

Legal Issues in Wind Development

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Overview

- Models for participating in wind projects
- Lease/option agreements
- Raising private equity seed capital
- Keys to creating a “financiable” project

Wind Development Models

Project Item	Traditional Corporate	Community Wind Models	
		Royalty (Sale Model)	Ownership (Flip Model)
Return on Investment	Lease payment	Reimbursement of development costs, lease payments plus royalty	Reimbursement of development costs, lease payments, service fees and ownership after 12 years
Risk of Development/ Construction	Owner	Developer and owner	Developer/investor
Risk on Maintenance	Owner	Owner	Developer/financier (0-12 years) local investor after 12 years
Overall Risk Assessment	Very Low	Medium	Medium risk first 12 years – high back 8 years

Land Lease and Wind Easement Agreements

Land Lease and Easement Agreement

Terms of particular concern to a property owner:

- Compensation
- Length of agreement
- Rights reserved to owner (i.e., farming, hunting, etc.)
- Crop loss / compaction payments
- Mechanics liens
- Topsoil replacement
- Insurance and indemnification
- Security for removal of wind turbines

Land Lease and Easement Agreement

Terms of particular concern to project developer:

- Compensation
- Right and flexibility to operate the wind farm
- Right to assign developer's rights
- Right to terminate at developer's option
- Confidentiality clause
- Financing / SNDAs

Land Lease and Easement Agreement

What is Market-Rate Compensation?

- Confidentiality clauses limit the market-rate payment information available
- Windustry Wind Energy Easements and Leases: Compensation Packages (September 2005), available at:
<http://www.windustry.com/sites/windustry.org/files/LandECompPackages.pdf>
- Speak with industry professionals (attorneys, consultants, etc.) about current trends

Legal Issues with Raising Private Equity Seed Capital

Entity Formation

- Articles filed with Secretary of State
- Business in good standing
- Corporate records up to date
 - Accurate operating or member control agreement
 - Minutes recorded for actions taken by company
- Financial information complete

Prepare a Solid Plan

- Basic company information
- Plan how the money will be used
- Identify and describe the business opportunity
- Describe all the key factors needed to succeed
- Identify and describe risks involved in this investment

Investor Eligibility

- Two categories of investors
 - Accredited
 - Non-accredited
- Different disclosure requirements
- Limits on number of non-accredited investors

Types of Disclosure Needed

- Financial statements
- Company contact information
- Investor eligibility requirements
- Disclosures related to lack of registration and limited transferability
- Business plan
- Company management
- Use of proceeds
- Risks related to the business
- Risks related to the offering and owning shares

No General Advertising for Private Offerings

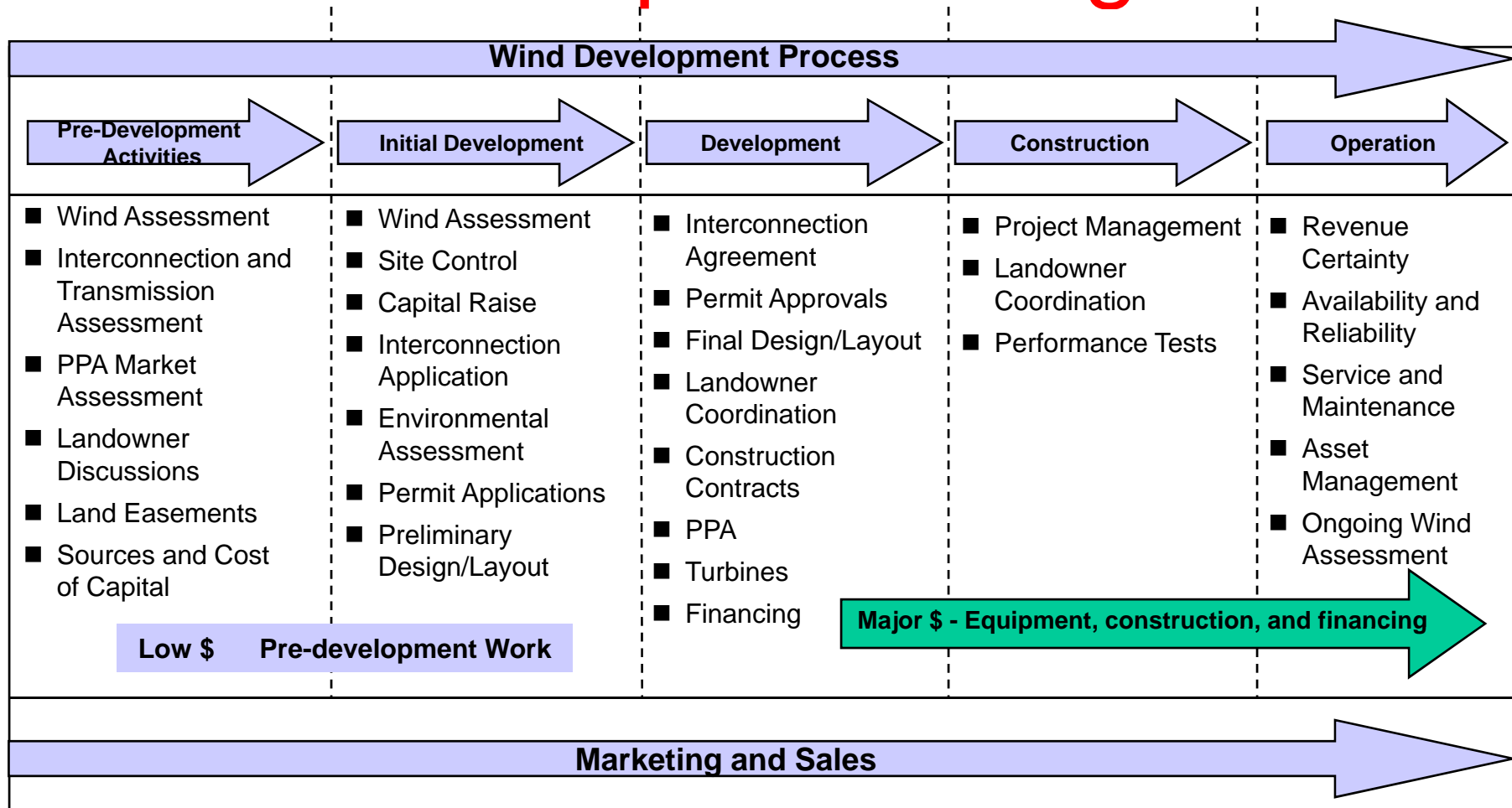
- No advertisements, articles or notices in newspapers, magazines, television, radio, or other media, even about general company business if the intent is to “condition the market”
- Cannot hold seminar where attendees were invited through general solicitation or advertising
- To comply, look for pre-existing relationship between the parties

Creating a “Financiable” Project

Development Milestones

- Analyze value of wind resource
- Secure footprint
- Negotiate a PPA
- Interconnect to the grid
- Finance and develop the project
- Obtain regulatory approvals
- Complete construction and secure operational maintenance

Risk Management Begins in Development Stage



Working with a Developer

- Evaluate the business model
- Negotiate a development agreement
- Compare development fees with services provided
- Look at prior experience
- Follow up on references

Conclusion

- Determine risk/reward preferences of local participants
- Add value by creating a financiable project

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