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DEPARTMENT OF ENERGY

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT  
OREGON STATE OFFICE,  
THE OREGON ENERGY FACILITY SITING COUNCIL**

**CONCERNING JOINT ENVIRONMENTAL REVIEW  
FOR WIND ENERGY GENERATION PROJECTS**

**I. PURPOSE**

This Memorandum of Understanding (MOU) documents the relative roles, responsibilities, and procedures to follow in conducting a joint environmental review of commercial wind energy generation development projects by the Bureau of Land Management (BLM) and the Oregon Department of Energy (ODOE), acting as staff to the Oregon Energy Facility Siting Council (EFSC or Council). The review process is described in attachment 1. This MOU is further intended to facilitate a harmonious relationship between the BLM, ODOE, and EFSC in the review of all permit applications for future wind energy generation projects in the state of Oregon that are proposed on Federal land managed by the BLM and on land under the Energy Facility Siting Council's jurisdiction. The BLM enters into this Agreement under its authority pursuant to 40 CFR 1506.2 and 1508.5.

The parties to this MOU are: U.S. Department of the Interior, Bureau of Land Management, Oregon State Office; the Oregon Department of Energy; and the Oregon Energy Facility Siting Council, collectively referred to herein as "the Parties." Proposed wind energy generation projects within the state of Oregon may be on land owned by the Federal government and managed by the BLM, along with privately or state owned lands located adjacent to BLM lands. Because the applicants for these projects would need rights-of-way from the BLM and site certification from the Council, and due further to the fact that the projects may also include privately or state owned lands, these projects are subject to both BLM and Council jurisdiction. For each project, the applicant will be a party to a separate, project-specific agreement with the Parties.

Under Federal law, the BLM is responsible for processing requests for rights-of-way to authorize the Projects and associated transmission lines and other appurtenant facilities to be constructed and operated on land it manages. In processing the applications, the BLM must comply with the requirements of the National Environmental Policy Act (NEPA), which are that Federal agencies reviewing projects under their jurisdiction consider the environmental impacts associated with project construction and operation. In the case of wind energy projects, the BLM has adopted a Wind Energy Development Programmatic Environmental Impact Statement (PEIS) and national policy. All decisions concerning the level and scope of NEPA review will be made after the scoping process and be based on a preliminary assessment of impacts for each site-specific application. The BLM may utilize the PEIS and "tier" to this document as needed through development of a project-specific environmental document, which may be an Environmental Assessment (EA) or, in certain cases, an Environmental Impact Statement (EIS). The preparation of the project-specific environmental document will be done in coordination with

EFSC, incorporating the procedures established under ORS Chapter 469 and OAR Chapter 345. Separate consultation requirements and associated documentation may be required for Section 106 of the National Historic Preservation Act and Endangered Species Act (ESA) Section 7 consultations associated with the projects. These consultations will be completed by the BLM during the process outlined in this MOU. Where appropriate, the BLM may also consult with Native American tribes. The result of this cooperative effort is intended to result in a public participation process and environmental documents that fully meet Federal and state requirements.

Under Oregon law, the Council and ODOE are responsible for reviewing the applications for energy facility site certifications and also have an obligation under ORS 469.370(13) to conduct Site Certificate Application review, to the maximum extent feasible, in a matter that is consistent with and does not duplicate Federal agency review. The Council and ODOE conduct this review in accordance with the requirements of ORS Chapter 469, EFSC's regulations governing site certification proceedings (OAR Chapter 345), and the administrative provisions of the Administrative Procedure Act (ORS Chapter 183). These provisions require the Council (through the assistance of ODOE) to conduct an independent analysis of applications for certification and prepare an independent assessment of a project's ability to comply with substantive siting standards and criteria, including potential environmental impacts, feasible mitigation measures, and in some cases, alternatives as part of this process. The Council considers the ODOE assessments, and BLM assessments; along with those of the applicant, interested local, regional, state, and Federal agencies, intervenors, and interested Native American tribes; in developing its decision on an Application for Site Certification (ASC).

It is in the interest of the Parties to share in the preparation of the NEPA document for all proposed projects in a public process in Oregon to avoid duplication of efforts; to share staff expertise and information; to promote intergovernmental coordination at the local, state, and Federal levels; to provide clarity in permitting requirements for the applicant; and to facilitate public review by providing a joint environmental document and a more efficient environmental review process. It is further in the interest of the Parties to use information prepared in connection with the Project Plan of Development (POD), Wind Energy PEIS, BLM Wind Energy National Policy, and the Field Office Resource Management Plan (RMP) in the preparation of the EFSC Notice of Intent (EFSC-NOI) and Application for Site Certification (ASC), in accordance with OAR 345-020-0011(2) and 345-021-0010(2).

## **II. BACKGROUND**

To date, the BLM has received right-of-way requests for development of numerous wind energy projects in the State of Oregon. To date, none of these projects has reached the stage of an EFSC NOI or ASC. The Parties typically conduct pre-application meetings separately with the project developers to specify their agency requirements and needs.

## **III. ROLES AND RESPONSIBILITIES**

The Council's siting process is divided into several phases, as is the NEPA process. The Parties agree to cooperate in their respective reviews of each project and to discuss the project and exchange information about the project on a regular basis. All information exchanged during the

project review shall be provided electronically, unless there is a specific need for a paper copy of a document. The Parties will identify a primary point of contact for each project who will coordinate the communications and exchange of information among the Parties. The Parties have developed a flow chart (attached hereto) to demonstrate how the integrated process to produce joint environmental documents will function. This flow chart can be shared with applicants at the pre-application stage so that they are fully informed of how the process will work and of the information they will need to provide at each stage in the process. The flow chart describes how the integrated EFSC/BLM process is expected to function. This flow chart may be modified by agreement of the Parties without amending the MOU as the process is refined.

The Parties agree to coordinate in the following specific ways during each joint environmental review process:

**A. Pre-application.** The Parties shall encourage all potential applicants to attend pre-application meetings and shall coordinate such meetings to the fullest extent possible so that representatives of all interested parties may attend. Pre-application meetings will provide the Parties with the opportunity to discuss and comment on a project developer's site selection process as well as provide the appropriate issues, concerns, opportunities, and survey protocols for resource assessments. During the pre-application phase, the BLM will invite the participation of other necessary Federal agencies and the ODOE will invite the participation of the other necessary state agencies at a meeting, including the applicant, to seek a consensus regarding the appropriate survey protocols and standards for evaluating resource impacts and mitigation measures. The Parties will ensure the ongoing participation and coordination by state and Federal agencies throughout the process, aimed at the establishment of common protocols, standards, criteria, and mitigation measures. A primary objective of coordination of the processes for the Parties is to ensure that each applicant is fully informed of the data and information needs of both EFSC and the BLM at the time both the BLM Commercial Development Application and the ASC are filed. It is critical, and in the interest of the applicant, that the respective application documents meet the Parties' combined data and information needs for the Parties' integrated process to function effectively. Upon submittal of the Application for Transportation and Utility Systems and Facilities on Federal Lands (SF-299) and Plan of Development, the Parties will enter into a three-party, project-specific MOU with the applicant for the purpose of ensuring the coordinated approach to determining appropriate scientific and environmental survey protocols and the exchange of information, as well as to define the applicant's and Parties' roles in the processes described herein.

**B. Data Adequacy.** Each Party will review submitted application documents to determine whether they meet the informational and other requirements of their policies and regulations and, if so, to determine that the application is complete. Upon receipt of both an ASC and a BLM Commercial Development Application with a Draft POD, the ODOE and BLM will confer regarding the sufficiency of information provided in the applications. The BLM staff will provide detailed and specific requests for additional information needed to complete the NEPA environmental document. If any such requests go beyond the scope of informational requirements in the EFSC regulations, the BLM will send such requests to the applicant immediately following acceptance of the application and the ASC as complete pursuant to the EFSC regulations. Based upon the combined information exchange process, if the Parties

concurrently determine the applications to be complete, the ASC will be accepted for the purposes of beginning the Council's statutory timeline for a final decision. However, notwithstanding anything to the contrary in this Agreement, if the process described below does not result in the concurrent determination of completeness of any application(s), each Party may deem its own application to be complete and commence the public process for review of its application and associated environmental document(s) as provided by the Party's applicable legal requirements.

**C. Discovery, Public Meetings and Scoping.** After the BLM SF-299 with a Draft POD and the ASC for a project is determined by the Parties to be complete, the Parties agree to cooperate in developing the scope of issues to be addressed in the NEPA document and in making decisions regarding public meetings, mailing lists, agency website information, and the preparation and distribution of fact sheets, news releases, announcements, and public notices during the NEPA process.

**D. Coordination of Meetings.** The Parties shall coordinate and hold a publicly-noticed scoping/information meeting to assist in determining the appropriate scope of project review in tandem with the public information meeting(s). The BLM shall make a representative available for the scoping/information meeting. If required, dates for public workshops will be coordinated among the Parties to the fullest extent possible and, to the extent that it has sufficient resources, the BLM shall endeavor to have a staff representative available at each publicly noticed staff workshop at which the applicant's efforts to satisfy EFSC siting criteria will be discussed. These public workshops are intended to satisfy the EFSC's requirements for public workshops and the BLM's need for public meetings at the same time.

**E. Exchange of Information.** Each Party agrees to promptly provide the other Party with any information it possesses or receives that is relevant to the responsibilities of the other party in its review of the projects. Each Party agrees to inform the other Party of any outstanding information it needs that is in the possession of the other Party. The Parties shall also coordinate and formally file any data or information requests for the environmental analysis or EFSC within 30 days of the date each of the Parties deems its respective application complete.

**F. Responses to Requests for Information.** Each Party will separately determine whether the applicant's responses to its own request(s) for information are adequate within 30 days of the receipt of the responses. If the applicant's responses are not sufficient, or a new issue arises resulting in a need for more data, the Parties shall require the applicant to provide the additional information within a reasonable timeframe. The BLM and ODOE will seek to coordinate the process to deem each application complete and to coordinate this process to the maximum extent possible.

**G. Analysis.** The Parties agree that the BLM will prepare an environmental analysis as required by NEPA. The ODOE will prepare a Draft Proposed Order (DPO), which will include an analysis of how the projects comply with the criteria in applicable EFSC statutes and rules. In addition, the BLM and ODOE may prepare a joint analysis that may include an assessment addressing impacts on air quality, biological resources, cultural resources, water resources, geological resources and hazards, hazardous materials handling, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual

resources, waste management and worker safety, fire protection as well as facility design engineering, efficiency, reliability, transmission system engineering and transmission line safety and nuisance consistent with typical EFSC and NEPA analysis. The assessment will also identify mitigation measures that may be considered to reduce any potential significant impacts, as required by applicable Federal or EFSC statutes, policies and rules. The assessments provided by the Parties must be sufficient to meet all Federal and state requirements for NEPA and for siting wind energy facilities under ORS Chapter 469 and shall be included as part of the Preliminary Staff Assessment/ Final Staff Assessment and NEPA compliance.

To the extent permitted by law, draft preliminary analyses prepared by each Party shall be shared with the other Party at least 21 days prior to publication, and draft final analyses prepared by each Party shall be shared with the other Party at least 21 days prior to publication. The Parties agree to identify all concerns and recommended changes within 10 days of receipt of the draft analyses and to work together to resolve any issues concerning the analyses or timing of review.

**H. Hearings.** The Parties agree that if a contested case is requested in the EFSC process, for EFSC's evidentiary hearings on each project, each Party will work with the applicant to ensure that witnesses are available as necessary and capable of sponsoring the analysis of each subject area for which the Party has responsibility pursuant to Section 3 above. If Department of the Interior employee testimony or records are used in state administrative proceedings, the applicant shall comply with the Department of the Interior regulations regarding testimony, 43 CFR Subpart H. The ODOE staff will consult with the BLM and, if determined necessary by ODOE's legal counsel, take the lead preparing any post-evidentiary-hearing briefs, if the EFSC calls for briefs from the parties in the EFSC proceeding.

**I. Proposed Decision.** The Parties agree to confer with each other as needed to comment on the Draft Proposed Order (DPO) in the EFSC proceeding and to identify any findings or conclusions of the DPO that are contrary to or inconsistent with the testimony of any Party. After completion of the NEPA document and a 30-day comment period, the BLM will prepare its Decision Record, which describes the BLM's decision. That decision can be appealed to the Interior Board of Land Appeals (IBLA) in the U.S. Department of the Interior.

#### **IV. IMPLEMENTATION AND AMENDMENT**

This MOU becomes effective upon signature by all of the Parties and may be subsequently amended or modified through written agreement of all of the Parties.

#### **V. RESOLVING DISAGREEMENTS**

If there are disagreements between the ODOE staff and BLM staff regarding the provisions of this agreement, representatives of each staff 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.

**VI. 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.

**VII. MISCELLANEOUS PROVISIONS.**

The terms of this MOU are effective only to the extent that the agencies are authorized by law to take actions and to the extent that funds are appropriated or otherwise made available.

This agreement is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate documents that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority.

Any information furnished to the BLM under this MOU is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552).

The BLM and ODOE will handle their own activities and utilize their own resources, including expenditure of their own funds, in pursuing the objectives in this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

This MOU is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted on behalf of the United States of America, or to any benefit to arise thereupon.

**VIII. SIGNATURES**

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

*for* Mickael Motiei  
State Director  
Bureau of Land Management, Oregon  
Date: 1/16/09

[Signature]  
Director  
Oregon Department of Energy  
Date: 2/4/09

## Key EFSC/NEPA (if EIS) Flow Chart

<b>Pre-Application Activity</b>	
Pre-Application BLM Scoping Meeting (Include draft "mini" EA for Site Characterization)	
Submit SF-299 and Draft Plan of Development (POD), defining potential corridors of impact Prepare Draft Applicant/ODOE/BLM Project-Specific (Three-Party) MOU Submit EA for Preliminary Site Characterization Study	
Sign Three-Party, Project-Specific Agreement	
<b>EFSC Activity</b>	<b>NEPA Activity</b>
Pre-application Meetings, Prepare NOI <sub>e</sub>	Internal NOI <sub>B</sub> process (kick-off meeting, field offices, staff, P&N, Route)
Submit NOI Optional Public Meeting re NOI Issue Project Order	Initial Tribal Consultation NEPA Scoping Meeting
<b>BPA NOI<sub>B</sub> Public Notice; EFSC NOI<sub>e</sub> Filed and Project Order Issued</b>	
Applicant Begins ASC Exhibit Preparation	Applicant and BLM Begin EIS Preparation
<b>Public Informational Hearings and Interagency Scoping Meeting</b>	
Applicant Prepares and Submits ASC	<b>Draft EIS Process</b> <ul style="list-style-type: none"> <li>• Continue EIS Analysis</li> <li>• Prepare PDEIS, ADEIS, Draft EIS</li> <li>• Conduct NHPA, Section 106, ESA Section 7 Consultation</li> <li>• Continue Tribal Consultation</li> <li>• Receive Field Surveys</li> </ul>
Begin Substantive Review by Oregon Office of Energy <ul style="list-style-type: none"> <li>• Consults with Affected Agencies</li> <li>• Additional Information Requested from Applicant</li> </ul>	
Application Deemed Complete	Publish Draft EIS
<b>End of Optional Public Informational Meetings Public Comment Meetings (60 Day Comment Period)</b>	
Final Applicant Responses	Comment Analysis Complete
Issue Draft Proposed Order (DPO)	Prepare Final EIS
<b>Prepare Joint Environmental Analysis with Required Mitigation Measures Harmonizing FEIS and DPO Requirements</b>	
<b>Public Hearings on DPO</b>	
<ul style="list-style-type: none"> <li>• Council Review</li> <li>• Oregon Office of Energy Issues Proposed Order and Notice of Contested Case</li> <li>• Administrative Hearings</li> <li>• Final Order and EFSC Decision</li> <li>• Appeal to Oregon Supreme Court</li> <li>• Council Decision Upheld</li> </ul>	<ul style="list-style-type: none"> <li>• Issue Final EIS</li> <li>• Issue Record Of Decision (ROD)</li> <li>• Appeal Period Completed</li> <li>• Issue Right-of-Way Grant</li> <li>• Notice to Proceed to Construction</li> </ul>

NOI<sub>e</sub> = EFSC Notice of Intent

NOI<sub>B</sub> = BLM's Notice of Intent