As Congress considers potential revisions to the nation's laws governing the permitting of renewable energy projects, the LPDD team is excited to announce the publication of eight new model laws that each address a question related to the obstacles renewable energy projects may face in the federal permitting process. The laws are briefly summarized below:

- **Model Law Amending the National Environmental Policy Act (NEPA) to Require Evaluating the Positive Impacts of Projects**: Under current law, the potential benefits of projects necessary to achieve a decarbonized economy may not be fully disclosed in the NEPA process. NEPA is the process through which agencies consider the potential environmental impacts of projects and provide the public an opportunity to comment on those projects. The Council on Environmental Quality (CEQ) has interpreted NEPA to require consideration of both beneficial and adverse impacts, even though it is not explicitly stated in the statute. Nevertheless, agencies tend to provide detailed analysis of only the adverse environmental impacts of projects in the immediate term and provide limited discussion about the project’s potential benefits over the long term. This model law revises NEPA to require federal agencies to fully consider the positive (or beneficial) impacts, in addition to the negative impacts, of proposed projects.

- **Model Law Amending the Coastal Zone Management Act (CZMA) to Facilitate Offshore Renewables Permitting**: This model document proposes potential amendments to the CZMA to facilitate the permitting of offshore renewable energy facilities. The first part of the document provides a brief overview of the relevant provisions of the CZMA, and the second part proposes amendments to facilitate the permitting of offshore renewable energy facilities. Specifically, the model law proposes exempting renewable energy projects from the CZMA’s consistency provisions, or else incorporating language encouraging planning for renewable energy projects and allowing for easier federal agency override of state objections to a project.

- **Two Model Laws Addressing Liability for Renewable Energy Projects Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**:
  - **CERCLA Liability Limitation for Renewable Energy and Carbon Capture**: This model law would amend CERCLA to limit liability for persons who own, operate, lease property for, construct or finance certain renewable energy and carbon capture projects. Under the model law, a developer who wants to construct and operate a renewable energy or carbon capture project on or adjacent to contaminated property (e.g., a brownfield, Superfund site, abandoned mine) would ask for a determination from EPA, a State or Indian tribe. The EPA determination would include potential conditions on development, which, if abided by, would shield the developed from liability as an owner or operator under CERCLA § 107. This model law was written by Frank Fritz, a senior fellow and adjunct professor at William S. Boyd School of Law in Las Vegas, Nevada.
  - **Model Law Exempting Renewables on Brownfields from CERCLA Liability**: This model legislation provides liability protections under CERCLA specifically for wind and solar energy developers on contaminated sites. This model legislation builds on existing liability protections for "bona fide prospective purchasers" (BFPPs) of brownfields sites, which protections currently provide EPA discretion in determinations as to individual applicability, and necessarily include the involvement of EPA where a brownfields developer seeks definitive liability protection. The proposed language adds a statutory exemption for wind and solar energy developers, in line with the BFPP provisions, and removes the need for EPA enforcement discretion as to imposition of CERCLA liability.
Two Model Laws Addressing Reviews Under NEPA and the Endangered Species Act (ESA)

- **Model Law Authorizing Joint Reviews Under NEPA and ESA**: This model law offers improvements to the interagency consultation process under Section 7 of the Endangered Species Act. To facilitate efficient environmental review and permitting of electric infrastructure that will drive decarbonization, it provides language that allows agencies to develop programmatic analyses for infrastructure-types (e.g., wind generation) over broad geographic areas that fulfill agencies’ NEPA and ESA responsibilities.

- **Model Law Enhancing ESA Consultation and Permitting Procedures**: This model law would provide for conducting joint regional reviews of renewable energy projects under both NEPA and ESA in order to avoid arduous, duplicative review processes. In general, the proposed statutory language is intended to: (i) assure that, to the maximum extent practicable and consistent with Federal law, the ESA requirements for a project or series of projects are satisfied in conjunction with the NEPA review; and (ii) endorse and encourage a programmatic, region-wide approach to consultations under ESA Section 7 (where a federal agency is authorizing, funding or carrying out a project) and incidental take permitting under ESA Section 10, to the extent they deem it appropriate to do so. This model law and the accompanying memorandum were drafted by J. Kevin Healy and Robert Tuchman of the Bryan Cave law firm.

Two Model Laws Addressing Permitting Requirements Pursuant to Avian Species Protections

- **Model Revisions to the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) for Permitting Renewable Energy**: This model law proposes language to give the Fish and Wildlife Service explicit authority to grant incidental take permits for renewables and transmission lines under the MBTA and the BGEPA. The BGEPA prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald or golden eagles. The MBTA is intended to ensure the sustainability of populations of all protected migratory bird species covered under four specific international treaties. The MBTA and BGEPA, as currently enforced, have presented challenges for renewable energy projects, in some cases creating roadblocks for renewable energy project developers and/or operators if they are unable to perform their activities in compliance with the MBTA and BGEPA provisions. This model law explicitly grants authority to the Secretary of the Interior to issue Incidental Take Permits to renewable energy and transmission projects under the MBTA and the BGEPA. This will allow the U.S. to accelerate the development of such projects while minimizing or offsetting the potential impacts of such projects on migratory birds, bald and golden eagles, and their habitat.

- **Model Law on Protected Avian Species Permitting**: Electric infrastructure that is critical to achieving a net zero economy may impact federally protected avian species. To encourage construction of this infrastructure, project developers prefer certainty regarding both their potential liability for impacts to protected avian species and the actions that can be taken to avoid that liability. As a result of textual differences among the three key federal avian protection statutes—the ESA, BGEPA, and MBTA—that certainty does not currently exist. This model document proposes amendments to the MBTA and the BGEPA that would give the U.S. Fish and Wildlife Service explicit authority to grant permits for incidental take caused by renewable power generation facilities and electric transmission and distribution infrastructure. Two key amendments are proposed.