

LEGAL ALERT

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RENEWABLE ENERGY: CATCHING THE WIND

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In 2007, almost 35 percent of all new electric generating capacity installed across the United States was wind generated. Michigan is 14th in the ranking of states with the most potential annual wind energy. In an era of increasing energy needs, wind power clearly is a significant part of supplying our energy needs. As T. Boone Pickens, the well-known Texas billionaire oilman and wind energy proponent puts it:

“Wind power is...clean, it’s renewable. It’s everything you want. And it’s a stable supply of energy. It’s unbelievable that we have not done more with wind.” (CNBC interview July 8, 2008).

How It Works

Wind-generated electricity is produced through the use of wind turbines. Wind projects generally fall into two categories: “large wind,” and “small wind.”

“Large wind” development generally consists of multiple wind turbines located on large areas of land. The turbines used are large commercial turbines, whose combined tower and blade height can range up to 400-500 feet. Typically, on “large wind” projects, wind development companies seek to obtain property leases from large land owners, such as farmers, for construction and placement of these commercial wind turbines. These companies often seek to negotiate leases with multiple land owners who have adjoining properties. In return for the use of their land, the land owners receive

payments, which may consist of lump sum payments, or royalty payments made on a per-turbine basis. The wind development companies ultimately sell the wind-generated electricity to local utility companies.

Large wind development can also be accomplished through local community ventures. In these ventures, land owners proactively come together, to form a business for the generation and sale of wind-produced energy. These ventures may take several forms: cooperatives, corporations, limited liability companies, or partnerships.

“Small wind” projects generally involve residences and businesses. The wind turbines are much smaller, and are mounted either on short wind towers, or on the roofs of homes or businesses. The turbines are intended to produce a sufficient amount of electricity to cover all of, or a substantial part of, the daily electricity requirements of a home or business. The small wind turbines are also sometimes used as a part of a wind back up-power system for a home or business.

Legal Considerations

Both “large wind” and “small wind” projects require consideration of potential legal issues. For example, in a large wind project, the wind development company and a land owner generally enter into a lease agreement, which is a legal contract addressing the relationship between the parties, and the respective

obligations of the parties during the life of the lease. A lease would include such issues as:

- Length of the lease
- Compensation to the land owner
- Liability for damage or injuries to third parties
- Zoning law compliance

“Small wind” projects also involve potential legal issues. These issues may include:

- Compliance with zoning laws and ordinances
- Insurance
- Compliance with property covenants

Renewable energy is blowing into Michigan on the wings of wind turbines. As they seek to catch the wind, participants in both large wind and small wind should ensure that they do not get caught in legal turbulence.

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