

Federal Wind Energy Applications Training Symposium

Environmental Review and Permitting
A Presentation

By:



Environmental Review and Permitting

- Prequel to Environmental Review
 - Know your resource
 - Wind capacity and duration
 - Know your site
 - Natural resources
 - Cultural significance
 - Aesthetic considerations
 - Know your infrastructure
 - Interconnection
 - Market rules
 - Know your regulatory obligations
 - Federal, state, regional, local

Environmental Review and Permitting

- Environmental Compliance at Federal Facilities:
 - Federal Facilities Compliance Act of 1992
 - Executive Order 12088
 - Individual Statutes and Topic-Specific Executive Orders

Environmental Review and Permitting

- Executive Order 13423 – Strengthening Federal Environmental, Energy, and Transportation Management (January 24, 2007)
 - Improving energy efficiency
 - Implementing renewable energy generation projects

Environmental Review and Permitting

- National Environmental Policy Act (NEPA):
 - Declaration of National Environmental Policy
 - Conceptual Blueprint for All Environmental Impact Review
 - Procedural Blueprint for Federal Agency Actions

Environmental Review and Permitting

- NEPA provides that:
 - Agencies of the federal government shall...
 - Include in all proposals for major federal actions significantly affecting the quality of the human environment, a detailed statement... on
 - Environmental impact of the proposed action
 - Adverse, unavoidable environmental impacts
 - Alternatives to the proposed action
 - Procedural, Action-Forcing Statute

Environmental Review and Permitting

- NEPA is a Process, Not a Permit
- Major NEPA components intended to:
 - Systematically incorporate environmental considerations in decision-making
 - Provide thresholds for preparation of environmental impact documents based on impacts of proposed federal action
 - Provide basis for informed decisions
 - Provide meaningful opportunities for public participation

Environmental Review and Permitting

- Most Executive Agencies Have Developed Mission-Specific NEPA Processes
- Commonalities of All NEPA Processes:
 - Categorical Exemption and Inclusion criteria
 - Ascending levels of analysis and implementing requirements, based on impacts of proposed action
 - Public participation

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- Exemptions from NEPA (No Action Required)
 - Express statutory exemption
 - Certain FEMA actions (Stafford Act)
 - Certain Forest Service actions (Interior and Related Agencies Appropriations Act)
 - Many EPA actions (Clean Water Act, Clean Air Act)
 - Conflicts or duplications
 - NEPA compliance conflicts with other federal law (timeframes)

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- Exemptions from NEPA (cont'd)
 - Conflicts or duplications
 - Alternative statutory process providing functional equivalency (CERCLA)
 - Emergency Actions
 - Categorical Exclusions (CX)
 - Agency-specific, programmatic determinations that certain categories of actions are not major and do not, individually or cumulatively, have a significant impact on the human environment:
 - Routine maintenance activities
 - Non-intrusive studies, data collection

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- Environmental Assessment (EA)
 - Brief assessment document addressing:
 - Purpose and Need for proposed action
 - Description of proposed action
 - Alternatives considered
 - No action
 - Proposed action
 - Other appropriate and reasonable alternatives

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- Environmental Assessment (EA)
(cont'd)
 - Affected environment
 - General environmental conditions
 - Baseline conditions that may be affected by proposed action
 - Environmental Consequences
 - Addressing proposed action and alternatives
 - Direct, indirect, and cumulative effects
 - Practical mitigation to minimize identified effects

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- Environmental Assessment (EA) (cont'd)
 - Conclusions regarding impacts of proposed action
 - Potentially significant impacts will require preparation of a Notice of Intent to prepare an Environmental Impact Statement
 - If no significant impacts, preparation of a Finding of No Significant Impact (FONSI)
 - List of preparers
 - References

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- Environmental Impact Statement (EIS)
 - Comprehensive document which includes:
 - Topics addressed in EA description, PLUS
 - Significant environmental impacts that may result from the proposed action and alternatives
 - EIS usually required when proposed action may significantly affect:
 - Environmental quality, public health or safety
 - Historic, cultural, archeological, scientific resources
 - Unique habitats, floodplains, coastal zones, wetlands
 - Federally listed, threatened, or endangered species
 - Or when a proposed action could:
 - Establish a precedent for future actions or decisions with significant environmental effects

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- EIS Process – Following Decision to prepare EIS:
 - Lead and cooperating agencies determination
 - Contact with federal, state, tribal, local agencies to identify EIS preparation responsibilities
 - Notice of Intent (NOI)
 - Public notice in Federal Register that an EIS will be prepared
 - Describes proposed action and possible alternatives
 - Describes agency scoping process
 - Provides agency contact information

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- EIS Process (cont'd)
 - Scoping
 - Establishes extent of analysis of significant issues related to proposed action
 - Involves all potentially affected parties; federal, state, local agencies, Indian tribes, interest groups
 - Eliminates insignificant issues
 - Identifies agency responsibilities, resources, schedules

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- EIS Process (cont'd)
 - Draft EIS
 - Notice of availability
 - Public hearings
 - Public comment period
 - Notice of Availability
 - Final EIS
 - Supplemental Final EIS

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- Record of Decision (ROD)
 - Documents the decision made and the basis for that decision. Identifies:
 - All alternatives considered
 - Significant issues and any national policy considerations
 - All practicable means to avoid or minimize environmental harm
 - Mitigation measures incorporated into decision

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- Public Participation in NEPA Process:
 - Notice of Intent provides public notice concerning decision to prepare EIS
 - Scoping process includes public meeting with appropriate notices published in Federal Register, local newspapers, case-specific announcements
 - Public review of draft EIS
 - Notice of availability
 - Hearings, publications will vary
 - Public comment opportunities will vary, but a mechanism for receipt and consideration must be included

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- Public Participation (cont'd)
- Final EIS must be noticed in the Federal Register
 - Public comment on Final EIS varies
- RODs must be made available to all commenters, but no public review required
- EAs must be made available to the public, but no express requirement for public participation
- FONSI must be made available for public review and public comments may be submitted for agency consideration

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- State Environmental Review
 - Consolidated review similar, but not identical to NEPA
 - Massachusetts Environmental Policy Act Review (MEPA) conducted by MEPA Office. Process must be completed prior to issuance of state agency authorizations, permits, approvals
 - Review through Permitting Agencies
 - New York State Environmental Quality Review (SEQR) driven by lead permitting agency; i.e. NYSDEC
 - No independent review requirement
 - NEPA process may be coordinated with state reviews, but generally will not substitute if state has independent review authority

Environmental Review and Permitting

- Priority Issues for Wind Energy Facilities
 - Avian and Bat Impacts
 - Visibility
 - Noise
 - Airspace Conflicts
 - Electrical Interference

Environmental Review and Permitting

- Additional information:
 - cwasserman@essgroup.com
 - Bonus question:
 - What is a BNANA?
 - Where is NOPE?