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The New ALTA Energy Project Title Insurance Endorsements

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The New ALTA Energy Project Title Insurance Endorsements

The seven new endorsements which are the subject of this article were adopted by the American Land Title Association on April 2, 2012. Since then, the endorsements have been filed in thirty-six states and are presently available for use there, with filings pending in a number of other states. I understand that these endorsements will be proposed for promulgation with the Texas Department of Insurance in the near future; no firm timeline is available for that process, however.

The endorsements were prepared by the Forms Committee of ALTA in response to many requests from wind and solar industry members and their counsel. The forms are intended to provide coverage for several special concerns that arise from these types of real estate projects which had been dealt with by various “boot strap” methods with varying degrees of success and customer satisfaction. ALTA’s comments regarding the endorsements provides some industry insight into their adoption as well: “Energy projects, including those designed to harvest wind and solar for energy, have accounted for a significant percentage of volume and gross revenue for the title insurance industry for a number of years and, particularly, in recent years as our country seeks to reduce its reliance on foreign energy sources.”

The unique issues that arise from a title perspective in wind and solar projects is, in part, driven by the large area of land typically involved in them. These projects are often comprised of many, occasionally multiple-hundreds of different property owners. The objective of course is to assemble as many of the properties needed for the project as possible; due to their nature, solar projects would usually tolerate no “holes” or gaps in the developer’s property rights obtained by lease or easement grant. Wind farm projects do have occasional gaps which can be accommodated by the developer, sometimes creating a checkerboard effect of the developer’s ownership rights. In any case, the developer and its counsel have always been concerned that the project be sustainable as a whole. From a title perspective, this concern is dealt with in the new endorsements.

Another concern that regularly arises relates to the nature of the improvements that are to be added to the land. Depending on state law, solar panels and wind turbines may be considered part of the real property, fixtures or personal property even after they are fixed to the land. Coverage for these components is now clearly given in the new endorsements, finally putting to rest the question of their being included in the property insured in the title insurance policy. Obviously, the great bulk of construction expense for these projects is the cost of the solar panels and wind turbines.

The Endorsements

Comment and Analysis: The 36-06 and 36.1-06 endorsements were created for use with the owner’s policy and loan policy respectively in instances in which the insured project is comprised of both easement and leasehold estates.

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. “Easement” means each easement described in Schedule A.
 - c. “Easement Interest” means the right of use granted in the Easement for the Easement Term.
 - d. “Easement Term” means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
 - e. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.



Also available as part of the eCourse

[Nuts and Bolts of Renewable Energy: Tax Considerations and Incentives; Surface Use Issues; Title Insurance Endorsements; and Wind Lease Issues and Severance of Wind Rights](#)

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