

Permitting and Siting Regulation Overview

Presented by Brooke M. Marcus



1

Permitting and Siting Practical Considerations

- Processes can take time (usually longer than expected)
- Processes can involve considerable cost
- Permits and processes vary widely across jurisdictions
- Processes can raise the public profile of a project
- Permits can be expensive to implement and maintain
- Permits can create additional litigation risk
- Lack of permits can create an enforcement risk
- The legal framework is constantly changing and can create uncertainty and surprises.

2

Permitting and Siting Practical Considerations Cont.

- Investors, potential purchasers, and offtakers will all want to see adequate documentation of permits (or why one isn't needed)
 - It is common for them to second-guess your permitting strategy, ask for coordination and documentation beyond what is required by the laws, regulations, and policies.
- Permitting authorities may have a broad view of their jurisdiction and ask for more than what is required by the laws, regulations and policies
- Consultants are wonderful resources for support in obtaining permitting. However, it is important to familiarize yourself with the applicable legal frameworks, as consultants have strengths and weaknesses in certain geographic regions, resources, and offices.

3

Permitting jurisdictions

- Federal
- Tribal
- State
- Local
 - County
 - Municipality
 - Special districts

4

Federal Permitting Considerations

- Do you have a federal nexus?
 - Federal funding
 - Examples: Department of Energy, Rural Utilities Service, etc
 - Federal lands
 - Examples: Bureau of Land Management, U.S. Forest Service, National Refuge Lands
 - Federal permitting
 - Examples: Endangered Species Act, Clean Water Act, federal interconnection (WAPA, BPA etc.), Bald and Golden Eagle Protection Act

5

Federal Nexus Implications

- The presence of a federal nexus triggers other federal processes:
 - National Environmental Policy Act (NEPA)
 - Endangered Species Act section 7 (ESA consultations)
 - National Historic Preservation Act Section 106 (cultural resources)
- Many federal nexus include some level of public comment period, which requires time and raises the public profile of a project.
- Several federal statutes have citizen-suits allowing a third-party to file a lawsuit for alleged violations of the law, including injunctive relief.
- Federal permits are also final agency actions that can be challenged under the Administrative Procedure Act; this can also include injunctive relief.
- NEPA, ESA consultations, and Section 106 can be challenged by opponents, and if successful can invalidate permits.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Permitting and Siting Regulation Overview

Also available as part of the eCourse

[2024 Renewable Energy Law Essentials eConference](#)

First appeared as part of the conference materials for the

2024 Renewable Energy Law Essentials session

"Permitting and Siting Regulation Overview"