

Wind Easements and Leases

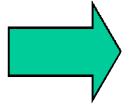
Representing Landowners in Wind
Energy Projects
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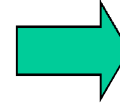
Wind Farm Elements



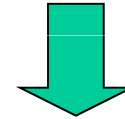
Tower and
Access Road



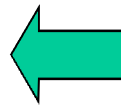
Underground
Collector Line



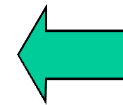
Project
Substation



US Electrical Grid



Utility Substation



Above Ground
Transmission Lines

Wind Turbine Specifications

- Commercial grade towers typically range from 1.0 – 2.5MW (or 3.0+ for offshore)
- Example: GE 1.5MW
 - Hub height – 80m
 - Rotor diameter – 82.5m
 - Total height – 121.25m (approximately 400 feet)



Source: http://www.gepower.com/prod_serv/products/wind_turbines/en/index.htm (Dec. 4, 2008)

Wind Turbine Tower Base



Wind Farm Development Milestones

- Site selection
 - Wind resource assessment
 - Transmission assessment
 - Fatal flaw analysis (environmental, geotechnical and cultural)
- **Secure site control of footprint**
- Power purchase agreement
- Obtain permits
- Interconnection agreement
 - MISO
- Financing
- Complete construction
- Operation and maintenance
- Decommissioning

Wind Farm Site Control Options

- Fee title
 - Generally O&M buildings, substation sites, etc.
- Option for Wind Lease and/or Easement Agreement
- Wind Lease and/or Easement Agreement (“Wind Lease”)

Wind Leases

Rights Granted

- Right to study property for wind energy purposes
- Right to construct and operate wind turbines and related improvements
- Wind easement (free flow of wind, Minn. Stat. § 500.30)
- Access easement
- Collector line easement (generally underground)
- Transmission line easement (generally above ground)
- Other rights
 - Turbine blade overhang easements
 - Exclusive right to use for wind energy
 - Setback waivers

Wind Leases

Landowner Review Checklist

- Definition of the premises
- Rights reserved to Landowner
- Turbine operation issues
- Landowner operation issues
- Market-rate compensation
- Crop loss / compaction payments
- Landowner cooperation
- Mechanics liens
- Insurance and indemnification
- Security for removal of wind turbines
- Confidentiality clause
- Advise Landowner regarding risks of “bankable” terms
- State specific considerations

Wind Leases

Definition of Premises

- Wind easement must cover entire property
- Location of improvements generally TBD
- Consider carving out certain areas for no improvements
- Consider confinement of certain rights post-construction

Wind Leases

Rights Reserved to Owner

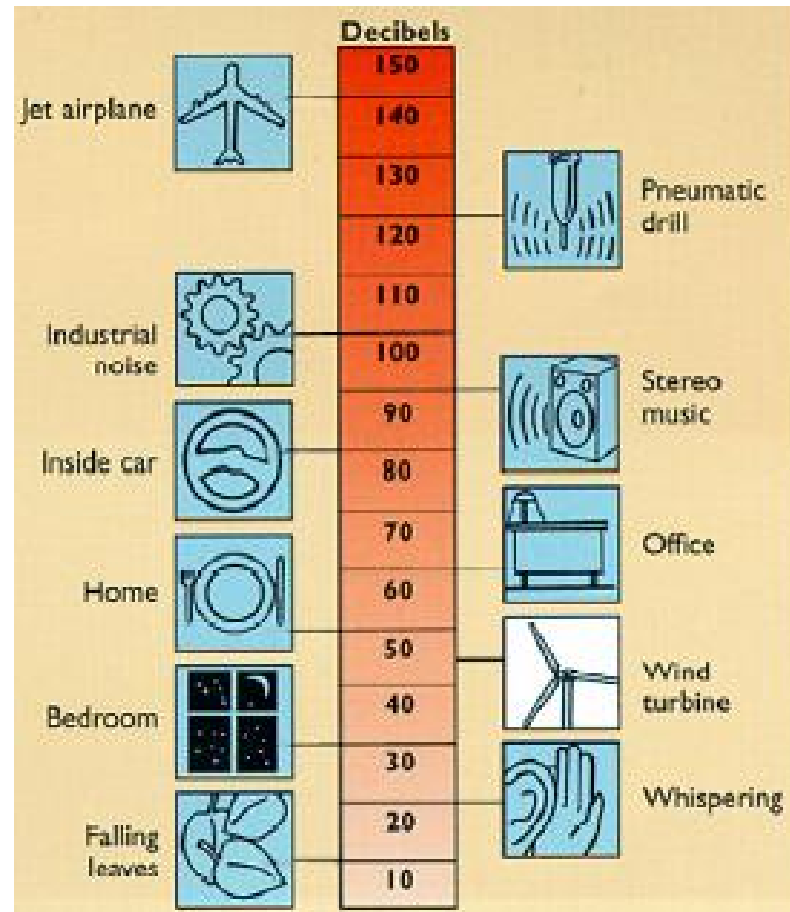
- Confirm that all rights not specifically granted to Developer are reserved to Landowner (farming, hunting, etc.)
- Construction of improvements (silos, barns, etc.)
- Consider reserving right for Landowner to construct small turbine for personal use

Wind Leases

Turbine Operation Issues

- What are Landowner's primary concerns?
- Consider:
 - Noise (setback from homestead, remediation if issues)
 - Television reception (remediation if issues)

Wind Turbine Noise



Source: http://www.awea.org/pubs/factsheets/Sound_Factsheet.pdf (assumes 350 meter distance)

Wind Leases

Landowner Operation Issues

- Topsoil replacement
- Cattle guards / gates
- Center-point irrigation systems
- Drain tile repair



Wind Leases

Market Rate Compensation

- Varies based on value of wind resource and value of land for other uses
- May include a number of components:
 - Cash (based on acreage or installed megawatt)
 - Royalty payments (based on installed megawatt)
 - Equity
- 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 about current trends
 - Word on the street
- Confirm that per megawatt payments are calculated on project-wide basis (to diversify risk of non-operational turbines)

Wind Leases

Crop Loss / Compaction

- Crop loss: currently growing crops
- Compaction: damage to soil impacts future growing seasons
- Consider:
 - Mechanism to calculate crop loss
 - Time period for assessment of damage / payment
 - Settlement of disputes
- CRP payments

Wind Leases

Landowner Cooperation

- Landowner cooperation:
 - Cure title defects / obtain SNDAs or third party consents
 - Join permit applications, if necessary
- Confirm all cooperation at no cost to Landowner

Wind Leases Mechanics Liens

- Consider payment time period / indemnification
- Inherent risk

Wind Leases

Insurance and Indemnification

- Insurance
 - Adequate coverage
 - Landowner named as additional insured
- Indemnification
 - Operations of wind project
 - Against claims of third parties
- Waiver of subrogation

Wind Leases

Security for Removal of Turbines

- Decommissioning
 - Time period
 - Underground improvements (3-4 feet)
- Security for removal
 - Bond / letter of credit
 - Beginning of term versus at certain year
 - Depends on Developer
 - Salvage value

Wind Leases Confidentiality Clause

- Include carve-outs:
 - Landowner's lenders, attorneys, financial advisors, etc.
 - Potential purchasers
 - Pursuant to subpoena, etc.

Wind Leases

“Bankable” Terms

- Landowner should be advised about the risks of these provisions, although the provisions are generally not negotiable:
 - Developer termination provision
 - Length of agreement
 - Extensive lender protections: extended cure periods, right to cure, etc.
 - Broad assignment provisions (consider notice)

Wind Leases

Minn. Stat. § 500.30

- Minn. Stat. § 500.30 governs wind easements, lease agreements and options
- Required contents:
 - Description of the vertical and horizontal angles, expressed in degrees
 - Distances from the site of the wind power system in which an obstruction to the winds is prohibited or limited
 - Terms or conditions under which the easement is granted or may be terminated
 - Description of the property subject to the easement and a description of the property benefiting from the easement

Wind Leases

Minn. Stat. § 500.30

- Subd. 2 imposes a seven (7) year development period limit:
 - A wind easement, easement to install wind turbines on real property, option, or lease of wind rights shall [] terminate after seven years from the date the easement is created or lease is entered into, if a wind energy project on the property to which the easement or lease applies does not begin commercial operation within the seven-year period.
- The statute was amended during the 2008 legislative season to remove the termination provision, but the amendment will not be effective until June 1, 2010.
- Ch. 296, Article 1, § 31 directs the Commissioner of Commerce, through the Minnesota Office of Energy Security, to convene a work group to mediate differences concerning the termination issue.
 - The work group shall determine whether there is a factual basis for concerns that wind development might be hindered absent a statutory termination requirement, and to report its findings to the legislature along with any legislative recommendations regarding the issue.

Wind Farm Site Control Title Review

- Advise Landowner to anticipate title review process
 - Frequently conducted post-execution of Wind Lease
- Common issues / clean-up items:
 - Contracts for deed / life tenants (all parties must sign)
 - Trust documents (affidavits / certificates required)
 - Farm tenants (SNDA required)
 - Mortgages / other liens (SNDA required)
 - Existing utility easements (consents / crossing agreements required)
 - Mineral rights (cooperation agreements required)
 - Other title defects

Questions?