

LEGAL UPDATES

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New U.S. Department of the Interior Review Procedures for Activities Related to Wind and Solar Energy

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On July 15, 2025, the U.S. Department of the Interior (DOI) circulated an internal memorandum, requiring 68 different DOI actions related to wind and solar project development to be submitted to the DOI Office of the Executive Secretariat and Regulatory Affairs, and then reviewed by the DOI Deputy Secretary and DOI Secretary. The 68 listed actions range from National Environmental Policy Act (NEPA) assessments to lease issuances to endangered and threatened species permits. The memorandum also includes a catchall category for “any other similar or related decisions, actions, consultations, or undertakings.”

As a reminder, DOI manages 11 bureaus: U.S. Fish and Wildlife Service (USFWS) and occasionally the Bureau of Land Management (BLM), the Bureau of Indian Affairs, the Bureau of Indian Education, the Bureau of Ocean Energy Management, the Bureau of Reclamation, the Bureau of Safety and Environmental Enforcement, the Bureau of Trust Funds Administration, the National Park Service, the Office of Surface Mining Reclamation and Enforcement, and the U.S. Geological Survey. The only bureaus under the DOI jurisdiction with which a wind or solar project developer would typically interact are the USFWS and BLM. Certain sources are reporting that the DOI memorandum extends to federal actions taken by agencies other than DOI, and some are wondering if the memorandum extends to all wind and solar projects on private land, regardless of a DOI nexus. However, there is nothing in the DOI memorandum suggesting it extends to projects without a DOI connection.

This new DOI approval process represents a significant departure from the standard review channels previously used for most of the listed activities, which were often handled by regional staff within the DOI. However, it is unlikely that the DOI memorandum will result in any noticeable changes for most wind and solar projects for the following reasons:

If a developer sites its wind or solar project on DOI (e.g., BLM) land, the need for DOI leasing would trigger the review process in the DOI memorandum. However, the majority of wind and solar projects are sited on private land.

If a developer wishes to utilize DOI funding or grants for its wind or solar project, the need for a DOI NEPA review would trigger the review process in the DOI memorandum. However, the majority of wind and solar projects do not involve any DOI funding or grants.

If a wind or solar developer anticipates that a project will impact federally protected species and seeks incidental or eagle take permits, this would trigger the review process in the DOI memorandum. However, the majority of projects do not involve species impacts. Even for the small percentage of (typically wind) projects with likely species impacts, USFWS permits were not being issued anyway prior to this DOI memorandum, as USFWS suspended its issuance of incidental take permits and eagle take permits many months ago as a result of President Trump's January 20 executive action addressing wind projects.

Many developers of wind and solar projects voluntarily consult with USFWS on species issues. This consultation can sometimes result in e-mailed discussions about species impacts or meeting minutes. However, developer consultation with USFWS is not legally mandatory, and developers can choose to forego this consultation.

If a wind or solar developer wishes to utilize Clean Water Act Section 404 Nationwide Permit (NWP) coverage for impacts to jurisdictional waters of the U.S. and the developer determines that the impact to waters may affect a listed species of a critical habitat, the developer must submit a Preconstruction Notification to the U.S. Army Corps of Engineers and obtain a Corps verification in order for NWP coverage to be utilized. In that event, the Corps may consult with the USFWS about the potential impacts on the species, which could trigger the review process outlined in the DOI memorandum. However, in our experience, very few impacts to jurisdictional waters affect protected species, so this situation arises infrequently.

Thus, for most wind and solar projects, there will be no need to interact with any DOI sub-bureau and the DOI memorandum will have no impact. We recommend that developers discuss DOI and species issues, as well as plans for the project, with their buyers, lenders, and tax equity investors early in the sale or financing process, to ensure that the parties have sufficient time to become comfortable in light of the DOI memorandum.

This development is the latest in a series of executive and federal actions related to wind and solar projects that have occurred since President Trump took office, summarized in a prior alert. The Husch Blackwell team will continue to closely monitor these developments.

Contact us

We continue to monitor renewable energy developments extremely closely. Reach out to Megan Caldwell, Jon Micah Goeller, or another member of Husch Blackwell's Energy and Natural Resources team if you have any questions or to request updates.