

Wind Energy

(generally, and from the perspective of the lawyer
for the landowner)

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Wind energy drivers

- Federal incentives (e.g. Production Tax Credit and accelerated depreciation)
- State mandates (i.e. renewable portfolio standards)
- Increasing fossil-fuel power costs
- Improved equipment and technology
- Increasing utility comfort and familiarity with intermittent resources
- Climate change concerns (and related regulatory issues)
- Foreign developer entry in the US wind business
- Threat of a carbon tax or cap and trade system

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Wind energy potential

- Wind energy accounts for less than 1% of US electricity production⁽¹⁾
- Potential for wind energy to supply 20% of US electricity⁽²⁾
 - (compare 20% of Danish electricity supplied by wind; 9% in Spain; 7% in Germany⁽³⁾)
- By third quarter 2007, 13,884 installed MW in the US, with 5720 MW under construction⁽⁴⁾
- To satisfy 20% of US electricity production (based on current figures and without considering increased electricity consumption), over 250,000 MW of wind must be built
 - (Note: Average installed cost of \$1.8 million per MW)

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Effects of wind energy potential

- Approximately 25% annual, average industry growth⁽⁵⁾
- Influx of foreign developers⁽⁶⁾ (in part, taking advantage of a weak dollar, but also attracted to rich market)
- Numerous new, domestic developers
- Oil and gas companies, as well
- Competition
- ... and, an **arguable land grab**
 - Developers competing for land, especially the best land (large tracts, with a strong wind resource, and close to transmission)

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Wall Street Journal

(Front page March 12, 2007)(emphasis added)

- "Wind developers in the U.S. have typically offered landowners one-time signing payments of about \$3 an acre and annual royalties totaling **3% of revenue**. Within months in Briscoe, energy companies were offering signing payments of between \$50 and \$80 an acre and royalty payments of **about 6% annually**, according to Mr. Arnold and several other local landowners. If the Briscoe project is built, a local rancher could expect to collect some \$80,000 a year for each "section" of land, a parcel equal to 640 acres."

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Key wind project requirements

- Purchaser for the power
- Means to transmit the power to the purchaser
- Equipment to produce the power
- ... and most critically, **a location for producing the power**
 - Land of sufficient size
 - Proximate to transmission
 - With a good wind resource

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Wind energy land issues

- Developer evaluation and getting the right deal
- Preserving current uses
- Preserving rights to mineral development
- Limiting developer uses to direct production of electricity
- Preserving other "sustainability" opportunities
 - Small wind development
 - Solar (PV and CSP) development
 - Community renewable energy development opportunities
 - Hydrogen development

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Endnotes

- (1) This presentation is geared to situations in which developers approach a landowner. Different strategies may apply or be advisable in cases where landowners want to attract developers, and especially where landowners want to develop their own projects. No part of this presentation may be considered or substituted for professional advice, such as accounting, legal, and tax advice. Before considering any project opportunity, landowners should engage professional advisors.
- (2) Brad Haight practices renewable energy law. Primarily, he represents developers and landowners (both individuals and groups) in wind and solar projects in California, Colorado, Nebraska, New Mexico, Texas, and Wyoming. He also represents designers and manufacturers of renewable energy equipment.
- (3) http://www.awea.org/pubs/factsheets/WindPowerToday_2007.pdf
- (4) *id.*
- (5) http://en.wikipedia.org/wiki/Wind_power
- (6) <http://www.awea.org/projects/>
- (7) http://www1.eere.energy.gov/windandhydro/wind_research.html
- (8) See e.g. <http://www.nytimes.com/2007/11/07/business/businessspecial/07below.html>

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