

United States Department of the Interior

MEMORANDUM OF UNDERSTANDING

Between the

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE

And the

FISH AND WILDLIFE SERVICE
PACIFIC SOUTHWEST REGION

Regarding the

JOINT ENVIRONMENTAL REVIEW OF RENEWABLE ENERGY PROJECTS

I. Purpose

This Memorandum of Understanding (MOU) documents the relative roles, responsibilities and procedures for the Bureau of Land Management and the Fish and Wildlife Service to follow in conducting a joint environmental review of renewable energy projects seeking an eagle take permit. The parties to this MOU are: U.S. Department of the Interior, Bureau of Land Management (BLM), and the U.S. Department of the Interior, Fish and Wildlife Service (FWS), collectively referred to herein as "the Parties." A number of solar and wind energy projects are proposed on BLM-managed lands in California that may require a take permit under the Bald and Golden Eagle Protection Act (BGEPA). Such projects would need a right-of-way (ROW) from the BLM and an eagle take permit from the FWS.

It is in the interest of the Parties to share in the preparation of an environmental analysis of renewable energy projects applying for a take permit under BGEPA in a public process to avoid duplication of staff efforts, share staff expertise and information, promote intergovernmental coordination, and facilitate public review by providing a joint document and a more efficient environmental review process.

II. Authorities

In accordance with the Federal Land Policy and Management Act (FLPMA) (Section 103(c)), public lands are to be managed for multiple uses and in consideration of the long-term needs of future generations for renewable and nonrenewable resources. The Secretary of the Interior is authorized to grant ROWs on public lands for systems of generation, transmission, and

distribution of electrical energy (Section 501(a)(4)). Taking into account the BLM's multiple use mandate, the BLM must respond to applications for a FLMPA ROW application submitted by applicants. In processing the applications, the BLM must comply with the requirements of the National Environmental Policy Act (NEPA), which requires that federal agencies reviewing projects under their jurisdiction consider the environmental impacts associated with their construction and operation.

The FWS mission is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people under the authority of various Federal laws, including the Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq., as amended; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; the Bald and Golden Eagle Protection Act (16 USC 668-668d and 50 CFR 22.26); and other applicable laws and regulations. In processing applications to take protected species such as golden eagles, the FWS must comply with the requirements of the NEPA, which requires that federal agencies reviewing applications for take permits for species under their jurisdiction consider the environmental impacts associated with issuance of the permit. Utility scale solar and wind projects which are expected to result in take of eagles will require the preparation of an Environmental Assessment or Environmental Impact Statement to accomplish this.

III. Roles and Responsibilities

1. As the lead agency responsible for issuing a ROW for renewable energy projects on public lands, the BLM is responsible for compliance with NEPA to assess the environmental effects of the proposed project. The BLM may engage a NEPA contractor to assist with NEPA compliance, where appropriate.
2. For renewable energy project ROW applications that have the potential for take under BGEPA, the BLM will invite the FWS to serve as a cooperating agency as defined by the Council on Environmental Quality's NEPA regulations (40 CFR 1501.6). If the FWS accepts cooperating agency status before the BLM's Notice of Intent is published, the BLM will identify the FWS as a cooperator in the Notice.
3. If the ROW application has the potential for take under BGEPA, the FWS will recommend that the applicant prepare an Eagle Conservation Plan and, if appropriate, submit a BGEPA take permit application. The FWS will inform the BLM in writing of its determination of whether a BGEPA take permit is recommended. The BLM will not initiate the NEPA process until it receives this determination. If the ROW applicant decides to apply for an eagle take permit and submits a take permit application package, the Parties will conduct a joint NEPA analysis to support decisions on the ROW and BGEPA take permit applications.
4. If the FWS and BLM conduct a joint NEPA analysis, the Parties will work together to agree upon project milestones. Milestone dates may include administrative draft NEPA document review periods, Draft and Final Environmental Impact Statement (EIS) publication dates, draft Federal Register notices, public comment periods, and tribal consultation responsibilities. The schedule may also include milestones for when

documents prepared by the permit applicant, such as draft and final Eagle Conservation Plans and other pertinent documents will be submitted. The Parties will agree upon milestones in writing.

5. The FWS will alert the BLM in writing when it has received an acceptable application package for a BGEPA permit. In order for the FWS to conduct a joint NEPA analysis with the BLM, this package must be received in advance of the release of the Draft EIS to allow the relevant eagle information to be incorporated into the draft environmental analysis. The Parties will not publish the Draft EIS until this information has been incorporated. If an acceptable application package is not received within this time frame, the Parties will follow the process outlined in subpart 12 of this section.
6. In order to support an FWS permit decision, analyses specific to eagles will need to be included in the NEPA document. The FWS will provide information, comments, and technical expertise to the BLM in a timely manner regarding those elements of the NEPA document, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the FWS may provide information to the BLM directly and/or work with BLM's NEPA contractor to develop a Purpose and Need statement addressing the pending BGEPA permit decision for the project, analysis of impacts to eagles at appropriate eagle management unit scales, including a cumulative effects analysis, and a reasonable array of alternatives related to the FWS's pending BGEPA permit decision.
7. Both Parties will strive to review the relevant sections of the administrative draft NEPA document within the agreed upon review periods.
8. The Parties will coordinate joint scoping periods, public comment periods, and public meetings. If the NEPA document is an EIS, the comment period on the Draft EIS will be a minimum of 45 days. If a proposed renewable energy project would require an amendment to the BLM's land use plan, the Draft EIS public comment period will be a minimum of 90 days. Public requests to extend a comment period will be jointly considered by the Parties. Responses to public comments will be handled by the appropriate Party. The Parties may collaborate on responses to particular comments if appropriate.
9. Both Parties have responsibilities under Executive Order 13175, DOI Secretarial Orders 3206 and 3317A1, and the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) for their respective actions. The Parties' responsibilities will be carried out jointly to the extent practicable. This may include sending joint letters to potentially affected tribes and conducting joint tribal consultation meetings. The Parties may identify a single agency as the lead for these responsibilities. Due to the migratory nature of eagles, the FWS may need to conduct additional outreach to tribes beyond the project action area.
10. The Parties will issue separate decisions as required by their corresponding authorities, but will coordinate the timing of these decisions to the extent practicable.

11. If the BLM issues a ROW grant before the FWS issues a BGEPA permit, the BLM will amend its ROW grant to incorporate requirements of the BGEPA permit upon its issuance, as appropriate.
12. The FWS must have an acceptable BGEPA permit application package before beginning its NEPA analysis. If the ROW applicant chooses not to apply for an eagle take permit and therefore, the FWS does not receive an acceptable package within the time frame described in subpart 5 of this section, the Parties will still coordinate to the extent practicable. If appropriate, the FWS will tier its BGEPA permit NEPA analysis to the BLM's completed ROW NEPA analysis. The BLM may request to serve as a cooperating agency for the BGEPA NEPA permit analysis if appropriate. The BLM may choose to issue a decision and ROW grant before the FWS has completed its permit process, but may include appropriate terms and conditions in the ROW grant based on the status of the FWS process.
13. If the ROW applicant decides to not apply for a permit and the project takes an eagle without an eagle take permit, the project will be considered in violation of the BGEPA and the FWS retains sole authority to seek enforcement action against the project proponent under the BGEPA. Regardless of whether FWS seeks enforcement, the BLM would retain its authority to suspend, terminate, or modify the project's right-of-way authorization in accordance with 43 CFR 2807.16 and 2807.17.

IV. Agency Representatives

Each Party will designate a representative for each project to ensure coordination between the FWS and the BLM during the permitting process. Each Party may change its representative at will by providing written notice to the other Party.

V. Administration of the MOU

1. This MOU becomes effective upon signature by the authorized officials of the BLM and the FWS.
2. This MOU may be amended upon the written agreement of both Parties.
3. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

VI. Dispute Resolution Process

If there are disagreements between the Parties regarding the provisions of this agreement, representatives from each Party will meet to discuss the issues in dispute and shall work towards resolution. If agreement is not reached within 21 days of this initial meeting, the signatories of this MOU or their representatives shall confer to attempt to resolve the disagreement. If disagreements on the findings, conclusions, impacts, or resource condition in the NEPA

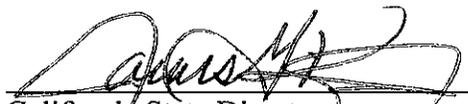
document cannot be resolved, each Party shall provide an explanation of assumptions used to reach these conclusions including reasons for the differing conclusions for insertion in separate sections of the NEPA document. If disagreement is over an issue that cannot be resolved through separate sections of the NEPA document, the parties may determine that it is necessary to publish separate NEPA documents.

VII. Termination

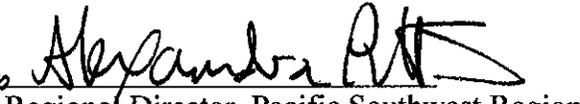
This MOU will remain in effect until all terms set forth herein are carried out to the satisfaction of the Parties. This MOU may be formally terminated in writing by any Party upon providing 30 days written notice to the other Party of an intention to terminate.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.


California State Director
Bureau of Land Management

Date: 7/24/13

Acting 
Regional Director, Pacific Southwest Region
US Fish and Wildlife Service

Date: 7/24/13