

# Svend Brandt-Erichsen

Partner | Seattle

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Svend Brandt-Erichsen focuses his practice on the development and ongoing operation of energy and natural resource projects. He advises companies on permitting, compliance, regulatory development and other issues arising under all of the major federal environmental statutes, as well as their counterparts in a number of states, with a particular emphasis on air, water, waste and wildlife. He routinely handles appeals involving environmental matters in federal and state courts.

Svend has helped companies obtain a wide range of environmental permits and approvals, appealed permits when necessary, and defended them from third party challenges. He has helped clients obtain use of federal lands and litigated challenges to those uses as well as broader issues of federal land management. He has helped assure compliance with the National Environmental Protection Act (NEPA) and its state counterparts and litigated claims under those statutes.

Svend has represented clients participating in rule development, challenging regulations in federal and state court, and intervening to defend rules after successfully obtaining favorable decisions from regulators. He also regularly defends clients against enforcement actions and citizen suits under multiple federal environmental statutes and their state counterparts and has defended against toxic tort claims, including several class actions. He has successfully assisted companies in responding to contamination of soil, water, and marine and freshwater sediments and has litigated cost recovery and natural resource damage claims under federal and state law, as well as under common law theories.

Before joining Nossaman, Svend served as Managing Partner of the Seattle office of a boutique environmental law firm. He began his career on the legislative staff of Alaska's Senator Ted Stevens and served as a Regional Administrator of the State of Alaska's Department of Environmental Conservation.

## EXPERIENCE

**Endangered Species Act.** Assisting clients with ESA matters, including: ESA section 7 consultations and development of habitat conservation plans (HCPs); litigation over HCPs and the adequacy of biological opinions; litigation over an agency's failure to conduct ESA consultation; successfully opposed petitions to list a herring population and a whale population.

**Migratory Bird Treaty Act.** Advise companies on MBTA requirements and policy development. Defended a wind energy project against litigation claiming that MBTA authorization was required for take of migratory birds.

**NEPA.** Advise companies regarding compliance with NEPA and its State equivalents, including adequacy of EISs and EAs for project development, expansion of existing industrial facilities, federal land exchanges, and federal land management policy decisions. Represent parties in disputes regarding the adequacy of environmental reviews under NEPA and its state counterparts.

**Air Regulation and Permitting.** Advise companies on air regulatory requirements and permitting. Represent permitted sources in compliance actions, including responses to agency investigations and information requests, penalty appeals, and permit appeals. Assisted more than twenty companies in preparing the first generation of Title V air operating permit applications, including facilities located in California, Washington, Oregon, Alaska, Louisiana, New York and Pennsylvania.

**Cook Inlet, Alaska NPDES.** Represented the owners of oil and gas platforms in Cook Inlet in several cycles of NPDES wastewater discharge permitting since 1996, including litigation in the Fifth and Ninth Circuits concerning the validity of EPA-issued general NPDES permits and of effluent guidelines developed for the coastal sector of oil and gas exploration, development and production facilities.

**Federal Lands.** Represented companies in obtaining authorization to locate projects and linear structures on federal lands and in amending and transferring existing authorizations, as well as represented them in litigation regarding federal land use authorizations. Advised companies regarding regulatory requirements governing the use of federal lands and represented them in administrative proceedings and litigation regarding federal land use policy.

**Washington Wind Project.** Currently assisting the developer of a 137 MW Washington wind project in negotiating terms of an HCP and related mitigation to support an incidental take permit for ESA-listed marbled murrelets, as well as for bald and golden eagles under the Bald and Golden Eagle Protection Act (BGEPA).

**California Wind Project.** Advised a renewable energy project developer regarding ESA and BGEPA requirements for a potential 155 MW California wind project. The project would have been located within an existing HCP developed for forest practices.

**Washington Hydroelectric Project.** Currently representing the owner of a 100-year-old hydroelectric project in defending a citizen suit alleging unauthorized take of ESA-listed fish species. This matter includes assistance with development of an HCP and other regulatory approvals needed for installation of fish diversion structures and other project improvements and repairs.

**Litigation Concerning Wind Project on Federal Lands.** Served as lead counsel for an independent power developer in defending federal rights-of-way for a wind energy project in California's Imperial Valley, the first renewable energy project to deliver power over the Sunrise Powerlink. The six suits filed against the project raised issues including: impacts on ESA-listed bighorn sheep and state-protected raptors; Native American cultural artifacts, cremation sites and a Traditional Cultural Landscape; NEPA compliance; and FLPMA compliance. Obtained favorable decisions on the merits in all five federal cases, a state court case, and three Ninth Circuit Appeals.

**Nevada Wind Project.** Represented the developer of the first utility-scale wind energy project in Nevada in defending the federal right-of-way for the project. Defeated a preliminary injunction motion in federal district court and on appeal to the Ninth Circuit, then negotiated settlement of all claims. Subsequently assisted the developer in negotiating changes to operating constraints designed to protect migratory bat species.

**Transmission lines.** Advised project developers on regulatory issues regarding rights of way across federal lands managed by BLM, the Forest Service and U.S. Fish and Wildlife Service, including projects located in Alaska, Washington, New Mexico, and Mississippi.

**Sage Grouse.** Represented the Governor of Idaho in a suit challenging sage grouse-related land management plan amendments. Issues included the adequacy of agency compliance with FLPMA and NEPA requirements.

**Greenhouse Gas Controls.** Represented a Washington regional air agency in defending a CAA citizen suit seeking to require the agency to regulate greenhouse gas emissions from existing refineries. Ninth Circuit ruled that the plaintiff environmental groups did not have standing to bring the citizen suit, as they had not shown that refinery emissions caused their climate change-related injuries. Advised the Washington air agencies on the development of regulations limiting greenhouse gas emissions from the refineries, which were adopted despite the Ninth Circuit's ruling.

**Due Diligence.** Regularly advise companies on permitting, regulatory requirements, and contaminated property issues arising in corporate and real estate transactions.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

- Speaker, "The New NEPA Regulations: A Practical Guide to What You Need to Know," Nossaman Webinar, 12.10.2020
- Speaker, "SEPA Procedural Strategies," Law Seminar International's 16th Annual Intensive One-Day Seminar on SEPA & NEPA, Seattle, WA, 01.11.2019
- Speaker, "Practice Pointers for Energy Projects on Timberlands," The Seminar Group's CLE Seminar, Portland, OR, 03.16.2018
- Panelist, "Assessing the Lay of the Land - Status Review of Wildlife Permitting and Potential Paths Forward," AWEA Wind Project Siting & Environmental Compliance Conference, Austin, TX, 03.21.2017
- Speaker, "Developments in the Regulation of Avian Impacts," American Wind Energy Association's Windpower 2016 Conference, New Orleans, LA, 05.25.2016
- Speaker, "PNW Timberlands: Clean Water Act Developments in Washington," Seminar Group, Portland, OR, 04.2014
- Speaker, "Eagles, Research, and Wind Energy," American Wind Wildlife Institute Forum, American Wind Energy Association Siting Seminar, New Orleans, LA, 03.19.2014
- Speaker, "Energy in Alaska: Developments in Environmental Policy," Anchorage, AK, 12.2013
- Co-Chair, "ESA in Alaska," Law Seminars International, Anchorage, AK, 05.2013
- Speaker, "Tips for Faster and Better Coordinated Multi-Jurisdictional Permitting," Law Seminars International 10th Annual SEPA & NEPA Seminar, Seattle, WA, 01.11.2013
- Speaker, "Clean Air Act Update," Oregon State Bar: Environmental and Natural Resource Section, Portland, OR, 10.2012

### PUBLICATIONS

- Co-Author, "High Court Seems to Seek Balance in Agency Draft Disclosure," *Law360*, 11.10.2020
- Author, "NEPA Rules Rewrite: Revised NEPA Regulations Designed to Influence Litigation," *Nossaman eAlert*, 08.25.2020
- Co-Author, "U.S. Alternative Energy and Power Industry - Trends & Developments," *Chambers Alternative Energy & Power 2020 Guide*, 08.01.2020
- Co-Author, "Federal Court Overturns Nationwide Permit 12, Throws Project Development into Flux," *Nossaman eAlert*, 04.20.2020
- Co-Author, "High Court's Frog Decision May Limit ESA Determinations," *Law360*, 12.07.2018
- Co-Author, "Justifying ESA Listings Based on Climate Change Forecasts," *Law360*, 11.16.2016
- Author, "A New Approach by the FWS over the MBTA & Eagles," *North American Windpower*, 01.2016
- Co-Author, "Migratory Bird Policy Casts Shadow over Large-Scale Solar," *Solar Industry Magazine*, 07.2015
- Co-Author, "Fish and Wildlife Service May Overhaul Rule Permitting Incidental Take of Eagles," *NAEP National E-News*, 04.2015
- Author, "What You Can Take From Recent MBTA Plea Deals," *North American Windpower*, 02.2015

Co-Author, "FWS Mulls Overhauling Eagle Permitting Rule," *North American Windpower*, 09.2014

Author, "9th Circ. Raises Bar for Standing in GHG Citizen Suits," *Law360*, 02.18.2014

Co-Author, "BACT: To The Future Of GHG Regulation," *Law360*, 07.16.2012

Author, "Washington State Releases Draft GHG Reporting Rules that are More Stringent than New Federal Rule," *LexisNexis Environmental Law & Climate Change Center*, 01.2010

Author, "FERC Report to Congress on Alaska Natural Gas Pipeline Expresses Concern about Further Potential Delays," *LexisNexis Environmental Law & Climate Change Center*, 01.2010

## HONORS & RECOGNITIONS

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Chosen for individual recognition for Environment in Washington State by *Chambers USA*, 2013-2020

Listed, *The Legal 500 United States*, Industry Focus - Energy - Renewable/Alternative Power, 2020

Martindale Hubbell AV<sup>®</sup> Preeminent<sup>™</sup> Rated

Included in *The Best Lawyers in America*<sup>©</sup> for Energy Law, Environmental Law, Litigation - Environmental, and Natural Resources Law, 2013-2021

Named the *Best Lawyers*<sup>®</sup> 2017 Natural Resources Law "Lawyer of the Year" in Seattle

Named to Who's Who Legal: Environment in 2016-2017

## COMMUNITY & PROFESSIONAL

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American Bar Association, Environment, Energy, and Resources Section

Washington State Bar Association, Environmental and Land Use Law

Alaska State Bar Association, Natural Resources and Environmental Law Section

## PRACTICES

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Environment & Land Use

Air Quality

Climate Change & Resiliency

Litigation

## INDUSTRIES

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Energy & Utilities

Renewable & Alternative Energy

## EDUCATION

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George Washington University, J.D., 1988

University of Colorado, B.A., 1984

## ADMISSIONS

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Washington

Alaska

U.S. Supreme Court

U.S. Court of Appeals, Third Circuit

U.S. Court of Appeals, Fifth Circuit

U.S. Court of Appeals, Sixth Circuit

U.S. Court of Appeals, Ninth Circuit

U.S. Court of Appeals, District of Columbia Circuit

U.S. Court of Appeals, Federal Circuit

U.S. Court of Federal Claims

U.S. District Court, Eastern District of Washington

U.S. District Court, Western District of Washington

U.S. District Court, District of Alaska

U.S. District Court, Central District of Illinois