



“Green” *Blue* Acres
is the place for me...



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Ohio's Offshore Permitting Experience--or "How to Create an Offshore Wind Industry without Creating a Red Tape Industry"

Status of Offshore Wind in Other States

- Michigan Governor Granholm Issues Executive Order 2009-1 creating Great Lakes Wind Council/Permitting Dry Run
- Indiana—Contact IDNR
- Wisconsin—Wind on Water (W.O.W.) Panel
- Illinois—not aware of specific proposals
- Minnesota—not aware of specific proposals

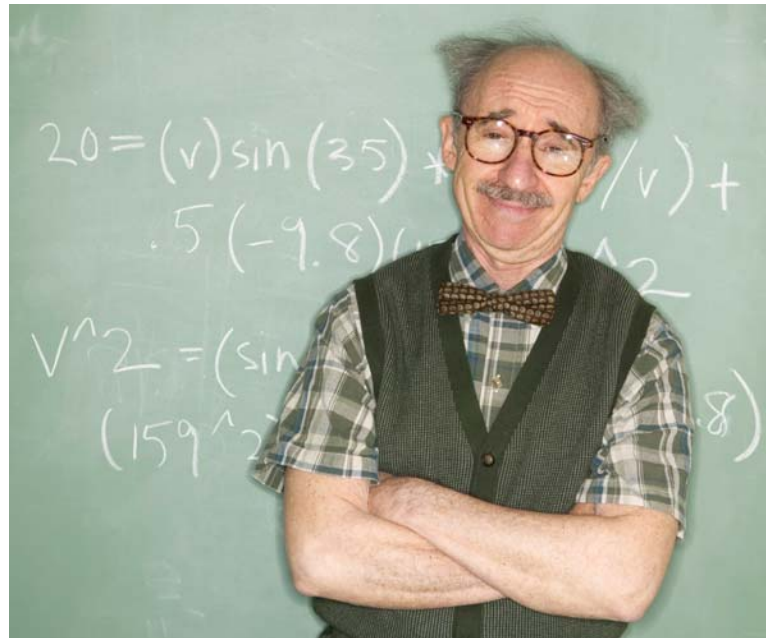
The Key to Success is...



Processing site control rights
and permits along parallel, yet
coordinated, paths.

While legally separate processes,
the fact is that negotiation of submerged land leases can also be dependent on other siting permit issues.

OK, Class...what result and why?



One needs to consider site
control and permitting issues
together!



Who owns that Great Lake?



- The State of Ohio owns the waters of Lake Erie and holds the lands submerged under Lake Erie in trust for the public. R.C. 1506.10 11.

Where do I get a submerged land lease?

Submerged Land Leases are obtained from ODNR

Ohio Revised Code Section 1506.11

and

Ohio Administrative Code Chapter

1501-6-01 to -09

ODNR has an expressed preference to lease to governmental subdivisions as opposed to private entities.



The public has public trust rights to use the waters of Lake Erie for navigation, water commerce and fishing, which are not impaired by grant of a lease.

“Littoral” Who?

Littoral Right:

Upland owners have a “property right” to make use of the waters of the lake in front of their property and the right to wharf out to navigable waters.

Part of Ohio law, but does it make sense when contemplating commercial wind power projects far offshore?

What about the shoreline?

ODNR proposed amendments to existing regulations on June 6, 2008. If promulgated, these regulations will create a limited exception for shoreline projects that fall within legal description embodied in an upland owner's deed, where a submerged land permit, as opposed to a lease, may be available.


The draft rules also place a more express requirement that the application be signed by “the current property owners” of upland property. RC 1506.11 does not specify that an applicant must be an upland owner.

Is there local involvement?

Revised Code 1506.11:

A local government entity with jurisdiction (a municipality, a port authority if one exists, or a county in unincorporated areas) must provide an ordinance or resolution certifying that the local government does not need the submerged land for breakwaters, piers, and other uses.

Will ODNR grant the lease?



The Director of ODNR, through the Coastal Management office, must follow criteria specified in the regulation (OAC 1501-6-03) in determining whether to grant the submerged land lease.

These regulations specify that the Director will coordinate with other state and federal resource agencies and the Director may (and typically does) solicit comment from other ODNR divisions, state historic preservation officers, Ohio EPA, neighboring property owners and others.

The Director may hold a public hearing regarding the application.

What will be in the lease?

A metes and bounds description of the leased area

A term of years (50 years is the default unless the director recommends a longer or shorter period)

A description of the proposed project as approved; and, rental term based on the lessee and the use, as specified in regulation

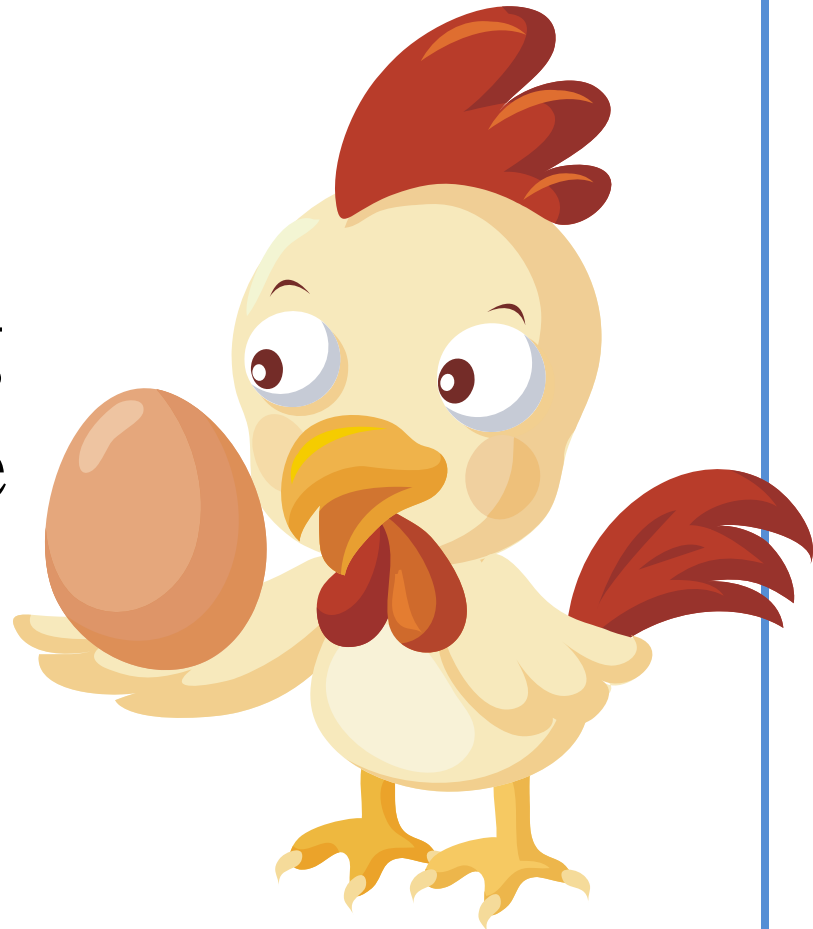
Additional terms. For example, most leases contain an option to renew for another term. Leases can be assigned, sublet or mortgaged only with the approval of the Director.

Any change in the use as approved under the lease can result in a change in the rental.

Rentals vary from nominal for governmental entities to .03 dollars per square foot plus other fees for private entities, but vary highly based upon use and user.

Which comes first...
the chicken or the egg?

ODNR requires
information touching
on permits before the
lease can be granted.



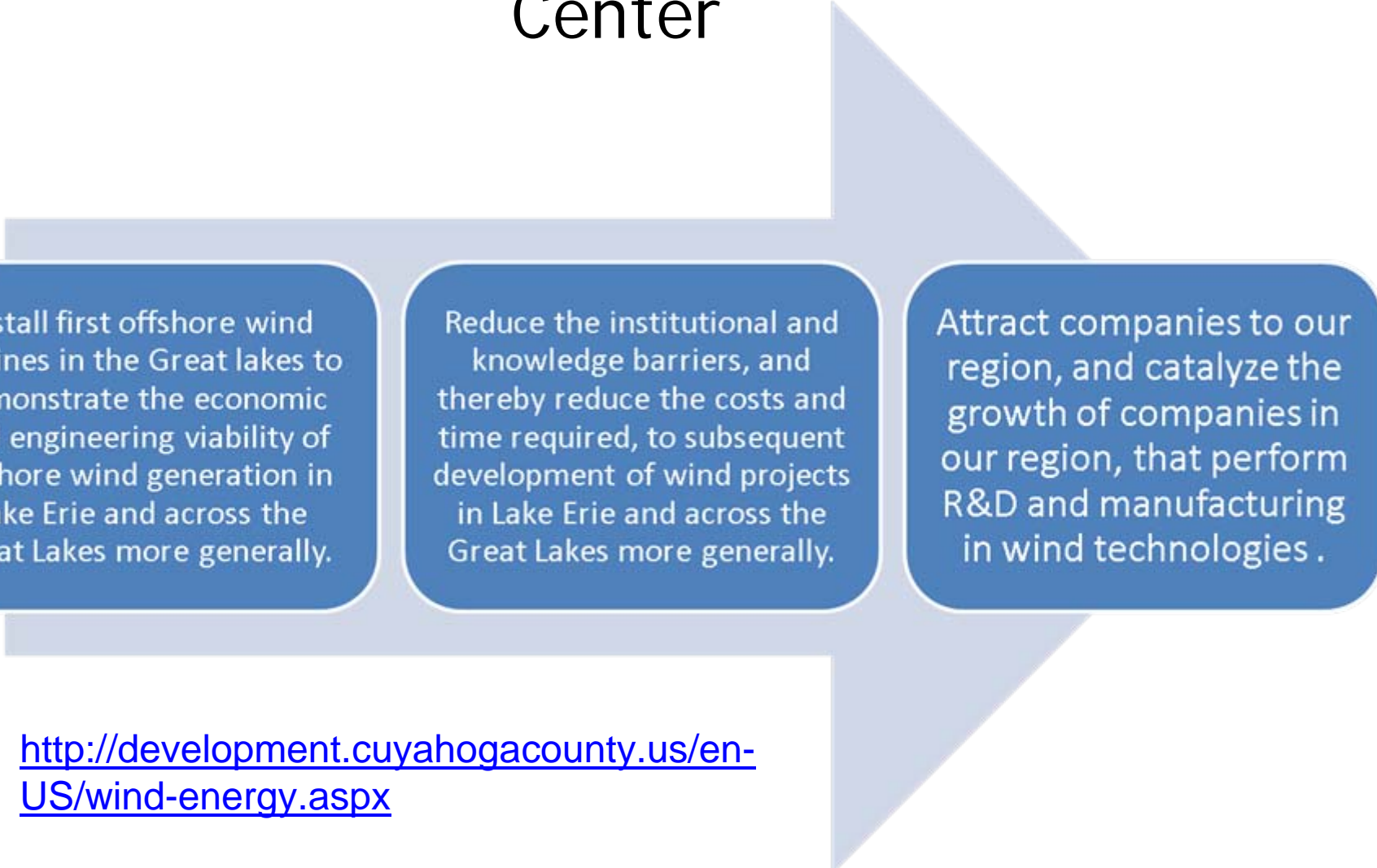
Offshore Permitting Issues



Cultural Dissonance

- European Centralized Authority Compared to Our Decentralized Federal System
- Many EU regulatory processes are already centralized
- Note cultural learning curve when working with EU developers in the US
- US has a hodge-podge of federal, state and local authorities from whom regulatory approvals are often necessary

Case Study: Permitting the Great Lakes Wind Energy Center



Install first offshore wind turbines in the Great lakes to demonstrate the economic and engineering viability of offshore wind generation in Lake Erie and across the Great Lakes more generally.

Reduce the institutional and knowledge barriers, and thereby reduce the costs and time required, to subsequent development of wind projects in Lake Erie and across the Great Lakes more generally.

Attract companies to our region, and catalyze the growth of companies in our region, that perform R&D and manufacturing in wind technologies .

<http://development.cuyahogacounty.us/en-US/wind-energy.aspx>

The Great Lakes Wind Energy Center: Herding the Cats

The US Army Corps
of Engineers

The US Coast Guard

The US Fish and
Wildlife Service

The Department of
Defense

The Federal
Aviation
Administration

The Ohio EPA

The Ohio
Department of
Natural Resources
(Five Divisions)

The Ohio Power
Siting Board

The Public Utilities
Commission of
Ohio

The Ohio
Department of
Transportation

The Ohio Historic
Preservation Office

The City of
Cleveland

Cuyahoga County

The Goal:

Virtual One Stop Shopping for Permits

- Inventing the template
- Getting them all in the same room at the same time
- Importance of inclusion, open process, transparency, and collaboration
- Agreed upon project goals
- Harmonizing regulatory interests with project interests

Why a Pilot Project ?

- Feasibility study anticipates pre-construction regulatory requirements
- Plan for post-construction studies accelerates approvals given research nature of pilot project
- Post-construction studies generate usable environmental data and reports that can also accelerate development of larger commercial projects
- Parallel processing for pilot and commercial development further accelerates while being responsive to regulatory and stakeholder concerns.
- The pilot project and commercial projects can run on parallel tracks
- Use pilot project to obtain real data for a robust environmental assessment
- Pre-construction and post-construction assessments and reports can be made available to commercial developers

What Primary Permits will I Need?

Federal Section 404
Permit



Ohio Power Siting
Board Certificate of
Authority



FAA Hazard to Air
Navigation



Federal “Section 404” permit



**US Army Corps
of Engineers®**

Environmental Assessment (“EA”) required to permit pilot project.



Commercial projects will require extensive Environmental Impact Study (“EIS”).



Post construction data from pilot project intended to help satisfy and accelerate EIS process.

FAA Hazard to Air Navigation Process



The FAA, Ohio Department of Aviation and local municipal authority need to be engaged to discuss locations of pilot and commercial projects

As necessary, FAA and affiliated agencies will need to analyze impact to air navigation and notify aviation community accordingly.



Ohio Power Siting Board Certificate of Authority

This comprehensive permit was instituted this past June by Ohio Legislature.

Rules for the application process have just been promulgated.

All environmental, technical, financial, community, social and historical data and analyses will be subject to OPSB review and approval.

Key avian and marine ecological studies get negotiated with ODNR and then feed into CA process.

The process calls for substantive and comprehensive engagement of OPSB professional staff prior to submitting an application.

The County has already opened a case number for the pilot project and has briefed OPSB staff.

Once “who, what, when, and where” elements of commercial project have been identified, OPSB can be engaged.

Conclusions

- Partner with project developers—put yourself in their shoes
- Encourage project developers to fit in your shoes
- Think outside your own subject matter jurisdiction
- Help connect the dots
- Reject tit-for-tat negotiations
- Focus on solutions
- Co-create responsible projects
- Key Words: openness, inclusiveness, collaboration, transparency