CCSM Project Infrastructure Components

Environmental Assessment

Appendix A

Project Permitting and BLM Tiering Procedures

APPENDIX A

PROJECT PERMITTING AND BLM TIERING PROCEDURES

This appendix contains a copy of Appendix C from the Chokecherry and Sierra Madre (CCSM) Wind Energy Project Record of Decision (ROD) published in 2012 (BLM 2012a). This appendix identifies the project permitting processes and the Bureau of Land Management (BLM) tiering procedures for this and subsequent environmental assessments (EAs) for the CCSM Project. This appendix is included in this EA for ease of reference to the tiering procedures being used.

Chokecherry and Sierra Madre Wind Energy Project
Project Permitting and BLM Tiering Procedures

September 2012

U.S. Department of the Interior
Bureau of Land Management
High Desert District
Rawlins Field Office
Rawlins, Wyoming

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1.0 Introduction

1.1 Project Overview

Power Company of Wyoming, LLC (PCW) is proposing to construct, operate, maintain, and decommission a nominal 2,000- to 3,000-megawatt (MW) nameplate capacity wind project in south central Wyoming within Bureau of Land Management (BLM), Rawlins Field Office (RFO) jurisdiction. The project is known as the Chokecherry and Sierra Madre (CCSM) Wind Energy Project (CCSM Project). A general description of the CCSM Project proposed by PCW can be summarized as follows:

- A 2,000 to 3,000-MW wind farm project consisting of up to 1,000 wind turbine generators (WTGs) with a nameplate capacity ranging from 1.5- to 3-MW;
- Development of step-up transformers, underground and overhead electric collection and communication lines, electric substations, rail distribution facility (RDF), a water extraction site, operations and maintenance facilities, and laydown areas;
- Haul road and transmission connection between the CCSM sites;
- Construct new roads and upgrade existing roads; and
- Transmit power produced via overhead and underground transmission lines that would connect the WTGs to new substations in the project area.

Upon completion of the project-wide level environmental impact statement (EIS), BLM may issue up to five separate right-of-way (ROW) grants for site-specific plans of development (SPODs) associated with distinct aspects of the project, including: 1) internal haul road, water extraction site, and RDF; 2) transmission line between the two sites; 3) Sierra Madre development; and 4) Chokecherry development. The subsequent ROW grants would be tiered to the analysis and site-specific terms and conditions described in the Record of Decision (ROD) associated with the project-wide level EIS in accordance with National Environmental Policy Act (NEPA). BLM will closely evaluate the SPODs to determine whether the impacts exceed the disturbance estimates from the conceptual layouts that served as the basis for determining significance of impacts the project-wide level EIS. Additional NEPA analysis may be required prior to issuance of any ROW grants for the individual SPODs. These subsequent NEPA analyses will incorporate additional requirements developed in coordination with other permitting agencies as well as any mitigation measures identified in the site-specific NEPA documents. The final turbine and support facility layouts would adhere to the terms and conditions of the ROD and any ROW grants issued by the BLM.

1.2 Overview of Project-wide Level EIS Analysis

Impacts in the Final EIS were evaluated on a broad level to enable the BLM to determine whether portions of the Application Area are suitable for wind energy development and identify the appropriate development plan. The impact analysis in the Final EIS was based on resource-specific assumptions, estimated project disturbance, and appropriate project-specific stipulations, all of which are documented in Chapter 2, Appendix A, and Appendix C of the Final EIS. The information provided in the ROD assumes the greatest potential for disturbance; therefore, it is assumed that impacts identified at the time of micro-siting would not exceed those described in this document. Monitoring will be used to ensure impacts do not exceed those projected in the Final EIS and subsequent tiered NEPA analyses. If it is determined that impacts are exceeded, additional monitoring and mitigation will be required as described in the Final EIS, ROD, and other permits and authorizations.

However, there is a potential for deviations from the selected alternative in the project-wide level ROD to occur during micrositing. Additional site-specific studies (including geotechnical investigations, threatened and endangered species surveys, and cultural surveys) will be conducted as part of the

SPODs to determine the facility locations, which may result in facilities located outside of the conceptual area of development, exceed the disturbance estimates analyzed in the project-wide level EIS, or result in the need for additional facilities not previously identified. For this reason, subsequent NEPA analysis tiered to the analysis conducted in the project-wide level EIS would be required prior to issuance of any ROW grants. The environmental constraints (including constraints identified in the Avian Protection Plan [APP], Eagle Conservation Plan [ECP], Biological Opinion [BO], Compensatory Mitigation Plan for cultural resources resulting from the cultural programmatic agreement, and mitigation measures) identified in the project-wide level ROD would be incorporated by reference into any additional NEPA analysis and considered as stipulations of approval in the ROW grants.

2.0 Need for Tiering Procedures

It is the responsibility of the BLM to ensure that projects on public lands are in compliance with NEPA as well as the environmental conditions and requirements contained in the ROW grant (which includes the SPODs; other federal, state, and local permits; and project construction drawings and staking plans). A list of the major permits, approvals, and authorized actions for other federal, state, and county agencies necessary to construct, operate, maintain, and abandon project facilities is provided in Table 1-2 of the Final EIS.

Follow-up project permitting and BLM tiering reviews are required because the CCSM project-wide level EIS provided conceptual siting analysis, but was not able to provide site-specific siting (i.e., micro-siting) analysis. It is possible that, at times, updated and new information for the project area or from stipulations or mitigation provided in these subsequent SPODs or changing federal policies may result in changes or deviations in the project design that are necessary to accommodate or mitigate site-specific circumstances.

Project permitting and BLM tiering review procedures would be conducted under the following circumstances.

1. During review of a SPOD for processing a ROW grant, or
2. To respond to minor changes or deviations from stipulations/mitigation provided in the ROW grant during field implementation.

Experience with other projects has shown that project changes or deviations requiring further agency approval can result in delays that can be extremely costly and possibly affect meeting construction windows. Therefore, the project permitting and BLM tiering review procedures were created to expedite subsequent site-specific and variance analysis. The focus of this document is on all permits applied concurrently with BLM tiering reviews.

3.0 Procedures for BLM's NEPA Tiering Review

Information regarding tiering and NEPA procedures contained in this document are summarized from the BLM Handbook H-1790-1. Tiering is using the coverage of general matters in broader NEPA documents in subsequent, narrower NEPA documents (40 Code of Federal Regulations [CFR] 1508.28, 40 CFR 1502.20). This allows the tiered NEPA document to narrow the range of alternatives and concentrate solely on the issues not already addressed. Tiering is appropriate when the analysis for the proposed action will be a more site-specific or project-specific refinement or extension of the existing NEPA document. There are three levels of subsequent NEPA analysis that may be required as determined through the Determination of NEPA Adequacy (DNA): Categorical Exclusion (CX), Environmental Assessment (EA), or EIS. Procedures for each are provided in the following subsections.

Tiering procedures can occur at two specific times during the process, both of which are discussed in the subsequent sections: submittal of SPODs and project redesign during field implementation. **Figure 1** provides a diagram of the process and where NEPA tiering procedures would occur. The NEPA Tiering Review Procedure also includes a feedback loop with PCW to allow them the opportunity to modify their site-specific proposal using information resulting from the BLM Interdisciplinary Team (ID Team) review. The ID Team review process is shown in **Figure 2**.

3.1 Tiering Procedure for Submittal of Site-Specific POD Proposals

Once SPODs are submitted to the BLM, the ID Team will evaluate the SPOD to determine whether or not it is sufficiently analyzed in the project-wide level EIS or if additional NEPA analysis is required to address new information or the proposal deviates from the project-wide level EIS. This evaluation is documented in a DNA form (detailed in Section 3.1.1).

The tiered documents focus only on those issues and mitigation measures specifically relevant to the SPOD but not analyzed in sufficient detail in the project-wide level EIS. For example, the cumulative impact analysis in the project-wide level EIS should not need to be revisited. The alternatives analyzed in the project-wide level EIS are not reexamined in the tiered document. The tiered NEPA document will:

- State that it is tiered to another NEPA document;
- Identify the NEPA document to which it is tiered; and
- Incorporate by reference the relevant portions of the NEPA document to which it is tiered (cite and summarize, as described in section 5.2.1 of BLM Handbook H-1790-1).

3.1.1 Determination of NEPA Adequacy

The DNA process should be used to document the BLM ID Team evaluation process used to determine whether the project-wide level EIS sufficiently analyzed the site-specific effects and considered the SPOD or if additional NEPA documentation is necessary. The following questions should be answered in the DNA evaluation:

1. Are the anticipated environmental impacts of the SPOD sufficiently analyzed in the project-wide level Final EIS?
2. Is the SPOD a feature of, or essentially similar to, the selected alternative identified in the project-wide level ROD? Is the SPOD within the conceptual area of development, or if the location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the project-wide level EIS? If there are differences, can it be explained as to why they are not substantial?
3. Is the existing analysis in the project-wide level EIS valid in light of any new information or circumstances (such as rangeland health standard assessments, recent endangered species listings, updated lists of BLM-sensitive species)? Can it be reasonably concluded that new information and circumstances would not substantially change the analysis of the SPOD?
4. Are the direct, indirect, and cumulative effects that would result from implementation of the SPOD similar (both quantitatively and qualitatively) to those analyzed in the project-wide level EIS?
5. Is the public involvement and interagency review conducted on the project-wide level EIS adequate for the SPOD?

Documentation of the answers to these questions with substantive and detailed information will be included in a DNA worksheet (**Attachment A**). The DNA worksheet will include specific citations to the

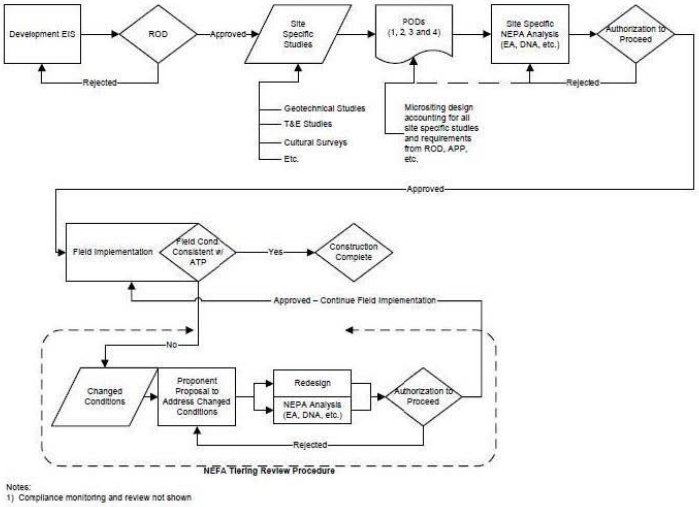
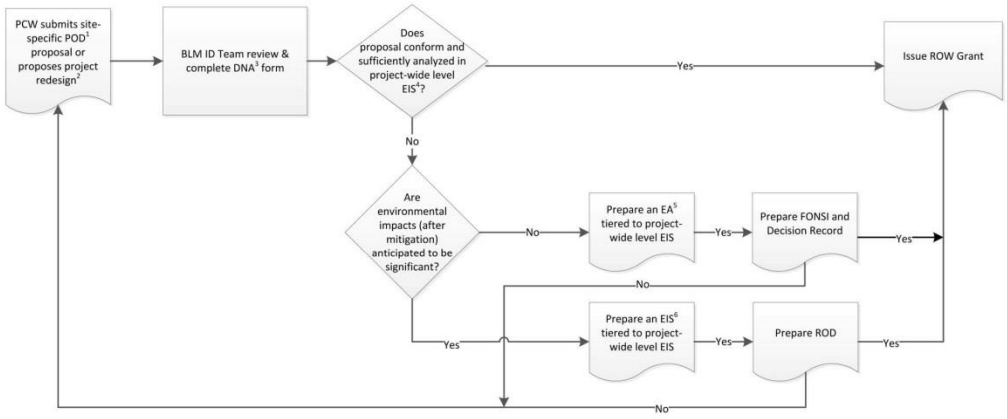


Figure 1 NEPA Tiering Review Procedure – CCSM Wind Energy Project



Notes
1) See Tiering Procedure for Submittal of Site-specific POD Proposals, Section 3.1
2) See Tiering Procedure for Project Redesign During Field Implementation, Section 3.2
3) See Determination of NEPA Adequacy (DNA), Section 3.1.1
4) BLM may contact PCW to determine if the proposal can be modified to conform to the project-wide level EIS
5) See Environmental Assessment (EA), Section 3.1.3
6) See EIS, Section 3.1.4

Figure 2 BLM ID Team NEPA Tiering Decision Making Process

June 2012

project-wide level EIS. If all questions are answered "yes," then additional NEPA review is not necessary. If any of the questions are answered "no," then PCW may be asked to either modify the SPOD to conform with the analysis in the project-wide level EIS or BLM will direct preparation of additional NEPA documentation.

For example, SPOD #1 may propose installation of an underground pipeline instead of a surface road between the water extraction site on the North Platte River and the laydown area in the Chokecherry site, which would vary from the project-wide level EIS. The ID Team will examine the proposal to determine whether the action was sufficiently analyzed in the project-wide level EIS and whether it would result in effects that would be similar to those analyzed in the EIS. If the ID Team determines that the effects from the underground pipeline are sufficiently similar and any differences are not considered substantial, then the decision is documented in the DNA form and the ROW grant is issued. However, if the differences are considered substantial by the ID Team, then PCW is provided the option to modify their proposal to conform with the project-wide level EIS or, if the action cannot be modified, then additional NEPA documentation will be prepared.

3.1.2 Categorical Exclusion

Upon review of the Departmental and BLM designated Categorical Exclusions (516 DM 2, Appendix 1 and 516 DM 11.9), no actions associated with submission of a SPOD would meet the requirements of a CX.

3.1.3 Environmental Assessment

Section 7.1 of BLM H-1790-1 provides a thorough discussion of actions requiring an EA, which is summarized in this section. An EA and Finding of No Significant Impact (FONSI) would be prepared if the deviation of the SPOD from the project-wide level EIS requires additional NEPA analysis that would not result in remaining effects that are considered significant. If the remaining effects would be considered significant, then an EIS would be prepared (see Section 3.1.4) as tiering to the project-wide level EIS would not provide the necessary analysis to support a FONSI for the SPOD.

In some instances, the project-wide level EIS might fully analyze significant effects on some resources affected by the SPOD, but not all resources. The tiered EA for the SPOD does not need to re-analyze the effects on resources fully analyzed in the project-wide level EIS, but may instead focus on the effects of the SPOD not analyzed in the project-wide level EIS. The FONSI for the SPOD would rely on the analysis in the project-wide level EIS as well as the tiered EA, and would explain which parts of the EIS it is relying upon.

An EA may demonstrate that a proposed action would have effects that are significant but could be reduced or avoided through mitigation. A mitigated FONSI may be used in lieu of an EIS if it is reasonably concluded, based on the EA analysis, that the mitigation measures would be effective in reducing effects to a level of non-significance. The FONSI would clearly identify whether the mitigation measures are needed to reduce effects to a level of non-significance. A description of the mitigation measures adopted would be incorporated into the decision documentation, and monitoring would be required to ensure the implementation of these measures.

3.1.4 Environmental Impact Statement

Section 7.2 of BLM H-1790-1 provides a thorough discussion of actions requiring an EIS. An EIS would need to be prepared for the SPOD only if there are significant effects that have not been analyzed in the project-wide level EIS and it is anticipated that they cannot be mitigated to a level of non-significance. In such instances, focus the EIS on determining if, and how, any new circumstances or information would change the effects anticipated by the action.

3.2 Tiering Procedure for Project Redesign During Field Implementation

A critical part of project construction is ensuring the CCSM Project is constructed in compliance with environmental conditions and requirements contained in the BLM ROW grant, which includes the SPOD; other federal, state, and local permits; landowner agreements; and project construction drawings and staking plans. Infrequently, minor changes or deviations from stipulations/mitigation provided in these documents are necessary to accommodate or mitigate unexpected on-site circumstances. These deviations may be necessary to facilitate construction or provide for more effective protection of environmental resources.

When changes from project requirements are identified, PCW's Environmental Inspector, an employee working directly for the applicant, may wish to file variance requests for approval of these changes. Additionally, the BLM may pursue similar or other types of alterations. Requests may vary in significance from minor changes (i.e., slightly shifting the location of an access road) to more complex requests (i.e., construct a new access road). These variance procedures apply only to activities taking place on BLM lands.

Tiered Variance System During Construction

A system using three variance levels (Levels 1, 2, and 3) will categorize variance requests, according to their significance and level of effort associated with the change.

Level 1. Those which do not require an amendment to the SPOD;

Level 2. Those requiring an amendment to the SPOD; and

Level 3. Those requiring an amendment to the BLM ROW grant(s).

Levels 1 and 2 variances may be used to modify or amend the SPOD. Level 3 variances will require an amendment to the BLM ROW grant. In this case, a Standard Form 299 will be required.

A third-party contractor under the direct supervision and control of the BLM, but funded by PCW, will serve as the Environmental Compliance Monitor (ECM) during the construction phase of the project, consisting of a manager and a full-time field monitor providing weekly reports directly to the BLM. The ECM will be authorized to address proposed/needed deviations from grant stipulations and the approved POD associated with the ROW grant for minor variances after consulting with the BLM Project Manager to expedite construction while protecting resource values. The ECM will consult with the BLM Project Manager, or designated BLM representative, to determine if a variance will require amendment to the SPOD or the BLM ROW grant. The ECM may approve Level 1 variances and the BLM Project Manager may approve Level 2 variances.

If a variance is requested by the BLM, a BLM representative can initiate a variance request in consultation with the ECM, PCW representative, and the construction contractor, as appropriate. The request needs to be in writing using the Variance Request Form (**Attachment B**). Supporting attachments, such as an alignment sheet or other project drawings, or photos, and cultural and/or biological clearances (including surveys for invasive weeds if necessary) will be required to process a variance request. The request, and PCW's input to the request, would be documented in the ECM weekly report.

3.2.1 Level 1: Variances Accomplished Through Field Resolution

A Level 1 variance is a minor field adjustment within the approved BLM ROW grant that conforms to the SPOD. These variances can be handled in the field by the ECM in consultation with the PCW representative. Such adjustments would be documented on the Variance Request Form. The ECM

would inform the PCW representative and the BLM Project Manager of these minor changes by including them in his/her weekly progress reports.

Examples of minor field adjustments include, but are not limited to, the following:

- Relocation of erosion control devices (note: this also may require a modification to the Stormwater Pollution Prevention Plan [SWPPP]);
- Locating temporary fences inside authorized work areas;
- Constructing ditch plugs and wildlife escape ramps in cable trenches, if needed;
- Permitting waterbars to be extended, if applicable, off the area designated for a cable trench or the transmission line, and into native vegetation "one dozer length" (this includes providing permission for construction equipment to work outside designated work areas);
- Allowing rubber-tired vehicles to use additional designated access roads (in addition to those approved in BLM approval documents) where improvements to the road would not be necessary (note: not intended for authorizing additional haul roads for equipment and materials); and
- Temporarily (for not more than 7 days) placing turbine parts or other assemblies outside areas designated in the POD but within the authorized project area. This does not include any surface disturbance associated with temporary storage.

Level 1 Variance Approval or Denial

The ECM can approve or deny Level 1 variance requests in the field after consulting with the BLM Project Manager. Level 1 variance requests may be approved if the results of implementing the changes are not significant. If a Level 1 variance request is approved in the field by the ECM, signatures on the Variance Request Form also will be required from the PCW representative. A Level 1 variance request can be implemented in the field as soon as it is approved and signed by the ECM. The ECM will document the approved variance and submit to BLM daily.

If the Level 1 variance is denied, the ECM will inform the PCW representative within 24 hours. The construction contractor's representative may choose to resubmit the request as a Level 2 variance, or to discontinue pursuit of the request.

Level 1 Variance Distribution

The ECM will give/send the approved Level 1 variance request to the appropriate PCW representative, who will then distribute the variance on the construction side of the project. The ECM will provide the BLM Project Manager copies of approved Level 1 variances daily. The ECM will generate a report at the end of each week identifying all Level 1 variances approved during the previous week.

3.2.2 Level 2: Variances Beyond Field Resolution, Not Requiring an Amendment to the BLM ROW Grant(s)

This type of variance involves a deviation that exceeds the field decision authority of the ECM. Level 2 variances require approval by the BLM Project Manager with concurrence of BLM RFO specialists. These alterations generally involve project changes that would affect an area outside of the previously approved work area, but within the corridor previously surveyed for cultural resources, wetlands, and sensitive species. Such variance requests typically require review of supplemental documents, correspondence, and records to be provided with the request.

Examples include, but are not limited to the following:

- Shifting extra workspace outside the approved construction corridor a short distance, but within the previously surveyed corridor where overall disturbance type and acreage remains approximately the same, and no cultural, paleontological, biological resources, or invasive weed infestations could be affected;
- Shifting temporary workspace to previously disturbed areas;
- Permitting project work to be completed in raptor areas during the construction closure window;
- Moving proposed culvert location(s) to better accommodate natural drainages (note: this also may require a modification to the SWPPP);
- Providing extra work space for topsoil and spoil material storage to prevent mixing of soils;
- Moving a range fence a specified number of feet laterally and permanently installing it to avoid proposed construction (note: this also may require an amendment to the Allotment Management Plan, if applicable.);
- Modifying seed mixes specified in the SPOD (due to unavailability; note: this also may require a modification to the Reclamation Plan); and
- Modification of an access road due to safety hazards.

Variance requests also may be submitted for minor changes that would extend beyond the previously surveyed work area and corridor for sensitive resources. In these situations, additional cultural, biological, and invasive weed surveys would be required. Documentation of the surveys and other applicable correspondence would need to be submitted with the variance request. If sensitive biological resources are encountered during the additional surveys, documentation of consultation with applicable agencies must be provided with the variance request. All BLM approved stipulations, and the Terms and Conditions of the United States (U.S.) Fish and Wildlife Service's (USFWS) Biological Assessment/Opinion must be adhered to, in order for the variance to be approved.

To initiate a Level 2 variance request, the construction contractor will determine the need for the variance. The request form, with attached supporting documents, will be prepared by the PCW representative and discussed with the ECM. The ECM will submit the request form and attachments to the BLM Project Manager. The BLM Project Manager, after consulting with BLM RFO specialists, will provide the PCW representative written approval or denial (including an explanation) of the request by using the spaces provided on the form. The BLM Project Manager or BLM representative may request additional information, or a modification of the request, before the variance can be approved. In addition, the PCW representative will be informed if an amendment to the BLM ROW grant will be required.

Level 2 Variance Approval or Denial

The BLM Project Manager will review the variance request form and any attachments in consultation with the appropriate BLM RFO specialists. If additional information or a modification to the request is required, PCW will submit the requested information within 5 business days. The BLM Project Manager will provide PCW or their representative written approval of the request by using the spaces provided on the form within 5 business days from receipt of a complete request.

If a Level 2 variance is denied, the BLM Project Manager will provide PCW or their representative a written denial (including an explanation) of the request by using the spaces provided on the form within 5 business days from receipt of a complete request. PCW may choose to resubmit the request as a Level 3 variance, or to discontinue pursuit of the request.

Level 2 Variance Distribution

Distribution of Level 2 variance requests are the same as stated above for Level 1 variance requests.

3.2.3 Level 3: Variances Requiring an Amendment to the BLM ROW Grant

This type of variance requires an amendment to the BLM ROW grant, completion of an application on a Standard Form 299 (SF 299), and a decision by the BLM Authorized Officer through a variance request form (**Attachment B**).

The PCW representative will prepare the SF 299 with supporting documentation, including a SPOD and map (1:24,000 scale), for submittal to the BLM RFO. The BLM will process the amendment application pursuant to 43 CFR 2800. The BLM may request additional information, or a modification of the request, before the amendment can be approved. Approval of the amendment also requires issuance of a Notice to Proceed (NTP) addressing the amendment, if a NTP is a requirement of the original BLM ROW grant.

The BLM Project Manager will assist the ECM and PCW representative in determining whether a significant proposed change, outside the approved BLM ROW grant, will necessitate submittal of an amendment, or whether the change can be handled with a Variance Request Form.

Examples of a variance requiring an amendment to the BLM ROW grant are as follows:

- Relocation of project components onto BLM land; or
- Expansion of the project area from the one defined in the BLM ROW grant and SPOD.

Level 3 Variance Approval or Denial

The BLM Authorized Officer will review the SF 299, variance request form, and any attachments in consultation with the appropriate BLM RFO specialists. If additional information or a modification to the request is required, PCW will submit the requested information within 5 business days. The BLM Project Manager will provide PCW or their representative written approval of the request by using the spaces provided on the form (**Attachment B**) within 5 business days from receipt of a complete request. The decision is documented in the new or amended ROW grant.

If a Level 3 variance is denied, the BLM Project Manager will provide PCW or their representative a written denial (including an explanation) of the request by using the spaces provided on the form (**Attachment B**) within 5 business days from receipt of a complete request. PCW may choose to discontinue pursuit of the request or proceed with additional NEPA documentation as discussed in Section 3.1.

Level 3 Variance Distribution

Distribution of Level 3 variance requests are the same as stated above for Level 1 variance requests.

4.0 Other Federal Reviews and Permits

It is the responsibility of the BLM to ensure that projects on public lands are in compliance with NEPA as well as the environmental conditions and requirements contained in the ROW grant (which includes the SPODs; other federal, state, and local permits; and project construction drawings and staking plans). A list of the major permits, approvals, and authorized actions for other federal, state, and county agencies necessary to construct, operate, maintain, and abandon project facilities is provided in Table 1-2 of the Final EIS. This section focuses on other federal agency permits applied concurrently with BLM tiering reviews, which primarily consists of the USFWS.

4.1 US Fish and Wildlife Service Reviews and Permits

4.1.1 Section 7 Consultation under the Endangered Species Act

Under Section 7 of the Endangered Species Act (ESA), a federal agency that authorizes, funds, or carries out a project that "may affect" a listed species or its critical habitat must consult with the USFWS. Under Section 7 consultation, the lead agency prepares a biological assessment (BA) that analyzes whether the project is likely to adversely affect listed wildlife or plant species or their critical habitat, and proposes suitable avoidance, minimization, or mitigation measures. At the end of the formal consultation (135 days by regulation), the USFWS issues its BO determining whether the project is likely to jeopardize the species or result in adverse modification of critical habitat. If a "no jeopardy" opinion is provided, the project may proceed. If a jeopardy or adverse modification opinion is issued, the USFWS may suggest "reasonable and prudent alternatives" that would result in no jeopardy.

The BLM's authorization of the requested ROW grants for CCSM, including the resulting consultation and coordination with the USFWS, complies with ESA Section 7 regarding potential take of listed species with the potential to occur in the Application Area. Formal consultation with the USFWS concluded with the issuance of a BO (**Appendix E**). All reasonable and prudent measures and terms and conditions for threatened and endangered species listed in the BO are mandatory requirements of the ROW grant issued. Implementation of the conservation measures for proposed and candidate species identified in the BO to reduce potential adverse impacts are discretionary. The BO incorporates the applicant-committed measures (ACMs). If the ACMs are not followed or are modified, this could invalidate the BO; therefore, the ACMs also are mandatory requirements of the BO.

4.1.2 Migratory Bird Treaty Act

To avoid and minimize impacts to migratory bird species protected by the Migratory Bird Treaty Act (MBTA) (16 United States Code [U.S.C.] 703), an APP is being developed in coordination with the USFWS to address all migratory bird species. The APP developed for the project will apply to all lands, regardless of jurisdiction. The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by regulation. The APP would outline conservation measures to reduce or eliminate the risk of mortality to migratory birds. The MBTA has no provision allowing for unauthorized take of migratory birds. The USFWS recognizes that some birds may be killed by the proposed project even if all known reasonable and effective measures to protect birds are used. Potential MBTA violations are investigated by the USFWS's Office of Law Enforcement (OLE), which also is responsible for MBTA enforcement actions. OLE carries out its mission to protect migratory birds by fostering relationships with companies and industries that have taken effective steps to avoid take of migratory birds. It is not possible to absolve companies from liability even if they implement bird mortality avoidance or other protective measures. However, OLE focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid take. Companies are encouraged to work closely with USFWS biologists to identify available protective measures when developing project plans, including APPs, and to implement those measures prior to and during construction or similar activities. The applicant will submit one or more APPs that will become part of the BLMs decision-making process in subsequent ROW grant approvals as outlined in this Tiering Plan and **Appendix G**.

4.1.3 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668) protects bald and golden eagles by prohibiting the taking, possession, and commerce of such birds and establishes civil and criminal penalties for violation of this Act. The Act's implementing regulations define "take" as "to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb individuals, their nests and eggs" (16 U.S.C. 668c). Under the Act, "take" includes "disturb." "Disturb" is defined by regulation as "to agitate

or bother a bald or golden eagle to a degree that causes... injury to an eagle, a decrease in productivity, or nest abandonment..." (50 CFR 22.3).

The USFWS is the Federal agency with primary statutory authority for managing bald and golden eagles in the U.S. In certain circumstances, the USFWS may authorize limited take of bald or golden eagles (50 CFR 22.26) if it has determined that the take: 1) is compatible with the preservation of bald and golden eagles, and 2) meets the criteria for issuance of a programmatic permit that the take is unavoidable even though advanced conservation practices are being implemented. For purposes of 50 CFR 22.26, "compatible with the preservation of Bald or Golden eagles" means "consistent with the goal of stable or increasing breeding populations."

Where land-based wind energy development is concerned, the USFWS has issued draft guidance (January 2011) to help identify, assess, and mitigate potential sources of impacts on eagles through applicant's voluntary development of an ECP. The USFWS's guidance provides a process to identify stressors, and involves an evaluation of the opportunity to apply additional advanced conservation practices (ACPs) to avoid and minimize eagle risk to the maximum degree practicable such that any remaining take is unavoidable. Current golden eagle population data necessitates that, for any remaining unavoidable take, compensatory mitigation must be applied to the maximum extent achievable to be compatible with the preservation of eagles

The biologically-based take thresholds for take permitting under these regulations are based on regional populations as defined by the environmental assessment supporting the USFWS's regulations (USFWS 2009). Thus, the predicted magnitude of eagle take of the project must be evaluated within the context of available information regarding the status of the regional population(s) that may be influenced by the project. The USFWS's 2009 environmental assessment for the eagle take regulations indicate that the maximum cumulative take for golden eagles is zero. In contrast to bald eagle populations, golden eagle populations do not appear to be increasing, and may be declining in parts of their range, possibly due to loss of habitat to support their prey base. The USFWS will not issue take permits for golden eagles unless there is enough data to make the determination that the take to be authorized will be compatible with the preservation of golden eagles.

The USFWS's ECP draft guidance acknowledges that some aspects of the project impact on eagles may not be fully determinable at the outset of project planning. Thus, ECPs are expected to include commitments to adaptive management procedures (see Department of the Interior Adaptive Management implementation guidance, 2009). Post-construction monitoring is essential to identify possible factors associated with eagle fatalities at wind facilities that might warrant additional ACPs or improvement or elimination of ACPs found to be ineffective. Implementation of these additional ACPs and further monitoring following identical (though perhaps more targeted) protocols will help the USFWS and project proponents rigorously evaluate the effectiveness of the ACPs under the project's operating conditions (see Council for Environmental Quality [CEQ] guidance, January 2011).

In accordance with the USFWS's draft guidance, the applicant has prepared a voluntary project-wide ECP (August 14, 2012), which also may form the basis for an application for a programmatic eagle take permit. Programmatic take is take that is 1) recurring, but not caused solely by indirect effects, and 2) occurs over the long term and/or in a location or locations that cannot be specifically identified. The ECP has undergone initial review by USFWS for adequacy. The USFWS anticipates that additional data collected by PCW and data analyses will result in revisions to the ECP. The ECP is expected to include measures that avoid and minimize the risk of take, compensate for any take that cannot be avoided, and monitor the implementation and effectiveness of mitigation. The efforts that PCW identifies are being formally evaluated by the USFWS in the context of CEQ guidance for mitigation, monitoring the implementation and effectiveness of measures, and monitoring the implementation and effectiveness of any remedial actions that may be required (see the January 14, 2011, CEQ Memorandum on "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of

No Significant Impact"). The USFWS anticipates that the applicant will develop one or more additional ECPs that cover both the CCSM parts of the project or two ECPs, one on Chokecherry and one on Sierra Madre. Prior to BLM granting the ROW for either portion of the project, USFWS will review and evaluate the adequacy of those ECPs.

To comply with NEPA on an eagle take permit decision, the USFWS must consider the predicted magnitude of eagle take within the context of regional eagle populations (Bird Conservation Regions or BCRs). The USFWS also must take into account other factors that may warrant protection of smaller or isolated eagle populations within a region. These other factors include tribal and cultural considerations, seasonal use by eagles, cumulative impacts, and effects on habitat and prey availability, including habitat fragmentation.

In addition, the USFWS's NEPA analysis should include, but may not be limited to a(n):

- Comprehensive analysis of impacts to eagles that addresses not only the predicted take under the Bald and Golden Eagle Protection Act (Eagle Act), but also the individual and cumulative habitat (including foraging and roosting) and prey base impacts that may have adverse population impacts but may not constitute take under the Eagle Act;
- Cumulative impacts analyses of eagles at the local area population scale (which the 2009 Final Environmental Assessment [FEA] acknowledged as a scale at which significant adverse impacts could occur) and at the BCR (Eagle Management Unit) scale. Analyses at the BCR scale may be more qualitative than quantitative;
- Analysis of the mitigation effects of measures in any applicable APP and/or ECP, excepting the pre-construction surveys, which inform part of the required NEPA baseline conditions, and the post-construction surveys, which will be part of the required mitigation monitoring for permits;
- Analysis of effects to wintering golden eagles;
- Analysis of climate change effects on eagles, their habitat, and their prey;
- Analysis of cultural resource effects to eagles as sacred species. As acknowledged in the preamble to the 2009 regulations and FEA, some tribes and tribal members may consider eagle nests and other areas where eagles are present to be sacred sites provided for in the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996).

5.0 State Permitting

A list of the major permits, approvals, and authorized actions for the state necessary to construct, operate, maintain, and abandon project facilities is provided in Table 1-2 of the Final EIS, including permits from the State of Wyoming Department of Environmental Quality (WDEQ), the State Engineers Office, Air Quality Division, Wyoming Department of Transportation, and Office of State Lands and Investment (OSLI) permit for ROWs on state lands. This section focuses on state permits applied concurrently with BLM tiering reviews, which is primarily the Wyoming Industrial Development Information and Siting Act (WISA) permit from the WDEQ Industrial Siting Division (ISD).

Wyoming law provides that it "is unlawful to locate, erect, construct, reconstruct or enlarge a wind energy facility without first obtaining a permit from the board of county commissioners in the county in which the facility is located" (Wyoming Statute [W.S.] 18-5-502(a)).The statutes relating to county regulation of wind energy projects are set out at W.S. 18-5-501 through W.S. 18-5-513 and require that board of county commissioners adopt standards that are not less stringent than the standards set out in the statute (W.S. 18-5-504 (a)(i)).

5.1 Wyoming Department of Environmental Quality, Industrial Siting Division

The WDEQ ISD administers the WISA (W.S. § 35-12-101:119) and the Rules and Regulations of the Industrial Siting Council, Chapters 1 and 2. The Wyoming Industrial Siting Council (WISC) is a seven-member council created through W.S. § 35-12-104 that reviews the socioeconomic and environmental impacts of planned industrial development facilities before making a decision on the issuance of a permit for construction and operation of a facility. The WISC permit application addresses the project description, location, schedule, socioeconomic baseline conditions, an analysis of the potential socio-economic impacts with the area of impact, and potential environmental impacts. In order to minimize or prevent duplication of efforts, the WISC permit, the county permit, and the federal agency sometimes utilize common information for their distinct and unique permits. The WISC regulations allow for common data to be submitted as part of the application as long as it meets the application requirements and format.

A wind energy project that meets the definition of an "industrial facility," as noted in W.S. § 35-12-102(a), will require a WISA permit from the WISC. Industrial facilities are defined regardless of construction costs, as:

> *(E) Any commercial facility generating electricity from wind and associated collector systems that:*
>
> *(i) Consists of thirty (30) or more wind turbines in all planned phases of the installation; or*
>
> *(ii) Expand an existing installation not previously defined as a facility to include a total number of turbines greater than or equal to the 30 turbine threshold.*
>
> *(F) Any facility over which a board of county commissioners has authority to issue the permit required by W.S. § 18-5-502 (County Regulation of Wind Energy Projects) and which facility the board of county commissioners has referred to the council under W.S. § 18-5-509 (County Referral).*

Associated "collector systems," as defined in W.S. § 35-12-102(a)(xiv), that also are subject to permitting by the ISD, include:

> *…electrical transmission infrastructure, including conductors, towers, substations, switchgear and other components necessary to deliver power from any commercial facility generating electricity from wind up to, but not including, electric substations or similar facilities necessary to interconnect to existing or proposed transmission lines that serve load or export energy from Wyoming.*

If a permit is required, it must be obtained prior to the start of construction, with the exception of changes needed for temporary use (i.e., less than 90 days) of the site (W.S. § 35-12-102(a)(iii)(A). Changes needed for temporary use include changes required to: conduct required studies and tests or any state or federal act or regulation; construct access roads and services associated with utilities; construct routes for nonutility purposes; or for uses in securing geological data. Guidance can be obtained from the ISD for site testing and modification including meteorological towers which are regulated by the Wyoming Department of Transportation.

For facilities permitted under W.S. § 35-12-102(a)(vii)(E) and (F), a site reclamation and decommissioning plan and a financial assurance plan are required pursuant to W.S. § 35-12-105(d) and (e). The site reclamation and decommissioning plan are to ensure the proper decommissioning and interim and final site reclamation of commercial facilities generating electricity from wind and wind energy facilities during construction and operation of the facility. The site decommissioning and reclamation plan

and its cost are proposed by the applicant, subject to review and approval by the Director of the WDEQ and the WISC, and updated and submitted to the ISD every 5 years. The financial assurance plans provide assurances that the permitted facilities will be properly reclaimed and decommissioned at the end of their useful life. The financial assurance may be in any form acceptable to the WISC and may include a corporate guarantee, letter of credit, bond, deposit account, or insurance policy. All such plans are required as part of Section 109 permit applications and Section 107 request for waiver of permit applications, and shall demonstrate compliance with rules and regulations adopted by the WISC. The financial assurance instrument (i.e., corporate guarantee, letter of credit, bond, etc.) must be provided to the ISD prior to the start of construction. In addition, a bond may be required following the request by a local government to the Director of the WDEQ to indemnify that government for preparations necessary for the project. A copy of the Rules and Regulations of the WISC, Chapters 1 and 2 can be accessed through the Wyoming Secretary of State web page: http://soswy.state.wy.us/Rules/RULES/8186.pdf.

The WISC must find that the proposed industrial facility will comply with all applicable local, state, and federal law throughout each phase of planning, construction, and operation. Counties and other local governments may participate as parties to the permit, examine the application, and request permit conditions. In addition, any person entitled to receive an application under W.S. § 35-110(a)(i), including affected landowners, also may participate as parties to the permit. "Affected Landowners" is defined under W.S. § 35-12-102(a)(xv) as persons holding record title to land on which any portion of a commercial wind facility is proposed to be constructed and any portion of any collector system located on those same lands. A list of all affected landowners with an address at which each landowner can be given notices required by the act are provided to the ISC as required under Sections 107 and 109.

W. S. § 35-12-119(c) lists activities exempt from an ISA permit:

> *(i) Electric transmission lines with a maximum operating voltage of less than one hundred sixty thousand (160,000) volts, except:*
>
> *(A) Any collector system, regardless of voltage, associated with a commercial facility generating electricity from wind and which meets the definition of an industrial facility pursuant to W.S. § 35-12-102(a)(vii)(E) and (F) shall not be exempt;*
>
> *(B) A commercial facility generating electricity from wind that is exempt from W.S. § 35-12-102(a)(vii)(E) or (F) shall not become subject to this chapter because its collector system is greater than one hundred sixty thousand (160,000) volts.*

The WISA requires certain notices be made prior to the filing of an application. Required notices include:

- Local governments must be advised of the project and provided 30 days to reply to the applicant before the application is filed;
- Surface land owners; and,
- Mineral rights owners of record.

Once the notice requirements are met, the ISD will receive and process permit applications. The application consists of the specified number of copies of the application, payment of the required fee, and a letter requesting the permit and certifying the accuracy of the application. The application fee is paid at the time of the filing in an amount determined to cover the costs of processing the application, for compliance during construction and subsequent appearances before the WISC. Within 30 days of receiving the application, the ISD will notify the applicant of any deficiencies. The WISA allows the applicant 30 days to remedy any deficiency after notice. If deficiencies are identified after receiving

additional information from the applicant, the applicant has 15 days from the receipt of notice to remedy the deficiencies or the permit application will be terminated. The application is given to 19 state agencies and to all affected landowners for review and comment. Copies of the agency reviews are given to the applicant for remedy and to the property owners for comment. Remedies and comments from the agencies, the applicant and the affected landowners are reported to the WISC. WISA, Section 111, identifies those individuals who are eligible to participate in the permit process as parties, such as local governments. The term "local government" is defined by WISA to mean, counties, incorporated municipalities, school districts, and joint powers boards. As a party, these entities can request permit conditions.

The WISC conducts a hearing in the form of a contested case hearing with sworn testimonies and examination and cross examination of witnesses. Those persons with statutory eligibility are able to participate.

The WISC may issue a permit to construct and operate a wind energy facility if it finds that the proposed facility:

- Complies with all applicable law;
- Will not pose a threat of serious injury to the environment or to the social and economic condition of the inhabitants;
- Will not substantially impair the health, safety, or welfare of the inhabitants; and
- The applicant has the financial resources to construct, maintain, operate, decommission, and reclaim the facility.

In making its decision, the WISC may add permit conditions and, under certain circumstances, relocate all or part of the proposed facility to mitigate identified impacts. The WISC sets the construction schedule of the project. A written decision on issuance or denial of the permit will be issued within 45 days after conclusion of the hearing on the application (typically within 135 days) under WISA Section 109 and within 60 days of the filing of an application under Section 107. Prior examples of applications filed under Sections 107 and 109 may be located through the WDEQ web page at http://deq.state.wy.us/isd/isdnews.htm. Decisions of the WISC may be appealed by the applicant or any party to the district court within 30 days of the written decision.

5.2 CCSM Development Plan Level State ISC Permit

The WDEQ-ISD participated as a cooperating agency during the CCSM project development plan process. During compilation of required and voluntary stipulations for the CCSM project, part of the ACMs put forth by PCW were to apply OSLI Board-approved stipulations to all project development activities. At the time of the project development plan, the only required OSLI Board-approved stipulation on state lands was limited to the State of Wyoming greater sage-grouse stipulation under the authority of W.S. 36-2-101, which include exclusion of sage-grouse core area and appropriate lek buffers. However, other stipulations may be applied on a case-by-case basis as part of the ISC process.

PCW completed the required jurisdictional meeting with the Industrial Siting Division on April 25, 2012 and plans to submit an application for an industrial siting permit for the CCSM Project Development Plan after a ROD is issued by the BLM. The ROD is planned for September 2012, and the filing of the ISC Permit is planned for November 2012. Based on the statutory timeframes outlined in W.S. 35-12-110, the Industrial Siting Council, through the office of Administrative Hearings will hold a contested case hearing of the permit application within 90 days of the filing for an industrial siting permit.

When the PCW submits its application to the ISC (planned for November 2012) it will include the features of a POD for the CCSM Project as well as the then-current site plan showing locations of

turbines, structures, and improvements and modifications to the topology of the land. PCW is required to supply any Federal documents and information "…the applicant considers relevant…" and to certify "upon oath or affirmation" to the accuracy and completeness of the application.

A standard condition of any permit issued by the ISC is expected to contain a condition that PCW "shall obtain and maintain all required state and local permits and approvals in accordance with W. S. 35-12-109 (a) (xv), 35-12-113 (a) (i), and 35-12-115 during the term of this permit." In accordance with W.S. 35-12-115(a)(i), WDEQ "shall retain authority which it has or which it may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans and to enforce those standards."

5.3 CCSM Site-Specific Plan of Development State ISC Permit Amendments

As PCW develops and submits SPODs for distinct portions of the project, the CCSM Project Development Plan Level ISC Permit would need to follow the ISC permit conditions subsequent to and as a condition of the BLM ROW grant approval. An amendment to the ISC Permit is required by ISC Rules, Section 16(a), "if the applicant makes a significant change to the scope, purpose, size, or scheduling of the project; which would result in different impacts not within the scope of the approved permit." The Wyoming statute addresses the procedure of an ISC Permit Amendment as follows (W.S. 35-12-106(c) and (d)):

> (c) Except as provided in subsection (d) of this section, the council may allow the amendment of a permit or application for a permit for good cause if the holder demonstrates to the council at its next meeting that the requested change is in compliance with local ordinances and applicable land use plans and will not significantly add to adverse environmental, social and economic impact in the impacted area.
>
> (d) On an application for an amendment of a permit, the council shall hold a hearing in the same manner as a hearing is held on an application for a permit if in the council's opinion the requested change in the facility would result in a significant adverse increase in any environmental, social or economic impact of the facility or a change in the location of all or a portion of the facility unless the change in location was specifically approved by the council in the permit.

The ISC Permit Amendment for each SPOD will not be submitted to the ISD until after the BLM issues a decision on the SPOD. Once the ISC Permit Amendment is submitted, the ISC Director will review the application and issue a public notice of the modification. The modification will not go before the ISC unless by requested, the Industrial Siting Division, parties with standing (further articulated in W.S. 35-12-110-111) or the Industrial Siting Council. The time frame to process a modification to the ISC permit will depend on the nature of the modification and the administrative process applicable to the request.

6.0 County Permit

In addition to the ISC permit, PCW must obtain a Conditional Use Permit (CUP-Wind) from the Board of Carbon County Commissioners. Wyoming law provides that it "is unlawful to locate, erect, construct, reconstruct or enlarge a wind energy facility without first obtaining a permit from the board of county commissioners in the county in which the facility is located" (W.S. 18-5-502(a)).The statutes relating to county regulation of wind energy projects are set out at W.S. 18-5-501 through W.S. 18-5-513 and require that board of county commissioners adopt standards that are not less stringent than the standards set out in the statute (W.S. 18-5-504 (a)(i)).

6.1 Carbon County Conditional Use Permit

Carbon County has adopted comprehensive standards for wind project permitting – set out in the Carbon County Zoning Resolution, Section 5.11 – Wind Energy Overlay-District Regulations, approved April 5, 2011. The Wind Energy Facilities Overlay District is intended to provide for public safety and to prevent hazards from the construction of commercial and non-commercial wind energy facilities in Carbon County. The regulation is intended to (Section 5.11[b}):

- To permit and encourage carefully planned and compatible wind energy facilities throughout the County;
- To assure that any development and production of wind-generated electricity in Carbon County is safe and consistent with the Comprehensive Land Use Plan;
- To acknowledge that these facilities are clearly visible and cannot be hidden from view, however, design consideration should include minimizing the degradation of the visual character of the area;
- To facilitate economic opportunities for local residents; and,
- To promote the supply of wind generated electricity in support of Wyoming's goal of increasing energy production from renewable energy sources.

To obtain siting approval, a Wind Energy Conversion System (WECS)[1] CUP application must be submitted to the Planning and Development Department. The CUP application for a Commercial WEC Project shall contain, or be accompanied by, a project summary and preliminary site plan (further detailed in Chapter V, Section 5.11[d][1][a]).

6.2 CCSM Development Plan Level County CUP Permit

Carbon County participated as a cooperating agency during the CCSM project development plan process, but no county-specific requirements were applied beyond those identified by the BLM.

PCW filed its application for a CUP with Carbon County on July 16, 2012. The next steps include: 1) a completeness determination by the County with respect to the application; 2) a Planning and Zoning Commission public meeting and recommendation regarding the application to the Commissioners; 3) a hearing on the application in front of the Carbon County Commissioners; and 4) a decision from the County Commissioners on the CUP application. It is anticipated that Carbon County will issue a decision on the application by the end of 2012.

The Carbon County Zoning Resolution states that the county regulations are not intended to preempt other applicable State and Federal laws or regulations and facilities shall be constructed to meet and be maintained in compliance with all Federal, State and County requirements, including all Wyoming Industrial Siting Council requirements (Chapter V, Section 5.11[d][7]). The CUP could be issued "subject to" obtaining all State and Federal agency required approvals (Section 5.11[d][1][a][8]).

---

[1] Wind Energy Conversion System" (WECS) means all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to Substation(s) and their support facilities, including collector systems" (Section 5.11(c)).

"WECS Project" means the WECS and associated support facilities including, but not limited to, roads, substations, operation and maintenance buildings, and permanent towers as specified in the application, including the project area as defined by the Owner(s) and includes, but is not limited to a Wind Energy Facility (Section 5.11(c)).

6.3 CCSM Site-Specific Plan of Development County CUP Permit Amendments

While the Carbon County Resolution does not specifically address permit amendments or modifications, the W. S. requires that "[i]f the application is granted, the board of county commissioners shall require that the project plan be revised to show the final location of all facilities" (W.S. 18-5-503[a][viii]). The county does require a detailed map of the site within 90 days of when operation begins. This map shall be updated by the Owners or Operators every 5 years or after the completion of any significant additional construction, whichever occurs first.

6.4 Carbon County Building Permits

Carbon County Requires Building Permits (i.e. zoning certificates) for all structures valued at more than $500.00 (Chapter VI, Section 6.3, Carbon County Zoning Resolution). Building permits will be required prior to construction of all facilities, including accessory structures to the operation of the facility. Site-specific information about the location of the turbines and associated structures will be obtained with the building permit application.

7.0 Permit Process

As described in the preceding sections, the permitting process for CCSM project requires a number of permits from varying federal, state, and county agencies. The following section attempts to describe the process and timing by which each of these permits will be pursued after issuance of the ROD.

As described in **Appendix B**, the process by which PCW proposes to construct the wind farm project is as follows:

- Year 1: Haul road and rail distribution facility construction
- Year 2: Sierra Madre West construction
- Year 3: Sierra Madre East and Chokecherry West construction; Sierra Madre West turbine installation
- Year 4: Chokecherry East construction; Sierra Madre East and Chokecherry West turbine installation
- Year 5: Chokecherry East turbine installation

It is estimated at this time that Year 1 would be 2013, Year 2 would be 2014, etc., with final turbine installation on Chokecherry East and project construction complete in 2017. In order to meet these construction goals, close interaction will be required between PCW and all permitting agencies.

Permits from Carbon County and the State of Wyoming must be granted prior to commencement of any ground disturbing activities. It is estimated that decisions on these permit applications will occur prior to BLM issuance of any ROW grant regarding the haul road, transmission line, rail facility, or wind farm locations. During this same period, PCW is committed to obtaining additional information regarding eagle and other migratory bird use so as to develop an adequate Avian Protection Plan and Eagle Conservation Plan, required for the BLM permits.

Because PCW has indicated that they will pursue eagle take permits for the project, the process by which those permits would be acquired also must be considered in the permitting of the wind facility.

The sequencing of events for the CCSM Wind farm locations will follow the same timeline. First, PCW will submit a notice of staking (NOS) to the BLM, which will outline the basic locations of proposed turbines and associated facilities to be constructed at that phase. At the same time, PCW will submit a

finalized APP/ECP and eagle take permit application to the USFWS. BLM and USFWS will work cooperatively with PCW to address micro-siting issues, using the turbine layout depicted in the application/NOS as a starting point.

As BLM and USFWS resolve potential conflicts, PCW will incorporate changes into the BLM ROW application and USFWS eagle take permit application. Subsequent to incorporating these changes, BLM and USFWS will undertake NEPA analyses for both applications. Upon issuance of a decision, BLM may then issue a ROW grant for the portion of the wind farm locations analyzed (assuming authorization), as all requirements associated with the BLM permit will have been met. At the same time, if USFWS has determined that an eagle take permit is allowable, USFWS will begin the process of issuing a permit.

Once the BLM decision is issued, PCW will be required to submit the revised project layout to Carbon County and the State of Wyoming ISD so that these respective agencies may evaluate the changes and determine whether an amendment to the existing permit is required. If permit amendments are required, construction of that specific phase of development will not be allowed to commence until those have been issued.

The above process focuses primarily on the issuance of permits for the CCSM Wind farm locations respectively. However, this same process also would be used for the permitting of the internal haul road, RDF, and internal transmission line.

For purposes of clarification, a generalized timeline sequencing the key permitting events associated with each of these activities has been included. This timeline is generalized and is not intended to be comprehensive of each activity that must be conducted prior to issuance of permits.

Attachment A – Determination of NEPA Adequacy (DNA) Worksheet

U.S. Department of the Interior Bureau of Land Management

OFFICE:

TRACKING NUMBER:

CASEFILE/PROJECT NUMBER:

PROPOSED ACTION TITLE/TYPE:

LOCATION/LEGAL DESCRIPTION:

APPLICANT (if any):

A. Description of the Proposed Action and any applicable mitigation measures

B. Land Use Plan (LUP) Conformance

LUP Name* _____ Date Approved _____

Other Document _____ Date Approved _____

Other Document _____ Date Approved _____

** List applicable LUPs (for example, resource management plans; activity, project, management, or program plans; or applicable amendments thereto)*

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decisions:

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decisions (objectives, terms, and conditions):

C. Identify applicable NEPA documents and other related documents that cover the proposed action.

List by name and date all applicable NEPA documents that cover the proposed action.

List by name and date other documentation relevant to the proposed action (e.g., biological assessment, biological opinion, watershed assessment, allotment evaluation, and monitoring report).

D. NEPA Adequacy Criteria

1. Is the site-specific POD proposal sufficiently analyzed in the project-wide level EIS?

Documentation of answer and explanation:

2. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?

Documentation of answer and explanation:

3. Is the existing analysis valid in light of any new information or circumstances (such as rangeland health standard assessment, recent endangered species listings, updated lists of

BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?

Documentation of answer and explanation:

4. **Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?**

   Documentation of answer and explanation:

5. **Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?**

   Documentation of answer and explanation:

E. Persons/Agencies/BLM Staff Consulted

Name	Title	Resource/Agency Represented

Note: Refer to the EA/EIS for a complete list of the team members participating in the preparation of the original environmental analysis or planning documents.

Conclusion (If you found that one or more of these criteria is not met, you will not be able to check this box.)

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of the NEPA.

_____
Signature of Project Lead

_____
Signature of NEPA Coordinator

_____ _____
Signature of the Responsible Official Date

Note: The signed Conclusion on this Worksheet is part of an interim step in the BLM's internal decision process and does not constitute an appealable decision. However, the lease, permit, or other authorization based on this DNA is subject to protest or appeal under 43 CFR Part 4 and the program-specific regulations.

September 2012

Attachment B – Variance Request Form

Variance Request Form

Power Company of Wyoming LLC.
Chokecherry/Sierra Madre Wind Farm Project

Variance Request No.: _____
Date Submitted: _____
Date Approval Required: _____
BLM Approval Reference No.: _____

Location: _____
Alignment Sheet/
Construction Drawing/Station Number: _____Approval Agency: _____
Current Land Use/Vegetative Cover: _____
Nearby Features (Washes, Wetland, Noxious Weed Area, Residence (distance): _____

Variance Level	[ ] Level 1	[ ] Level 2	[ ] Level 3
Variance requested in →	[ ] Permit	[ ] Plan/Procedure	[ ] Specification
	[ ] Mitigation Measure	[ ] Drawing	[ ] Other

Detailed Description of Variance: Attachments? [ ] Yes [ ] No Photos? [ ] Yes [ ] No

Variance Justification:

Additional Surveys Required	Surveyed Corridor Description	Additional Surveys Completed
Cultural Survey [ ] Y [ ] N		[ ] Y [ ] N
T & E [ ] Y [ ] N		[ ] Y [ ] N
Weeds [ ] Y [ ] N		[ ] Y [ ] N

Request prepared by:

Sign-off (as appropriate)	Name (Print)	Approval Signature	Date	Conditions Attached
Environmental Manager				[ ] Y [ ] N
Chief Inspector				[ ] Y [ ] N
BLM 1/				[ ] Y [ ] N

For use in approval only.

Variance Approval:_____ Variance Denied: _____ Beyond Authority: _____

Approval Number: _____ Date: _____

Signature: _____ Stipulations: _____

If the ECM is authorized (in the POD or other document included in the BLM ROW authorization documents) to act/sign on behalf of BLM, include the name of ECM with the signature.

September 2012

Chokecherry/Sierra Madre Wind Farm Project Relating to Wind Turbine Generator Number (if applicable): _____ Variance Conditions (refer below for individual requesting the condition and specific condition(s). Name:	Title:	Organization:
Conditions:		
Name:	Title:	Organization:
Conditions:		
Name:	Title:	Organization:
Conditions:		

September 2012