

Tribal Wind Farm Leases Hearth Act Versus BIA Approval

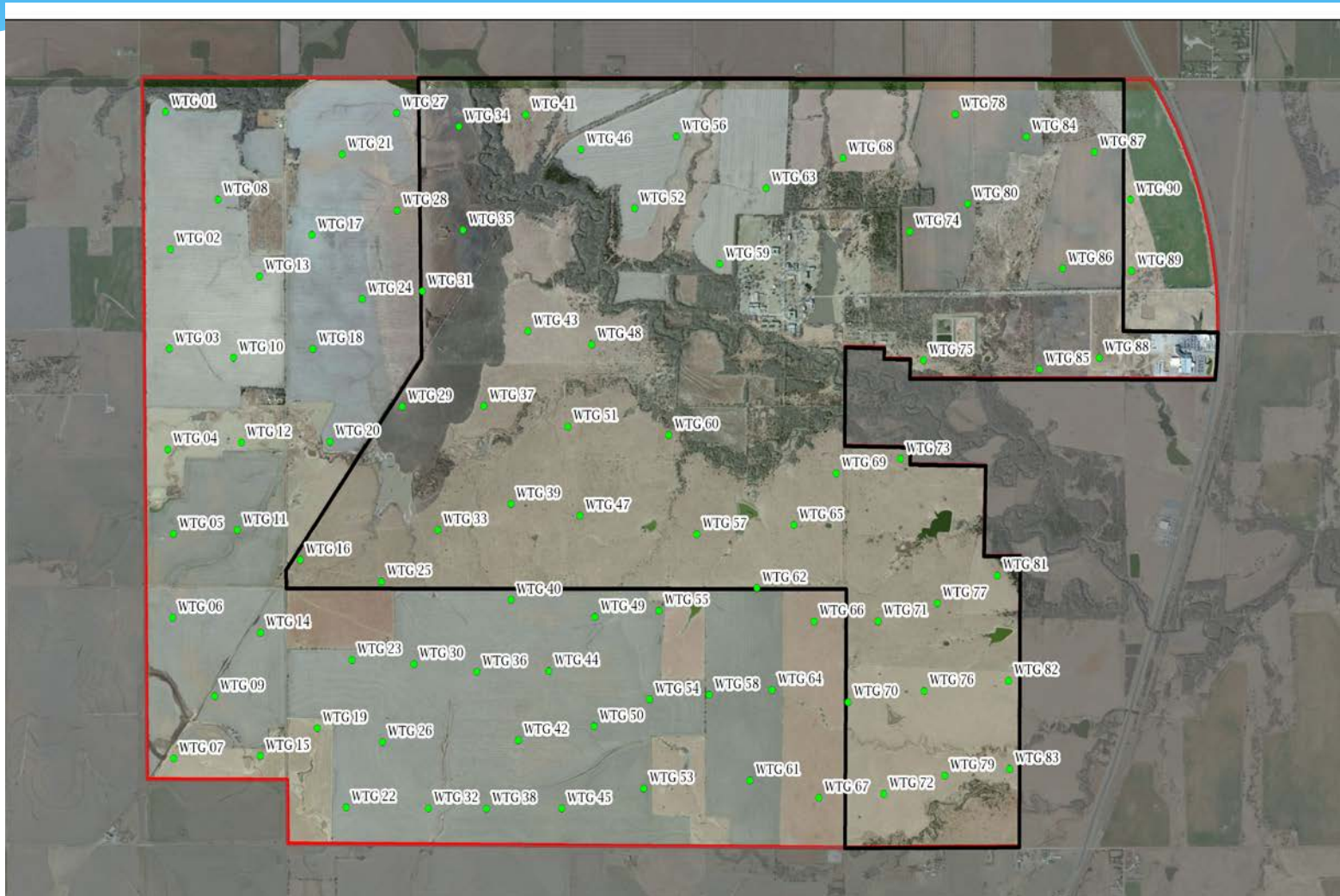
March 24, 2014

Mark Randall
Developer
PNE Wind USA

DOE TEP Peer Review Meeting



Chilocco Wind Farm



The HEARTH Act

July 30 2012

Helping Expedite and Advance Responsible
Tribal Home Ownership

Tribes can develop and implement their own
leasing regulations

Tribal regs can include a tribal NEPA process
Secretary must verify compliance before
approval

Federal permits are still required

Tribal Regulation Design

- * Tribal regulation must provide the same protections that BIA would provide “as much as possible”.
 - * Gives tribes some latitude but BIA (Asst Secretary) must approve.
 - * Tribes can approve their own NEPA.
 - * Does not affect other federal law
 - * Endangered Species Act
 - * National Historic Preservation Act
 - * Bald and Golden Eagle Protection Act
 - * All others
- * Modeled on 25 CFR 162

On the other hand...

- * BIA abdicates trust responsibility
 - * BIA will not serve to protect the Tribe in disputes

However....

BIA, upon request of the tribe, can intervene and could cancel the lease.

Kaw Nation Land Leasing Ordinance

- * HEARTH Act Allows Tribal Land Leasing After Approval
- * Kaw Ordinance submitted in November
- * Approved by Kevin Washburn in December
- * Kaw Approval of Chilocco EA and Lease in December
- * Limited Notice to Proceed Authorized
- * Construction completed of 8000' of Roads and 5 turbine excavations before December 31st.
- * Chilocco Project Now Qualified for PTC

National Wind Farm Construction Company and Local Subcontractors



Horizon Angle: -01.8°

Zoom: 1X





BIA Lease Approval

25 CFR 162

- * Revised in January 2013
- * Imposes time limits for BIA review
- * Provides recourse for inaction by BIA
- * Creates a new Subparts
 - * Wind Energy Evaluation Leases (WEEL)
 - * Wind and Solar Resource Leases (WSRL)
- * Provides for BIA deferral to negotiated terms
- * Allows lease review without NEPA docs

Time limits

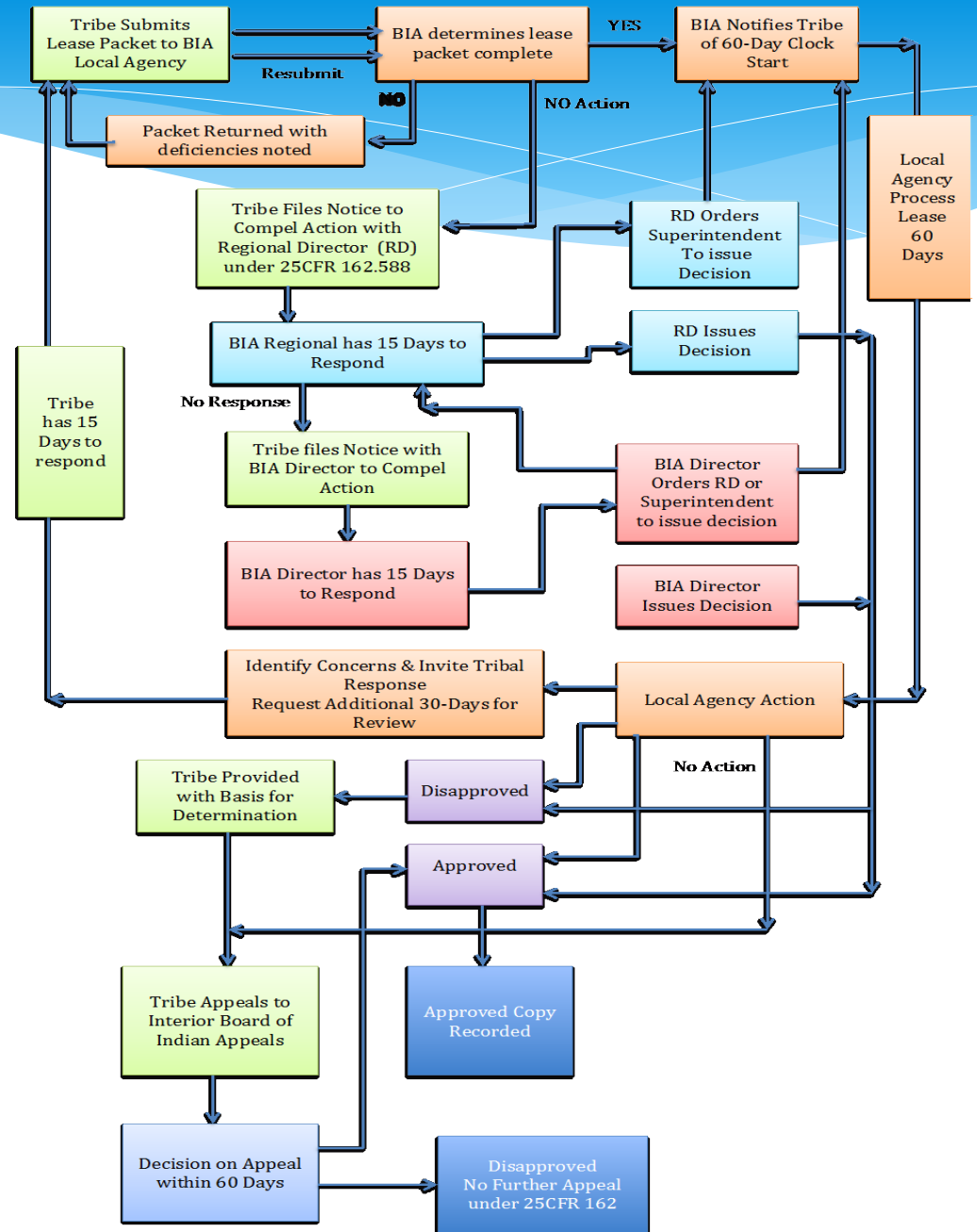
- * Residential – 30 days
- * Business/ Commercial – 60 days
- * WEEL – 20 days
- * Wind and Solar – 60 days

Starting the Clock!

Upon Receipt – acknowledge packet complete...

- * If not – deficiencies listed (162.563)
- * Tribal Authorization for the lease
- * Valuation – or waiver
- * Insurance – or waiver
- * Performance Bond – or waiver
- * Statement that land use is compliant with Tribal Law
- * Environmental Documents
- * Resource Development Plan
- * Restoration and Reclamation Plan
- * Corporate Qualifications and Experience
- * Legal Description of the Land
- * Corporate Documentation / Authority for the Lease

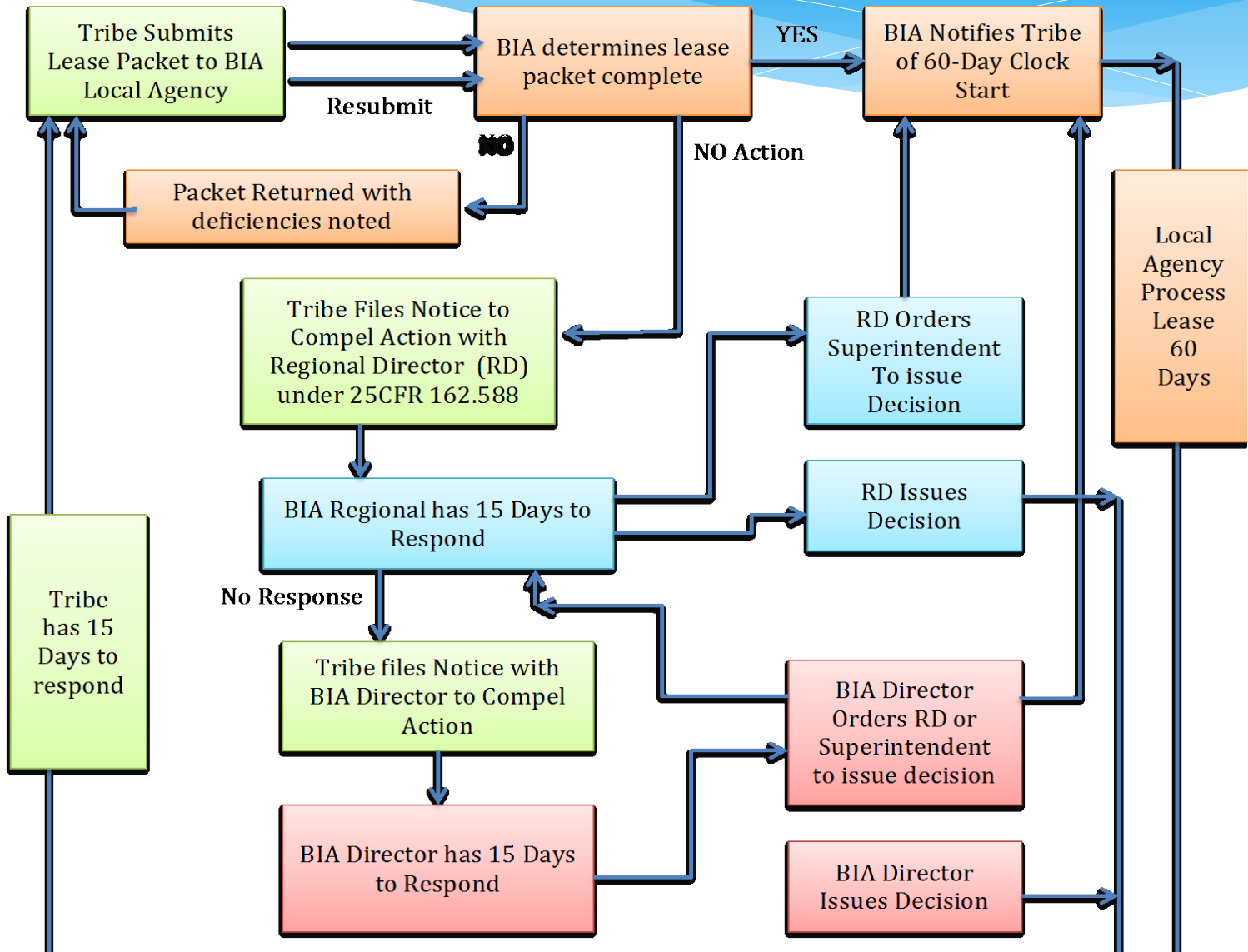
At Last.... A simple procedure to follow!



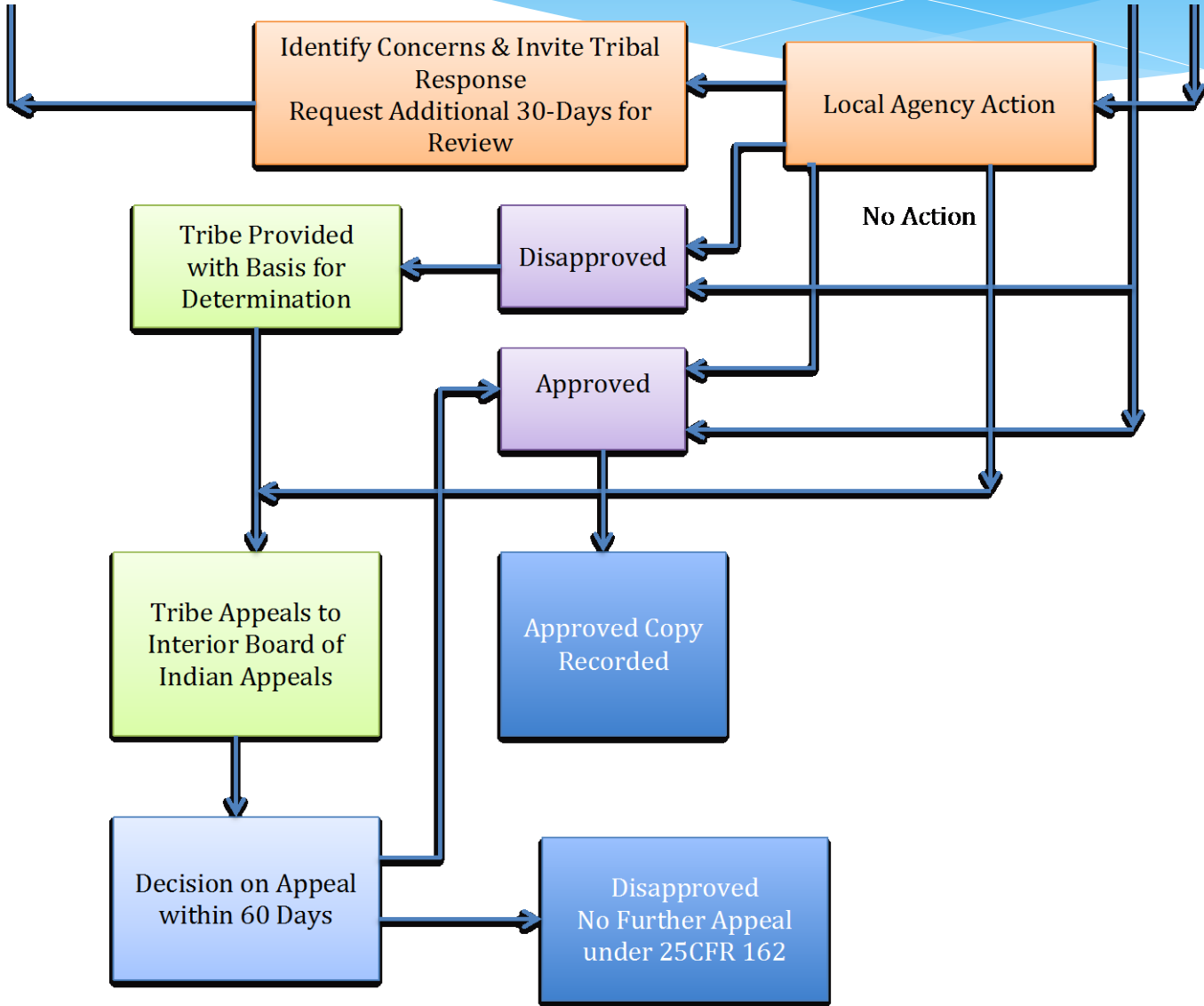
Starting the Clock Easy... Right?

- * No Clock Start if BIA:
 - * Does not acknowledge receipt
 - * Does not send notice of deficiencies
 - * Lists deficiencies
 - * Shifts venue
 - * Questions Content

Time Limits and Recourse



Decision and Appeal



Deferral to Negotiated Terms

- * BIA can evaluate or Tribe can request waiver:
 - * Valuation – lease rates
 - * Insurance Requirements
 - * Bonding Requirements
- * BIA has to agree that terms or waivers are in the Tribe's interest.
- * BIA still has Trust Responsibility

NEPA

- * Allows for review of the lease before or simultaneous with NEPA Review
- * BIA or Other Federal Lead Agency
- * EA – FONSI
- * EIS – Record of Decision
- * Lease Packet is incomplete until NEPA is done
- * Permits as an aspect of NEPA
- * BIA discretion over requirements

PERMITS

- * US FISH AND WILDLIFE SERVICE
 - * Endangered Species Act Section 7 Consultation
- * BIA
 - * National Historic Preservation Act -Section 106 Concurrence
 - * SHPO Concurrence
- * Army Corps of Engineers
 - * 404 Consultation
 - * Impacts to Wetlands and Waters of the US Permit(s)
- * Take Permits
 - * Eagles and Listed Species

More Permits and Consultations

- * Bald and Golden Eagle Protection Act
- * Migratory Bird Treaty Act
- * NAGPRA
- * Native American Religious Freedom

You always have to comply with federal law.

Invite Consultation with Federal Agencies early on

WEEL

Wind Energy Evaluation Lease

- * Short-Term (3 years)
- * Limited land (1 acre per MET Tower)
- * Option for the WSRL
- * 25 CFR 162 requirements are very similar to WSRL
- * Good Practice with BIA Approval Process
 - * 20-days

Wind and Solar Resource Lease WSRL

- * Numerous Requirements
 - * Compliant Lease terms and legal protections
 - * Solicitor's review
 - * Resource Development Plan
 - * Corporate Qualifications Volume
 - * Developer
 - * EPC Contractor
 - * Finance
 - * NEPA
 - * Permits

Hearth Act

- * Asserts Tribal Sovereignty
 - * Right to control trust land
- * Retains control of lease terms
 - * No BIA opinion of value
- * Tribal NEPA process
 - * Develop Tribal Capacity
- * All leases including residential and commercial
- * Faster

Things to Consider

- * Record of BIA Performance
- * Need for improved lease processes
- * Tribal Capacity to implement and manage leases
- * Tribal Capacity to implement and manage NEPA compliance
- * Time

Things To Do

- * Get Started Now
 - * Hearth Act draft... examples available
 - * Develop Tribal Capacity to Implement
 - * Working with Local and Regional BIA
 - * Let them know what you want to do
 - * Get their input during the negotiations
 - * Tell them what waivers you want
 - * Do not take NO for an answer

Contact

PNE WIND USA

Mark Randall

Developer

Tel: 206-713-6352

E-mail: mark.randall@pnewind.com



USA Headquarters
Chicago, IL



Company Headquarters
Cuxhaven, Germany