

How to Secure a Wind Site

MSBA CLE: Development of Renewable Energy Projects
on Agricultural Land
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Sue Steinwall

612.492.7171

Katie Cole

612.492.7288

Fredrikson & Byron, P.A.

Wind Farm Life Cycle

- 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

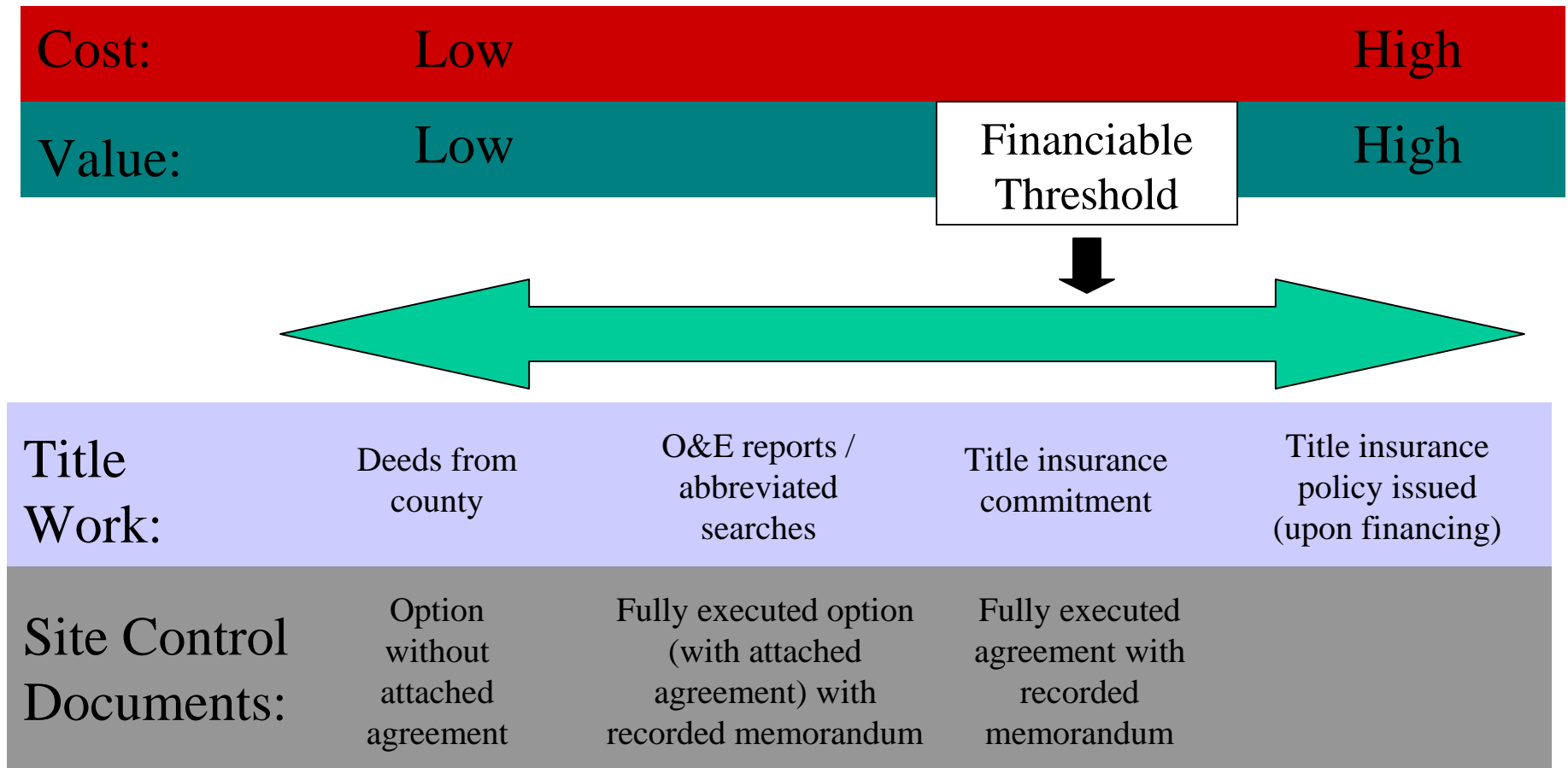
Site Control: General Considerations

- Wind farm footprint = multiple owners, multiple parcels, multiple headaches and challenges
 - 100MW project requires approximately 10,000 acres
 - All owners (or nearly all) need to agree
 - Allow enough time to complete work (months, not weeks)
- Who's doing the talking?
- Who's keeping you organized?

Site Control Steps

1. Prepare form site control documents
2. Title review
3. Prepare individual site control documents
4. Survey
5. Correct title defects

Title Work Spectrum



+ Title defects resolved

Title Review

- Determine the real owners
- Determine correct parcel legal descriptions
- Resolve title issues / encumbrances
- Get consents from others

Common Title Issues / Encumbrances

- Contracts for deed / life estates (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)
- Spousal consent (both parties must sign, or provide separate affidavit)
- Probate / outstanding fractional interests

Surveys

- Locate property boundaries
- Determine access to the property
- Locate recorded encumbrances
- Identify unrecorded encumbrances

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”)
- Ancillary Documents

Wind Lease: Developer Goals

- Obtain right and flexibility to develop and operate wind farm
- Make the lease financeable

Wind Leases

Sample Developer Checklist

- q Rights granted to Developer
- q Term of Lease
- q Definition of the Premises
- q Early termination
- q Market-rate compensation
- q Confidentiality clause
- q Landowner cooperation
- q Broad assignment rights
- q Broad protections for lenders
- q Address landowner concerns
- q State specific considerations

Wind Leases

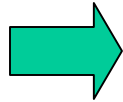
Rights Granted to Developer

- Right to study property for wind energy purposes
- Right to construct and operate wind turbines and related improvements
- Wind easement (free flow of wind)
- 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

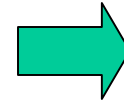
Wind Farm Elements



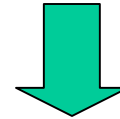
Tower (and access road)



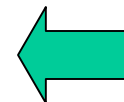
Underground Collector Line



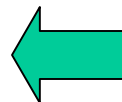
Project Substation



Above Ground Transmission Lines



Utility Substation



US Electrical Grid

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 Confidentiality Clause

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

Wind Leases

Landowner Cooperation

- Developer may require Landowner cooperation with:
 - Curing title defects / obtain SNDAs or third party consents
 - Joining permit applications, if necessary

Wind Leases

Broad Assignment Rights

- A Developer will require the right to freely assign its interest in the Wind Lease (without Owner's consent) to allow financing, development and investment flexibility.
- Developer's lenders and investors will likely require this provision.
- Release upon assignment

Wind Leases

Broad Lender Protections

- Extensive lender protections
 - Extended cure periods
 - Right to cure Developer defaults

Wind Leases

Address Landowner Concerns

- Consult with Landowner on improvement locations
- Discuss removal of improvements (salvage value, security in later years)
- Landowner reserved rights (farming, hunting, etc.)
- Topsoil replacement
- Noise / TV reception issue mitigation
- Cattle guards / gates
- Irrigation systems
- Drain tile repair



State-Specific Considerations

- State statutes and regulations may impose limitations on wind easements
- Trend toward wind energy-specific laws and regulations:
 - Contents of wind lease/easement (i.e. a description of the vertical and horizontal angles)
 - Length of development period
 - Term of wind lease/easement
 - Frequency of payments
 - Setbacks
- Current state laws should be reviewed

Minnesota Wind Lease Statute

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.

Questions?