



POLICY GUIDANCE FOR USE OF CORRIDORS DESIGNATED PURSUANT TO SECTION 368 OF THE ENERGY POLICY ACT OF 2005 AS REQUIRED BY THE SETTLEMENT AGREEMENT IN WILDERNESS SOCIETY V. UNITED STATES DEPARTMENT OF THE INTERIOR, NO. 3:09-CV-03048-JW (D. N.D. CAL)

IM 2014-080

Instruction Memorandum

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
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To: All Field Office Officials

From: Assistant Director, Energy, Minerals, and Realty Management

Subject: Policy Guidance for Use of Corridors Designated Pursuant to Section 368 of the Energy Policy Act of 2005 as Required by the Settlement Agreement in *Wilderness Society v. United States Department of the Interior*, No. 3:09-cv-03048-JW (D. N.D. Cal)

Program Area: Right-of-Way Management, Right-of-Way Corridors, and Land Use Planning.

Purpose: This Instruction Memorandum (IM) provides guidance on the development and use of corridors designated in January 2009 pursuant to Section 368 of the Energy Policy Act of 2005 (Public Law 109-58) (EPAAct) and Section 503 of the Federal Land Policy and Management Act of 1976 (FLPMA).

This guidance fulfills the Bureau of Land Management's (BLM) responsibilities under Section II.A.2 of the Settlement Agreement in *Wilderness Society v. United States Department of the Interior*, No. 3:09-cv-03048-JW (D. N.D. Cal) (Settlement) and supplements the guidance for rights-of-way and corridors in the BLM Land Use Planning Handbook (H-1601-1, Appendix C, Section E). Additionally, this policy will also assist the agency in fulfilling its "ongoing responsibilities" under Section 368 of the EPAAct to ensure identification and designation of additional corridors that may be needed, and to expedite reviews of applications within corridors, taking into account prior analyses and environmental reviews.^[1]

Policy/Action: As required by the Settlement, the BLM, the U.S. Forest Service (FS), and the Department of Energy (DOE) developed an interagency workgroup and entered into a Memorandum of Understanding (MOU) that was approved on July 8, 2013. The MOU, available at <http://www.blm.gov/wo/st/en/prog/energy/transmission.html> (/wo/st/en/prog/energy/transmission.html), and

corresponding work plans provide the framework for preparing the corridor study and periodic regional reviews of designated EAct Section 368 corridors as required by the Settlement.

Consistent with FLPMA, EAct, and the Presidential Memorandum dated June 7, 2013, entitled, "Transforming our Nation's Electric Grid Through Improved Siting, Permitting and Review," the following provisions are intended to guide efficient and effective use of the EAct Section 368 corridors including corridors of concern (COC)[2] identified in the Settlement. Use of the 2008 Final Programmatic Environmental Impact Statement (FPEIS) for project-specific National Environmental Policy Act of 1969 (NEPA) analysis and land use planning, and use of Interagency Operating Procedures (IOP) as outlined in the Settlement. This guidance directs line managers to undertake a variety of actions. For clarity, the term "line managers" refers to state directors, district managers or field managers with authority to make final decisions on projects, corridors, or land use plans in accordance with BLM's delegation of authority procedures.

Management and Use of EAct Section 368 Corridors

The BLM designated 119 corridors in 11 western states in January 2009. These corridors may be used for siting oil, gas, and hydrogen pipelines and electricity transmission and distribution projects. Siting projects within COC segments could cause heightened public attention and objections. Project proponents and line managers must be aware of this prior to their use.

For projects in the pre-application stage, the line manager will encourage the project proponent to locate projects within the EAct Section 368 corridors and will notify the project proponent about the COCs with identified siting concerns. Line managers will encourage project proponents to consider alternative locations if a proposed project would be located within a COC segment.

If the line manager determines there are site specific constraints within an EAct Section 368 corridor (e.g., required separation distances to meet electric reliability standards, or engineering constraints), the line manager will encourage the proponent to site the relevant portion of the project as close as practical to EAct Section 368 corridors or within or adjacent to other BLM designated corridors, existing linear rights-of-way or previously disturbed lands.

If a project proponent proposes to site a project, in part or in whole, within a COC segment, the line manager will notify the project proponent in writing, in a timely manner, that a COC segment is involved and that siting within COCs may:

- Involve significant environmental impacts;
- Include preparation of an environmental impact statement;
- Involve substantially increased or extensive mitigation measures such as regional or off-site mitigation to compensate for impacts to sensitive resources;
 - Include consideration of alternatives outside the corridor and consideration of an alternative that denies the requested use;
 - Include amendment of the applicable land use plan to modify or delete the COC and designate an alternative corridor; and
- Be challenged.

National Environmental Policy Act Compliance for Projects within EAct Section 368 Corridors

As noted in the FPEIS, projects proposed within EAct Section 368 corridors require project-specific, site specific environmental review pursuant to the requirements of NEPA, the Department of the Interior's NEPA regulations at 43 C.F.R. Part 46, and BLM NEPA Handbook H-1790-1 (Jan. 2008). Line managers should encourage incorporation by reference of analyses in the FPEIS - such as the cumulative effects analysis - and other relevant documents, as appropriate, for individual projects and consistent with NEPA regulations, in order to reduce bulky and redundant analyses. Line managers should note that tiering to the FPEIS cannot substitute for site-specific analyses in accordance with NEPA regulations at 40 C.F.R. §§ 1502.20 and 1508.28.

In assessing the scope of environmental review for projects proposed to be located within EAct Section 368 corridors, line managers will include analysis about whether the use of the corridor is appropriate in the context of the site-specific project and/or whether additional analysis should be undertaken to modify or delete the corridor and designate an alternative corridor.

Line managers involved in the processing of an application involving an EAct Section 368 corridor should ensure that, consistent with FLPMA and NEPA, the process involves robust outreach to stakeholders. A strong plan for engaging stakeholders and providing a variety of opportunities for stakeholder input will be a priority in the scoping and NEPA processes. If revisions, deletions, and/or additions to EAct Section 368 corridors result from site-specific project planning, line managers must ensure, at a minimum, the decisions are consistent with applicable laws, regulations, agency policy and guidance, including the requirements specified in Section 368 of the EAct. They also must consider, as contemplated in the Settlement, the siting principles identified in Section II.A.1.c of the Settlement.[3]

If a proponent proposes to site a project within a COC segment, the NEPA document should include consideration of alternatives to the proposed location. Any alternatives considered must be reflected in the NEPA document as either an alternative carried forward for detailed analysis, if it meets the purpose and need for the action, or as an alternative considered but not fully analyzed. The line manager may make a decision to reject an application based on the NEPA analysis or other relevant information. If the line manager determines the application should be approved, the approval will be based on the NEPA analysis and all other relevant information. If approved, the manager may choose the proposed route within the COC segments, with appropriate mitigation if available, or another route evaluated in the NEPA process.

When undertaking land use plan revisions or amendments which consider revisions, deletions, and/or additions to EAct Section 368 corridors, the planning process, at a minimum, must meet the requirements specified in EAct Section 368 and must consider the corridor siting principles in Section II.A.1.c of the Settlement.

Implementation of Interagency Operating Procedures

The BLM's January 2009 Resource Management Plan Amendments/Record of Decision (ROD) requires the use of IOPs for projects sited within EAct Section 368 corridors. The IOPs are available on the BLM external webpage at <http://www.blm.gov/wo/st/en/prog/energy/transmission.html> (/wo/st/en/prog/energy/transmission.html). Use of the IOPs is intended to expedite the permitting process by reducing duplication, increasing coordination, and ensuring consistency among Federal agencies. The IOPs provide uniform processing and performance criteria for energy transportation rights-of-way during project planning, construction, operation, and decommissioning.

Line managers should ensure applicable IOPs are used for projects sited within EAct Section 368 corridors. Line managers should consider use of relevant IOPs for major linear rights-of-way proposed outside of EAct Section 368 corridors. Line managers should encourage applicants to include applicable IOPs as part of their application (e.g., Plan of Development) or line managers may also require their use through analysis in the NEPA document and inclusion in final decisions and authorization documents (e.g., Decision Record/ROD, Right-of-Way Grant).

As part of the Settlement, the BLM, the FS, and the DOE committed to undertake review of the IOPs. Once completed, the regional periodic reviews, required by the Settlement, may result in specific recommendations from the interagency workgroup to BLM and FS line managers regarding new or modified IOPs.

Timeframe: This policy is effective immediately.

Budget Impact: The effect on the budget is anticipated to be minor. In most cases, environmental reviews and associated land use planning will be undertaken as part of BLM's review of a right-of-way application. Most applications for these type of projects are subject to the cost recovery provisions of FLPMA Section 304(b) and the regulations at 43 C.F.R § 2804.14 and 43 C.F.R § 2884.12.

Background: Beginning in 1976, Congress identified the critical need for corridors to support the efficient use of the public lands through the enactment of Section 503 of FLPMA. In 2005, Congress reaffirmed this need in Section 368 of the EAct.

Right-of-way corridors on public lands provide for more efficient siting and permitting of major rights-of-way. The Presidential Memorandum, dated June 7, 2013, entitled, "Transforming our Nation's Electric Grid Through Improved Siting, Permitting and Review" states, "An important avenue to improve these processes is the designation of energy right-of-way corridors (energy corridors) on Federal land." It also states, "Designated energy corridors provide an opportunity to co-locate projects and share environmental and cultural resource impact data to reduce overall impacts on environmental and cultural resources and reduce the need for land use plan amendments in support of the authorization of transmission rights-of-way."

Section 503 of the FLPMA states, "In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act."

Section 368 of the EAct directs the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior (in this section referred to collectively as "the Secretaries"), in consultation with the Federal Energy Regulatory Commission, States, Tribal or local units of governments as appropriate, affected utility industries, and other interested persons to "designate, under their respective authorities, corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land in the eleven contiguous Western States (as defined in section 103(o) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1702(o))." The EAct requires that the Secretaries "perform any environmental reviews that may be required to complete the designation of such corridors; and incorporate the designated corridors into the relevant agency land use and resource management plans or equivalent plans." The EAct also requires the Secretaries, in consultation with the Federal Energy Regulatory Commission,

affected utilities, and other interested parties to “expedite applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities within such corridors, taking into account prior analyses and environmental reviews undertaken during the designation of such corridors.”

BLM regulations at 43 C.F.R. § 2801.2, state, “It is BLM’s objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that: (a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity; (b) Prevents unnecessary or undue degradation to public lands; (c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and (4) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.”

To fulfill its responsibilities for environmental review and designation pursuant to Section 368 of EAct, the BLM analyzed corridors in a 2008 FPEIS, Designation of Energy Corridors on Federal Land in the 11 Western States (DOE/EIS-0386). The DOE and the BLM were lead agencies in preparation of the draft Programmatic Environmental Impact Statement and FPEIS; the FS, Department of Defense, and U. S. Fish and Wildlife Service participated as cooperating agencies. In January 2009, the BLM issued a ROD designating 119 corridors spanning approximately 5,000 miles. The ROD is available at <http://corridoreis.anl.gov/> (<http://corridoreis.anl.gov/>). The BLM ROD amended 92 BLM land use plans and designated approximately 5,000 miles of corridors. The FS issued a ROD on January 14, 2009, which amended 38 land use plans and designated approximately 990 miles of corridors on National Forest System lands. The RODs included mandatory IOPs to avoid or minimize harm and ensure consistency for projects crossing lands administered by BLM and FS.

Conservation groups challenged the FS and BLM corridor designation decisions. The litigation was ultimately resolved through the July 2012 court-approved Settlement Agreement for *Wilderness Society v. United States Department of Interior*, No. 3:09-cv-03048-JW (D.N.D. Cal.). Exhibit A of the Settlement identifies 36 of the 119 corridors designated on BLM-administered lands with segments that the Plaintiffs identified as having a variety of environmental, cultural and other concerns. The remaining 83 corridors had no identified conflicts for siting oil, gas, and hydrogen pipelines and electricity transmission and distribution projects. The Settlement is available on the BLM external webpage at <http://www.blm.gov/wo/st/en/prog/energy/transmission.html> ([/wo/st/en/prog/energy/transmission.html](http://www.blm.gov/wo/st/en/prog/energy/transmission.html)).

The Settlement establishes a framework for future review and updates of EAct Section 368 corridors and IOPs, and required, among other things, the BLM to issue internal agency guidance on the development and use of designated Section 368 corridors. Documents related to the EAct Section 368 corridors, including *The West Wide Energy Corridors Final Programmatic EIS*, the RODs, and related environmental documentation, studies and maps are publically available at <http://corridoreis.anl.gov/> (<http://corridoreis.anl.gov/>). Additional information regarding electric transmission lines and corridors are located on BLM’s external webpage at <http://www.blm.gov/wo/st/en/prog/energy/transmission.html> ([/wo/st/en/prog/energy/transmission.html](http://www.blm.gov/wo/st/en/prog/energy/transmission.html)).

Manual/Handbook Sections Affected: The guidance provided herein are in addition to the guidance provided in BLM Manual Sections 1601 (Land Use Planning) and 2801.1 - .10 (General Rights-of-Way), BLM Land Use Planning Handbook (H-1601-1), Appendix C, and BLM NEPA Handbook (H-1790-1).

Coordination: The BLM state and field offices, the Division of Decision Support, Planning and NEPA (WO-210), National Renewable Energy Coordination Office (WO-301), Renewable Resources and Planning Directorate (WO-200) and the National Landscape Conservation System Division (WO-410) reviewed and provided input for this policy.

Contact: If you have questions or need additional information, please contact me at 202-208-4201, or your staff may contact Robyn Shoop, Acting Division Chief, Lands, Realty and Cadastral Survey (WO-350) at 202-912-7350, Heather Snow, Acting Branch Chief, Rights-of-Way at 202-912-7503, or Stephen Fusilier, Transmission and Energy Corridor Program Lead at 202-912-7426.

Signed by:

Authenticated by:

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Minerals and Realty Management

[1] Sec. 368(c) of the EAct, Pub. L. 109-58, 119 Stat. 727-728, Aug. 8, 2005.

[2] The term “corridors of concern” is a construct from the Settlement and only refers to those corridor segments that the Plaintiffs identified in the Settlement as having specific resource conflicts.

[3] The corridor siting principles articulated in Section II.A.1.c of the Settlement, which are intended to guide future recommendations for revisions, deletions, and additions to EAct Section 368 corridors, are:

- “Corridors are thoughtfully sited to provide maximum utility and minimum impact to the environment;
- Corridors promote efficient use of the landscape for necessary development;
- Appropriate and acceptable uses are defined for specific corridors; and
- Corridors provide connectivity to renewable energy generation to the maximum extent possible while also considering other sources of generation, in order to balance the renewable sources and to ensure the safety and reliability of electricity transmission.”

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