The University of Texas School of Law
The Oil, Gas and Energy Resources Law Section of the State Bar of Texas
2017 Renewable Energy Law

Title and Survey Essentials: State Variances/Wind and Solar Distinguished

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Introductions and Overview



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Real Estate Site Control



- Backbone of wind and solar energy projects
- Wind/Solar Project
  - Wind/Solar Energy Lease/Easement
  - Transmission Line Easement
  - Access Easement
  - Obstruction or Good Neighbor Easement
  - Substation – O&M Facility Lease, Easement or Fee
  - Memorandum of Site Control Instrument (record notice)

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Importance of "Good and Marketable" Site Control

- Energy Generation/PPA– cash flow
- Loss of site control through invalid site control instrument – loss of cash flow
- Loss of site control through title/survey defect – loss of cash flow
- Concern of Developer
- Concern of Tax Equity Party
- Concern of Finance Party



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Mitigating Risk - Survey



- Locate boundaries of project under site control instruments in relation to project improvements
- Show contiguity of project parcels
- Show access to public roads
- Show title encumbrances in relation to project improvements
- Show zoning, conditional use permit or special use permit set back lines in relation to project improvements
- Remedy for Errors – errors and omission insurance of surveyor
  - Limited Remedy – insurance coverage/lawsuit

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Mitigating Risk – Title Insurance Policy

- Valid site control instrument
  - Vesting
  - Authority
  - Correct Parties
- Free of title encumbrances except as listed in Schedule B
  - Insurance against search errors and undisclosed unrecorded instruments
- Free of survey defects except as listed in Schedule B
  - Includes coverage over surveyor errors

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Also available as part of the eCourse
Answer Bar: Navigating a Renewable Energy Project

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