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# RECOMMENDATIONS ON POWER GENERATION INFRASTRUCTURE CONSTRUCTION PERMITTING RULES

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25 October 2020

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# DATA

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## ACRONYMS

<b>EIA</b>	Environmental Impact Assessment
<b>EnCT</b>	European Energy Community Treaty
<b>EU</b>	European Union
<b>GEL</b>	Georgian Lari
<b>GoG</b>	Government of Georgia
<b>LEPL</b>	Legal Entity of Public Law
<b>MoESD</b>	Ministry of Economy and Sustainable Development of Georgia
<b>NAPR</b>	National Agency of Public Registry
<b>TCSA</b>	Technical and Construction Supervision Agency
<b>USAID</b>	United States Agency for International Development
<b>VRE</b>	Variable Renewable Energy

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# 1. INTRODUCTION

This report is done under the USAID Energy Program (“Program”). The objective of the Program is to support the Government of Georgia (GoG) to enhance the energy security of the country through promoting the deployment of local energy resources and meeting commitments under the European Energy Community Treaty (EnCT). The investment objective will be achieved through the provision of technical assistance to a variety of stakeholders in the energy sector. The ultimate goal of this Program is to enhance Georgia’s energy security through the improved legal and regulatory framework and increased investments in the energy sector. The expected outcome of this Program is an energy legal and regulatory framework that complies with European requirements and encourages competitive energy trade and private sector investments.

The Program covers five major areas: 1. Energy Market Development in Compliance with European Union (EU) Energy Acquis; 2. Evaluation of the Fiscal and Long-Term Impacts of Regulatory Changes; 3. Energy Investments in Variable Renewable Energy (VRE) Development; 4 Integration of Non-Hydro Renewable Energy into the Power System; and 5. Advisory Services to the GoG to Increase Georgia’s Energy Security.

Under Task 3, the Program supports the enhancement of enabling environment for small and medium-sized VRE plants, thus promoting the diversification of generating capacity of the country. To that end, the Program provides in this report recommendations to VRE project developers on technical, financial, legal, and environmental issues tailored to project-specific needs. The USAID Energy Program offers recommendations based on well-established practices applied in the renewable energy sector. We aim to depict the weaknesses and bottlenecks in the existing national legal framework that guide construction permit procedure. The recommendations are meant to make the procedure easier and clearer and fill the identified regulatory gaps, thus promoting a more efficient process of issuing construction permits for VRE projects.

USAID Energy Program presents here our analysis about the authorization of the construction for variable renewable energy projects. We focused on solar and wind projects. We examined relevant national legislation in light of criteria of reasonable simplicity, efficiency and clarity of procedures for developers to obtain a construction permit.

The report has a general overview of the national legal framework related to construction permitting; a more in-depth analysis of the major legal acts directed to revealing deficiencies or drawbacks that complicate the permit issuing procedure or bring ambiguity in it; and recommendations to address identified pitfall and drawbacks.

In the first part of the report we review the Code of Georgia on Spatial Planning, Architectural and Construction Activities as of 13 August 2018, the Ordinance of the GoG #255 on the Rules and Conditions of Issuing Construction Permits and Commissioning Buildings enacted on 3 June 2019 and the Ordinance of GoG #257 on the Rule of Issuing Permit for Building of Facilities of Special Importance (Excluding Radioactive and Nuclear Facilities) and Permit Conditions enacted on 3 June 2019.

In the analytical part we dive deep into the permit procedure by focusing on improving the simplicity and clarity of the procedure, the number and character of documents requested, the uniformity and lengthiness of the procedure, and the value of administrative fees and easiness to access permit related information.

Finally, we offer conclusions and recommendation on the enhancement of permit procedure through fine-tuning of legal base and on complementary activities that will contribute to creating a more friendly environment for the implementation of VRE projects. We offer our own views and recommendations based on the common practice of renewable energy sector developments in the emerging markets.

## 2. EXECUTIVE SUMMARY

We judge that the existing construction legal framework is straightforward and sets clear rules for the implementation of permit procedure. It is comprehensive and it makes a clear distinction between the stages and the requirements per each stage including documentation to be submitted and timeframes within which decisions should be made.

However, we identified a number of drawbacks that deserve consideration and further actions, as follows:

1. In the Code of Georgia on Spatial Planning, Architectural and Construction Activities, we recommend that Class Five buildings be treated the same as the building of special importance, thus streamlining the Code;
2. Annex 1 of the Code introduces solar panels under class I and wind under class III without any specification of different parameters. We suggest the categorisation into the classes to be based on the well-formulated and relevant parameters;
3. Local authorities have too general a right to request permit seeker to go through more complicated procedure or increase the duration of the procedure. The code should strictly and precisely define the conditions when those rights can be applied;
4. The two-stage procedure for obtaining a permit can be simplified only to one stage in case all municipalities implement spatial development plans that contain VRE overlay zoning;
5. Among the documents to be submitted by a permit seeker are ones that demonstrate compliance to other legal requirements and are also in the possession of other relevant authorising agencies. We recommend implementing a “one-stop” electronic platform and online service for issuing construction permits.

### 3. OVERVIEW OF LEGAL ACTS APPLICABLE TO CONSTRUCTION OF POWER GENERATION INFRASTRUCTURE

The regulatory framework of Georgia on construction permitting encompasses three major legal acts that rule the issuance of construction permit including for the renewable energy sector. Particularly, the Code of Georgia on Spatial Planning, Architectural and Construction Activities as of 13 August 2018, the Ordinance of the GoG # 255 on the Rules and Conditions of Issuing Construction Permits and Commissioning Buildings enacted on 3 June 2019 and the Ordinance of GoG # 257 on the Rule of Issuing Permit for Building of Facilities of Special Importance (Excluding Radioactive and Nuclear Facilities) and Permit Conditions enacted on 3 June 2019. Construction of any facility for the deployment of variable renewable energy resources is subject to procedures defined in those legal acts.

The Code is of more general character and defines the main principles, goals and objectives for special and urban planning in Georgia, rules and conditions for issuing construction permits and supervision of construction, state compliance and liability for the violations of the law. The objectives of the code include, but are not limited to, regulation of use and development of the territory of Georgia by balancing public and private interests; creating decent environment for human life and activity, protection of human health, environment, natural resources and cultural heritage; public participation in the spatial and urban planning; ensuring urban development that is safe for human health and life; establishing major rules for reliability, energy efficiency and rigidity of buildings and ensuring stable investment environment by simplifying administrative procedures for obtaining construction permit and increasing effectiveness of supervisor of construction.

The Ordinance of the GoG # 255 specifically addresses conditions related to the issuance of construction permits and goes into more details to define building classes and construction types subject to construction permit except for class V buildings, list of documentation to be submitted for obtaining construction permit and the rule and conditions for drawing up those documents, permit conditions and process of their implementation and rule and conditions for commissioning buildings.

The Ordinance of the GoG #257 prescribes procedures for obtaining construction permit but for the buildings of special importance and sets criteria pertinent for those buildings.

According to the Code all buildings may fall under one of the five classes differentiated for the purposes of protecting the environment and human health, issuing construction permit and commissioning buildings. Categorization into five classes is based on the level of risks associated to the buildings or structures. Class I buildings are the ones with insignificant risk levels; Class II have low risk level; Class III have moderate risk level; Class IV high risk level and Class V extreme risk level.

Annex 1 of the Ordinance # 255 provides further details on the parameters against which the categorisation of buildings or structures are made into classes. The same annex specifies the classes for variable renewable energy. Solar panels constitute class I and the wind turbines class III though the annex does not define either parameters that would justify such a division or characteristics of those facilities. Thus, leaving the room for ambiguity and misinterpretation.

Wind energy projects may also be considered under the Ordinance # 257. The article 50 stipulates the characteristics that categorise facilities into the class of special importance. One of those properties relevant for the wind turbine is the length of the part of facility that should exceed 24 m.

As per the Code administrative procedures and responsible agencies for issuing the construction permit vary for different classes. In general class I buildings are exempt from construction permit procedure. However, the Code also entitles the Councils (Sakrebulo) of the Municipality to request the construction permit for the class I buildings if those buildings are to be constructed within the administrative boundaries of that Municipality. It does not specify the conditions of application of that right by council. Hence, leaving the decision-making right at the discretion of local authorities. For the buildings or structures included in classes II-IV two-stage procedure is applied and the authority granting construction permit is the executive body of the municipality on the territory of which the construction is planned. The Code provides a classification of buildings into five classes, though it does not mention any procedure for the class V facilities. Neither the Code provides any information on the legal act, the subject of which are class V buildings. Moreover, none of the legal acts, defining



the classification of buildings, indicate any correlation between the class V buildings and the ones having special importance and regulated within Ordinance #257. Thus, creating an information gap or regulatory vacuum.

The Ordinance of the GoG # 257 defines certain characteristics that qualify the buildings or structures into the ones having special importance and assigns the duty of issuing construction permit to the Legal Entity of Public Law - Technical and Construction Supervision Agency (LEPL TCSA) of the Ministry of Economy and Sustainable Development of Georgia (MoESD).

## 4. ANALYSIS OF REQUIREMENTS TO OBTAIN CONSTRUCTION PERMIT

In this part of the report we examine the complexity and clarity of the overall authorisation process. Namely, we review the legislation in terms of the number of procedures permit seeker should undergo to obtain a construction permit, including the number of agencies participating in the authorisation process; the number of categories of documents requested as a submission demand; uniformity of submission demands at a country level and the timeframe allocated for decision-making or the lengthiness of the procedure and related administrative fees that should be paid for the service. Furthermore, we look at the issue of accessibility to the information relevant to decision-making for ensuring effective and efficient permit procedure.

### PERMIT PROCEDURE

The permit seeker should go through the two-stage administrative procedure to get a construction permit. The Code establishes the requirements for documents to be presented at each stage to start the administrative proceedings. Ordinance #255 provides details on the content mandatory for those documents. At each of the above stages respective state agencies conduct independent administrative proceedings and issue separate administrative legal acts. Construction permit procedure for buildings or structures being classified as having special importance under the Ordinance # 257 consists of three interdependent stages. Though the ordinance stipulates the simplified two stage procedure when submission of documents for all stages can be done at once. The latter is not the case under the procedure defined in the ordinance # 255.

For classes II-IV the first stage entails the permit seeker to file the application annexed with a number of documents with the relevant executive body of the municipality to get decision on the conditions of land use for the construction purposes. The requested documents comprise extract from the National Agency of Public Registry (NAPR) and cadastral data, request on the developments or construction of buildings on the land plot, actual topographic plan of the land plot, cadastral plan of the land plot, photos depicting an actual state of the land plot, a photo confirming that the information board (banner) has been put up in a conspicuous place and also the results of the preliminary design study. The study should be conducted in case the spatial development plan does not exist for the land plot area and include photos of the study area and location plan, types and main parameters of land development and study on the environmental aspects of the area (groundwater, air and soil pollution, contamination sources if any). Hence, in the absence of a spatial development plan, the burden of additional study is with the permit seeker.

On the contrary, the permit seeker may skip first stage if the land plot is within the area covered by the spatial development plan and complies with its requirements.

The second stage foresees the issuance of a construction permit. The application, as in case of the first stage, should include contact information of the applicant, list of documents provided and the name of organization the application is meant for. The application should be complemented with the act on approval of terms and conditions of the use of land plot for the construction or information on the detailed spatial development plan, predesign study results, detailed architectural project, design of construction works; preliminary decision (if such a decision exists), Environmental decision if the project is subject to Environmental Impact Assessment (EIA), document certifying payment of permit fee and conclusion of accredited inspection body or certified expert on the detailed architectural project, construction scheme/project.

In case the applicant finds it necessary relevant local authority may initiate approval of the architectural project separately as an independent administrative proceeding. The procedures for obtaining a construction permit for those buildings or structures being classified of having the status of special importance are similar to that of the buildings belonging to the II-IV class. The major difference is with the number of stages required that is three and the authorizing institution that is the LEPL TCSA of the MoESD.

From the above-mentioned it is evident that in the case of buildings categorised within the II-IV class legislation envisage two independent and interrelated procedures to obtain a construction permit. Though it also allows permit seeker to get the permit within the one procedure in case the construction is to take place in the area for which a special development plan exists and envisages such an activity. While in case of buildings having special importance, the legislation is stricter and

requires three stage procedure positive decision on each of which is the precondition for the initiation of the next one. However, the legislation also prescribes the right of an applicant to submit all documents at once thus slightly reducing the time needed for making a final decision. At the same time, the permit seeker is obliged to submit quite significant number of documentations of technical and administrative character. Those documents are essential for making informed and evidence - based decision. Yet the burden of collecting and submitting of those documents can be reduced if the acts that are issued by the other administrative bodies can be immediately available through an online platform to the construction permit issuer.

To obtain a construction permit, the permit seeker needs to apply to only one administrative body though the permit procedure provides possibility of involving other bodies as well. While the participation of multiple administrative bodies ensures that all issues having effect on human safety and the environment are duly considered the later possibility contributes to expansion of bureaucratic procedures and prolongation of administrative proceedings.

The administrative body issuing construction permit are executive bodies of Municipalities for the buildings falling under II-IV classes and LEPL TCSA of MoESD of Georgia in case the construction concerns buildings of special importance. Authority of issuing the permit is bound with the territory where the activity should take place (excluding for the buildings having status of special importance) but the submission demands are uniform regardless of the executive bodies of Municipalities. Meaning that submission demands are the same in all municipal areas of Georgia.

The procedure on each stage envisages checking of the completeness of submitted documents. If all documents are in place relevant authorities can commence each stage of the procedure. During the review process, authorities may reveal that the submitted documents miss some information that is relevant for decision-making. The legislation does specify that, on such occasions the applicant has right to take corrective actions in a reasonable timeframe that should not be less than 5 days. Thus, the applicant may avoid termination of the procedure with an unsatisfactory decision.

## **TIMEFRAMES AND FEES**

The National legal acts set clear deadlines for completing each procedure for both the buildings of II-IV classes and the ones of special importance and provide exceptions to those rules. All together the construction permit procedure for the buildings of II-IV classes takes 30 working days. But the deadlines can be extended if the executive body of municipality considers reasonable to devote more time for clarifying substantial circumstances related to the allocation of land. For that the relevant authorities may extend the decision-making process up to 3 months. If the executive body decides to involve other state agencies, authorities can add 20 more working days to the decision-making process. The second stage of the permit procedure may also take 30 more working days if appropriate representative of executive body makes justified decision on that. Authorities can allocate additional 10 days when other agencies take part in decision-making. Hence the timeframe for the procedure can be prolonged up to 125 working days.

A respective national legal act is explicit on provisions stipulating the duration of each procedure related to issuing permit. It is transparent in a way it set conditions when the authorising body can apply the longer procedure. Though the clarity on the context when an exception can be regarded as lawful is missing. Namely, no indication or definition is given what is meant under the substantial circumstance. So, any justification can be assumed under this context giving the right to local authorities to request more time for the decision.

The Code gives the possibility for the acceleration of the procedure for an additional cost. For that Municipalities are entitled to approve appropriate rules and fees. Presently, none of the municipalities has such a regulation.

The procedure for the construction of buildings that have special importance envisages 60 days for the issuance of construction permit. It may be extended up to 90 days. In case the permit seeker decided to go for the simplified two-stage procedure the number of days is reduced to 35.

Executive bodies of municipalities define fee for construction permits. As for legislation (Law of Georgia on Local Fees), it defines ceilings of fees, which is maximum 1 Georgian Lari (GEL) per one m<sup>2</sup> of regular buildings; 5 GEL per one m<sup>2</sup> for construction of an industrial building in a resort zone. For the construction of buildings for which calculation of area of construction intensity coefficient cannot be applied the fixed amount of fee is set. In such case the fee for a construction permit for III class buildings is 400 GEL.

The Law of Georgia on Licences and Permit Fees defines rule for setting the construction permit fee for the buildings of special importance. The table below provides further details:

**Table 1: Construction Permit Fee for the Buildings of Special Importance**

Value of Building or Structure	Fee
▪ Within 500,000 GEL	▪ <b>1,000 GEL+0.5% of the total value</b>
▪ Over 500, 000 GEL up to 1,000,000 GEL	▪ <b>8,000 GEL</b>
▪ Over 1,000,000 GEL up to 3,000,000 GEL	▪ <b>14,000GEL</b>
▪ Over 3,000,000 GEL up to 5,000,000 GEL	▪ <b>19,000GEL</b>
▪ Over 5,000,000 GEL up to 10,000,000 GEL	▪ <b>24,000GEL</b>
▪ Over 10,000, 000	▪ <b>24,000GEL+0,01% of the value</b>

To conclude the legal provisions set clear and well-defined deadlines and fees for the aforementioned procedures, though still, there is a room for simplification and clarity.

## AVAILABILITY AND ACCESSIBILITY OF LEGAL ACTS

Easy access to information on documentation and fees required by building authorities can simplify the compliance with regulations. Access to information needed to comply with regulatory requirements is associated with lower transaction costs, lower levels of perceived corruption and stronger voice and accountability mechanisms. In that respect, the national legislation requires public agencies to proactively make available public information. Legal acts constitute such information. Accordingly, all, most recent primary and secondary legislation related to construction permitting procedure should be available via the websites of the agencies issuing permits.

Practice shows that a list of relevant normative acts that can be searched through the official websites are not full. Neither the latest versions of the legal acts are available. Even though any interested person can find a comprehensive database of legal acts on the official website of the Legislative Herald of Georgia but access to the consolidated versions of sublegal acts is restricted to only those who have subscription. The subscription service requires a monthly payment.

On the other hand, the uninterrupted availability of information of various agencies important for decision-making can substantially improve the quality of permit procedure by reducing the duration of it and the number of requested documents from permit seeker. Introduction of electronic platforms and online services can heavily contribute to that target.

## 5. CONCLUSIONS AND RECOMMENDATIONS

Simplicity and clarity of construction permit procedure are the essential conditions to attract investment and implement renewable energy projects. On contrary, the vague rules may become subject to broad interpretation and induce confusion leading to unnecessary delays, disputes and uncertainties. Thus, adding up to the bureaucratic impediments for the penetration of renewable energy into the energy mix.

In the analysis we demonstrate that overall, the existing construction related legal framework is straightforward and sets clear rules for the implementation of permit procedure. It is comprehensive in a way that provides rigorous yet differentiated construction permitting processes to treat buildings according to their risk level and location. Low-risk buildings require less documentation than more complex structures and can be approved faster. Legal framework makes a clear distinction between the stages and the requirements per each stage including documentation to be submitted and timeframes within which decisions should be made. Administrative fees prescribed within the relevant legal acts are reasonably affordable when comparing to the overall investment value of the project.

However, we identified a number of drawbacks that deserve consideration and further actions. On that note, we provide recommendations to bring more clarity to the procedure and address some administrative bottlenecks, as follows:

1. The Code of Georgia on Spatial Planning, Architectural and Construction Activities splits buildings and structures into five classes based on the risk level. The same code substantiates on the procedures for class II-IV, though lacks any indication on the linkage of class V buildings to the ones having special importance. **For more clarity, we recommend to specify that Class Five buildings having extra risk are the same as the building of special importance, thus avoiding the perception on procedural gap for class five buildings.**
2. Annex 1 of the Code introduces solar panels under class I and wind under class III without any specification of parameters. The nature of the design of a wind turbine may also determine its categorisation into a structure of special importance. The absence of a clear distinction in the parameters determining the classification creates room for ambiguity, diverse interpretation and lack of uniform implementation. **To bring clarity to the issue, we suggest the categorisation into the classes to be based on the well-formulated parameters.**
3. The code entails certain provisions that grant local authorities a right to request permit seeker to go through more complicated procedure or increase the duration of the procedure. The code is not explicit when those decisions can be regarded reasonable, leaving space for discriminatory treatment of projects/companies and unjustified delays. **To improve the transparency of the decision-making process the code should strictly and precisely define the conditions when those rights can be applied. By also giving a clear definition of terms e.g. substantial circumstances that create a basis for justifying such changes.**
4. The two-stage procedure for obtaining a permit can be simplified only to one stage procedure in case all municipalities implement spatial development plans that contain VRE overlay zoning. The latter can be a useful tool to identify appropriate areas for siting renewable energy projects. Energy overlay zones often target areas with available renewable energy resources, existing infrastructure, and a landscape where projects can be sensitively sited with minimal negative impact. In establishing the energy overlay zone and development guidelines within the zone, potential environmental impacts and mitigation strategies are pre-determined for applicants. Implementation of such plans will not only contribute to the speedy decision-making but also remove the burden of undertaking studies by a permit seeker otherwise requested by Code for justifying the land use for construction purposes.
5. Among the documents to be submitted by a permit seeker are ones that demonstrate compliance to other legal requirements and are also in the possession of relevant authorising agencies. The procedure may also require the involvement of other agencies in the permit issuance procedure. Introduction of an electronic platform and online service for issuing construction permit may bring multiple benefits: 1. The authorities will request less number of documents due to the possibility to directly access them into the platform; 2. Once submitted all involved authorities may simultaneously review the documents; 3. Involved agencies will enjoy better overall coordination; 4. Authorities will make decisions faster as they will have

access to readily available electronic information relevant for decision-making; thus reducing the duration of the procedure; 5. Because of online submission involved authorities will have less workload; 6. Online service for issuing a permit may also trigger the reduction of administrative costs and lower the fee for a construction permit, 7. The online platform may allow the permit seeker to track the procedure and thus increase transparency, accountability and trust.

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