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## **Permitting issues affecting wind energy projects vary from state to state and locality to locality**

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Last month I examined the issue central to the success of any wind energy project: its land rights. This month's focus is on wind energy project permitting. A wind energy project may implicate three levels of governmental permitting oversight: Federal, State, and Local. The extent to which each level of government extends its influence over a wind energy project depends upon the facts and circumstances surrounding the wind energy project. There can be enormous variation between the permitting processes of states and even locations within states. Factors such as the need for transmission lines, access roads and facility size may determine the number of agencies and the level of government involvement for a particular wind energy project.

For example, proposed wind energy projects located on federally managed land are subject to federal oversight and must secure land rights and undergo environmental review under the National Environmental Policy Act ("NEPA") and related statutes. Although NEPA review tends to be more prevalent in western states due to their large swathes of federal land, it does occasionally occur in the Northeast, as witnessed in the proposed Cape Wind project off the coast of Massachusetts.

For the most part, wind energy projects located in the Northeast are subject to either state or local (county, township, city or town) oversight. Although the permitting process varies from state to state and locality to locality, there are two key substantive issues that wind energy project developers will almost always have to confront: (1) Wildlife Impacts and (2) Visual Impacts. Regarding the first, a particular emphasis is placed on avian impacts. The emphasis on avian mortality stems in part from the large number of birds killed at one of the first wind energy project developments at Altamont Pass in California (the "Altamont Project"). The Altamont Project was developed at a time when avian migration patterns were not studied and wind turbine technology consisted of fast-moving blades and a lattice tower that provided perching opportunities. Wind turbine technology may have evolved since then, but the lessons learned from the Altamont Project remain.

To expedite the permitting process for wind energy projects, developers should provide governmental permitting entities with data reports documenting the avian impacts of the proposed wind energy project. Developers should heed that in some instances, governmental agencies may require a full year or more of avian impact data when determining whether to issue a permit. In addition to avian impacts, wind energy projects can affect other plants and wildlife. Developers should determine if any species present in the project area are listed as federal or state threatened or endangered. Such a determination may require conducting a survey of the proposed project site. The visual impacts of wind energy projects are increasingly becoming an issue for developers when seeking permitting approvals. This is especially true in the Northeast due to its population density. Onshore wind turbines can be over 260 ft. tall with blades extending the total to over 415 ft. To achieve the most consistent and highest average wind velocity, wind turbines are often constructed

in open areas and along ridge lines, with little available in the way of visual buffers.

Studies by the U.S. Forest Service have revealed that the visual impacts of wind turbines are at their greatest within three miles. However, under certain atmospheric conditions, wind turbines may be seen from many miles away. Mitigation for daytime visual impacts may include painting the wind turbines a neutral color so that they blend into the surrounding landscape. However, because the options for full mitigation of the visual impacts of wind turbines are limited, developers must begin to address any opposition to a wind energy project based on its visual impacts early in the project development phase. By engaging potential opposition, developers are afforded the opportunity to educate their opponents as to the exact nature and extent of any visual impacts, thus potentially dispelling any future opposition and possibly avoiding unforeseen and unnecessary delays or costs in project development.

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