the EIS and approval of the project(s).

Budget Impact: None at this time.

Energy Impact: This IM may result in some increased costs to oil and gas and geothermal lessees, permittees, and operators and energy right-of-way holders. Because these parties would usually enter into offsite mitigation agreements voluntarily and with full knowledge of associated costs, it is unlikely that this policy would have any material adverse impact on energy supply, distribution, or use.

Manual/Handbook Sections Affected: None.

Coordination: Preparation of this IM was coordinated with WO-200, WO-300, WO-310, WO-350 and the Office of the Solicitor.

Contact: Tom Hare (WO-310) at 202- 452-5182, Ron Montagna (WO-350) at 202-452-7782, or Andrew Strasfogel (WO-210) at 202- 452-7723.

Signed by:
Kathleen Clarke
Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

3 Attachments
1 - Definitions (1 p)
2 – Departmental Compensatory Mitigation Programs (1 p)
3 - Frequently Asked Questions (4 pp)

Definitions

Compensatory Mitigation: As defined by CEQ, this means compensating for the impact by replacement or providing substitute resources or environments. This offsite mitigation can be immediately adjacent to the area impacted but can also be located anywhere in the same general geographic area. It does not have to be juxtaposed.

Mitigation: The CEQ defines mitigation to include: (a) avoiding; (b) minimizing the impacts by limiting the magnitude or degree; (c) rectifying the impact by repairing, rehabilitating, or restoring; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

In-lieu-fee Mitigation: Payment of funds to a natural resource management entity (e.g., an agency or third-party organization) for implementation of specific projects designed to replace or substitute resources impacted by an authorized project. For the purposes of this Instruction Memorandum, its use would always require a formal agreement among affected parties and BLM.

In-kind Compensatory Mitigation: Replacement or substitute resources that are of the same type and kind as being impacted. For example, replacement with sagebrush habitat of the same general quality and species compensation as is being impacted by the project.

On-site mitigation: Mitigation of the actual area affected by the action causing the impact. For a comparative example, the reclamation of an abandoned well pad is onsite mitigation; compensatory mitigation in another area to offset the loss of vegetation during the life of that same well pad is defined as offsite mitigation.

Out-of-kind: Replacement or substitute resources that, while related and of a different quality, species mix, or even species type, are of equal or greater overall value to the ecology of the impacted species or ecological region. Example: Replacement of lost sagebrush with improved grazing practices on related habitat but not of the exact type and species mix. The net ecological values may be the same or better, but the acreages and species composition of the habitat would be substantially different.

Departmental Compensatory Mitigation Programs

Within the Department, the Fish and Wildlife Service (FWS) developed a formal mitigation policy as published on January 23, 1981, in the Federal Register (46 FR 7656). Compensatory mitigation is an integral part of that policy primarily as a means of habitat replacement, enhancement of in-kind habitats, or any combination of these and other impact-mitigating measures. Compensation of impacts can be either on- or off-site. The authorities for this policy span numerous Acts and Executive Orders, including mineral development statutes such as the Mineral Leasing Act of 1920, the Geothermal Steam Act of 1970 and the Surface Mining Control and Reclamation Act of 1977.

To address wetland impact mitigation through a structured program commonly referred to as "wetland banking," the Department promulgated "Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks" on November 28, 1995, in the Federal Register (60 FR 58605). This policy was developed in cooperation with the Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), and the National Oceanic and Atmospheric Administration (NOAA) to address wetland impact mitigation through a structured program commonly referred to as "wetland banking." It represents a rather extensive means of onsite, offsite, in-kind and out-of-kind mitigation, as well as in-lieu-fee mitigation arrangements, all designed to compensate unavoidable wetlands losses.

Frequently Asked Questions

Q. "Can you provide an example of how compensatory mitigation could be applied to oil and gas operations?"

Response: A small oil and gas field has been operating for 20+ years without much change. However, over the next 10 years it is expected to expand several times its current size with many more wells, roads, and related infrastructure and with an increase in vehicular use (both public and private). Major residual impacts to crucial wildlife winter range are expected to remain even after best management practices are implemented.

Some compensatory mitigation options could include any combination of the following:

- A mitigation fund could be established in which all operators contribute. This fund could be held by the BLM or another party to be later used for specific on-the-ground mitigation projects. The projects could take several forms and include, for example, habitat enhancement in the same or general area. These projects could be located on public, private or State lands. (Note: This would require prior State Director approval before implementation.)
- Operators could choose to develop and implement offsite projects on their own, after BLM has determined that they in fact accomplish the needed mitigation.
- Critical habitats could be purchased and managed for the species of concern. These purchases could be made directly by the operators or by BLM using a mitigation fund.

Q. "How could compensatory mitigation apply to a wind energy right-of-way project on public lands?"

Response: A wind energy project is proposed on public lands that involves numerous wind turbines in excess of 200 feet in height along an exposed ridgeline, with access roads, electric transmission lines, and support facilities. Residual impacts to wildlife habitat from surface disturbance related to the facilities and visual resource impacts from the wind turbines are expected to remain even after best management practices are implemented.

Some compensatory mitigation options could include any combination of the following:

- The right-of-way holder could develop and implement offsite wildlife habitat improvement projects with the approval of BLM.
- Critical habitats or conservation easements could be purchased and managed for wildlife species of concern. These purchases could be made directly by the right-of-way holder or by BLM using contributed funds.
- The right-of-way holder could pursue rehabilitation, reclamation, or removal of existing disturbances or visual intrusions in the landscape setting to reduce the overall cumulative visual resource impacts in the area. This could involve the reclamation of existing unnecessary roads in the area, removal of abandoned buildings or other structures, cleanup of illegal dumps or trash, or the rehabilitation of existing erosion or disturbed areas.

- A mitigation fund could be established by the right-of-way holder for use by the BLM or the State game and fish department for on-the-ground wildlife habitat improvement projects in the general area. These projects could be located on public, private, or State lands. A formal cooperative agreement is required between the parties and must be approved by the State Director.

Q. "If an applicant submits a permit or right-of-way application, can he or she offer to pay a "damages" fee, and then proceed with the project as planned?"

Response: The short answer is "no." The BLM will not accept direct cash payment as a replacement of on-the-ground mitigation of impacts. However, Departmental policy does allow for collection of funds where those funds are used to improve, restore, or replace like habitats as part of a formal, structured agreement to implement a mitigation strategy determined effective in a NEPA document. The BLM has mandatory fiduciary requirements for the collection and use of such received funding (see Manual Handbook 1511-1).

Q. "As follow up to the above question, can the BLM accept an applicant's voluntarily proposed damage payments rather than do on-the-ground mitigation as is sometimes done on private lands?"

Response: No. The BLM always requires onsite mitigation of impacts using best management practices to the extent practicable. Cash payments to avoid onsite mitigation are not to be accepted and are not in accordance with Departmental or Bureau policy. However, in-lieu fee payments into a fund for mitigation projects can be an approved mechanism of compensatory mitigation. This would require a series of prior steps to be approved. As a minimum, the impact mitigation would have to be analyzed in a NEPA document; a cooperative agreement would have to be established between the BLM and affected parties; and a clear procedure developed for the use of such funds for on-the-ground development of compensatory mitigation projects directly related to cumulative or individual project impacts.

Q. "Does this compensatory mitigation policy apply to range projects developed by the BLM and funded by the 8100 accounts?"

Response: No. Range projects and other Bureau programs are not subject to this compensatory mitigation policy IM.

Q. "Does this policy apply to special recreation permits or other authorizations not related to oil and gas, geothermal, or energy rights-of-way?"

Response: No. At the current time, this policy only applies to oil, gas, or geothermal authorizations or energy rights-of-way. Expansion of the policy to other programs may be considered in the future.

Q. “How does the compensatory mitigation policy apply to impacts to cultural sites?”

Response: Consultation with the State Historic Preservation Officer and/or the Advisory Council on Historic Preservation guides any possible use of compensatory mitigation. Those consultation efforts will determine if and when compensatory mitigation is to be considered.

Q. “Does the BLM anticipate this new policy will result in a structured policy similar to the wetlands banking process?’

Response: No.

Q. “How does this policy IM apply to replacement habitat off site?”

Response: When selecting lands or resources as replacement or substitute, the lands must be located so as to protect, restore, or enhance the impacted resources. To protect any investments made as a compensatory mitigation measure, the land ownership (including lease rights) must be generally sufficient for the term of the impact and free from encumbering prior rights. It is very important that lands selected not become encumbered by a compensatory mitigation measure that would preclude or substantially affect existing rights. When compensatory mitigation occurs on non-Federal land, there must be a legally enforceable method to assure that mitigation measures would remain in place and that mitigation measure effectiveness would not be compromised until the mitigation objectives are reached. This latter point may require binding agreements with the parties involved to avoid loss of impact mitigation.

Q. “How does compensatory mitigation apply to Visual Resource Management (VRM)?”

Response: Compensatory mitigation can be considered when it is not possible to design or mitigate a project sufficiently to meet VRM classes. This could take the form of actual rehabilitation of existing disturbance or development where such remedial actions would reduce the overall cumulative impacts to the visual resources of a particular setting.

Q. “Does off-site mitigation affect the unnecessary and undue degradation provision of FLPMA?”

Response: While the offsite mitigation proposal may be used for NEPA analysis, BLM still has an obligation to ensure that an approved action does not result in unnecessary or undue degradation of public land resources.

Q. “Does compensatory mitigation include direct payments or compensation to the livestock permittee for loss of grazing uses on a grazing permit?”

Response: No. The BLM and Federal courts have consistently held that livestock grazing is a privilege and not a right. When a grazing permit or lease is reduced for whatever reason, no monetary compensation is provided by the BLM or any other BLM permittee. The only time compensation is referenced at 43 CFR 4120.3-6(c), which states in part:

"Whenever a grazing permit or lease is cancelled…the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein."

APPENDIX F

APPLICANT COMMITMENT LETTER FOR COOPERATIVE AGREEMENT

windland
clean energy from wind

April 27, 2005

Wendy Reynolds
Field Office Manager
Bureau of Land Management
15 East, 200 South
Burley, Idaho 83318

Re: Voluntary Compensatory Mitigation Fund Contribution – Cooperative Agreement

Dear Ms. Reynolds:

This letter is written to document our intent to enter into a Cooperative Agreement with the Bureau of Land Management for a compensatory mitigation fund related to the proposed Cotterel Mountain Wind Energy Project.

Understanding that BLM Washington Office Instruction Memorandum 2005-069 (Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal and Energy Rights of Way Authorizations) allows for a voluntary contribution, Windland, Inc. expects to execute a such a Cooperative Agreement with BLM. We intend the annual contribution to be in an amount equal to approximately one-half of one percent of the gross revenues received from Cotterel Mountain wind farm electricity sales. For a 200 megawatt Cotterel Mountain wind farm that contribution is expected to average approximately $150,000.00 per year at today's forecasted production and electricity rates.

Of course, such a Cooperative Agreement would only become effective upon the project actually being approved, constructed and generating electricity.

Sincerely,

Roald Doskeland
President
Windland, Inc.

WINDLAND INCORPORATED 208-377-7777 10480 GARVERDALE COURT SUITE 804A BOISE, IDAHO 83704 FAX 208-375-2894

APPENDIX G

VISUAL SIMULATIONS

VIEW FROM OREGON TRAIL - Existing Condition (shown without clouds)

VIEW FROM OREGON TRAIL - Proposed Project (shown without clouds)

VIEW FROM BLM OFFICE - Existing Condition

VIEW FROM BLM OFFICE - Proposed Project

VIEW FROM CALIFORNIA TRAIL - Existing Condition (shown without clouds)

VIEW FROM CALIFORNIA TRAIL - Proposed Project (shown without clouds)

VIEW FROM CANYON ROAD OVERLOOK (EXISTING)- ROAD TO POMERELLE, IDAHO

VIEW FROM CANYON ROAD OVERLOOK (PROPOSED) - ROAD TO POMERELLE, IDAHO

VIEW FROM MARSH CREEK EVENT CENTER (EXISTING) - ALBION, IDAHO

VIEW FROM MARSH CREEK EVENT CENTER (PROPOSED) - ALBION, IDAHO