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Route To:

Subject: Advice in Responding to and Evaluating Proposals and Applications for Energy and Energy Related Facilities

To: Regional Foresters

Important goals of the May 2001, National Energy Policy (NEP) are to increase domestic energy supplies, modernize and improve our nation's energy infrastructure, and improve the reliability of the delivery of energy from its sources to points of use. The use and occupancy of Federal lands, including National Forest System (NFS) lands, is an important element in facilitating the exploration, development, and transmission of affordable and reliable energy to meet these NEP goals. This should be an important consideration when responding to proposals for the siting of energy and energy related facilities on NFS lands.

Evaluating Energy and Energy Related Proposals

Our regulations at 36 CFR 251.54(e) direct that all special use proposals must meet two levels of screening criteria before they can be accepted and processed as an application. One of those criterion requires that the proposed use be "consistent with laws, regulations, orders, and policies establishing or governing NFS lands, with other applicable Federal law, and with applicable State and local health and sanitation laws".

One of our special uses policy statements, at FSM 2703, directs that an authorized officer may deny a proposal if it "can reasonably be accommodated on non-NFS lands..." and not to authorize a special use of NFS lands just because it affords the applicant a lower cost and less restrictive location when compared to non-NFS lands.

Special use administrators and line officers must be aware that this policy does not authorize the rejection of a proposal just because a facility can be feasibly built without the need to use or occupy NFS lands. Because the NEP envisions that the use and occupancy of Federal lands can help to meet the nation's energy goals and objectives, authorized officers should exercise prudence when rejecting proposals for energy and energy related projects on the sole basis that such a project can be accommodated on non-NFS lands.

The differences in the environmental, social, and economic effects between constructing an energy project or facility on non-NFS lands as opposed to where it is being proposed on NFS lands are important considerations. In some cases, siting a project on NFS land may minimize or mitigate many of these effects due to its location, aspect, topography, etc. An example might be the proposed siting of an electric transmission line on NFS land, where it would have a less visually obtrusive impact on the landscape, and provide for greater public safety, as opposed to an alternative, yet feasible, siting of that same facility on nearby non-NFS land, where doing so might result in numerous user conflicts and proximity to hazards.



When there is inadequate or inconclusive information or data to support a pre-application finding that the proposed energy or energy related facility can be reasonably accommodated on non-NFS land, further evaluation is appropriate. If the proposal meets all of the other pre-application screening criteria, then it should be accepted as an application, and processed accordingly. The public scoping and environmental analysis of alternatives should subsequently provide the information needed to identify, and fully disclose to the public and the applicant, whether the proposal can be reasonably accommodated on non-NFS lands. The documentation of that analysis is the basis for the authorized officer to make a decision whether to deny or approve the proposed use and occupancy of NFS lands.

Deferring to the Federal Energy Regulatory Commission's (FERC's) Procedures for Interstate Natural Gas Pipeline Proposals

In 2002, the USDA and numerous other Federal agencies and departments signed an inter-Agency agreement for the processing of proposals for interstate natural gas pipeline projects. That agreement directs that the FERC will be the lead agency when responding to proposals for such projects. When a proposal for an interstate natural gas pipeline project includes a proposed routing over NFS lands, the Forest Service will defer to the FERC's procedures in responding to such proposals, rather than applying our pre-application screening criteria at 36 CFR 251.54(e).

An interim directive providing additional information concerning the Forest Service's roles and responsibilities pursuant to this interagency agreement will be issued in the near future.

Deferring to the Designated Lead Federal Agency for Other Inter-Agency Special Use Proposals

Many other energy and energy related proposals will involve the proposed use and occupancy of Federal lands administered by more than one Federal agency. For oil or gas pipeline projects (other than interstate natural gas pipeline projects), the lead agency will commonly be the Bureau of Land Management (BLM). For inter-Agency electric transmission, solar, or wind energy projects, the lead agency could be the Forest Service, the BLM, the Department of Energy (for cross-border/international projects), or some other Federal agency. When another Federal agency is designated as the lead for an energy or energy related project, the Forest Service should follow the lead agency's procedures in responding to such proposals.

If you or your staff have any questions or concerns, please contact Randy Karstaedt, Special Uses Program Leader on my staff, at (202) 205-1256.

/s/ Jack L. Craven
JACK L. CRAVEN
Director of Lands