

Solar Lease Considerations in Nebraska

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This educational information does not constitute legal advice.

The technology for production of solar electricity has declined in price dramatically in recent years which has led to installations of small, medium and large solar electrical systems throughout the country. Land leases are a common method of accessing land for solar electric systems. A landowner should carefully consider these agreements prior to signing. Key to a fair agreement are the issues of land use impacts, duration of agreements, obligations of the landowner, compensation, and decommissioning.

- Development of solar facilities may lose the land's status to qualify for preferential assessment as agricultural land. Consider including lease terms obligating the solar developer to pay all increased property and personal taxes including any recapture of prior years' preferential assessments and taxes resulting from any increased valuation reflecting the solar facility installation.
- Solar facilities may require fencing to protect solar facilities from agricultural livestock and operations. Consider including lease terms obligating solar developer to install and maintain appropriate fencing.
- Solar facilities may require restricting aerial application of agricultural chemicals in order to protect solar modules. Make sure solar lease payments include potential increased costs associated with non-aerial application of agricultural chemicals.
- Consider inclusion of escalator for long-term solar lease payments to at least reflect inflation.
- Consider including lease provisions obligating solar developer to control and assume legal responsibility for changes in storm water runoff patterns associated with the solar development.
- Spell out the solar developer's responsibility for decommissioning the solar facility. Require property to be restored to original condition or appropriately modified condition such that normal farm and ranch operations may be reestablished without limitation and without significant expense by the landowner.
- Solar access may involve restricting the use of adjacent properties. Make sure the owner or land operator understands these restrictions and how they may restrict the use and value of adjacent properties.
- Cannot overemphasize how important it is to have solar leases and associated legal documents reviewed by an experienced attorney. These are long term agreements that will likely restrict your use of your own property for decades to come. You need to understand how the solar development will affect all of your property and it is impossible to do that without the assistance of an attorney.
- Prior to signing an agreement consider how the agreement impacts your taxes, insurance, federal agriculture programs, and other property rights such as oil and minerals. Visit with professionals with regards to how solar leases may impact you in these areas.

Questions to Ask (questions from materials originally developed by Cornell Extension)

1. What is the term of the lease? Can it be extended, and under what conditions?
2. Who is responsible for the potential increase in taxes as a result of the solar farm?
3. Who is responsible for maintenance of the solar farm?
4. Is the solar farm location designated prior to signing a lease?

5. Who is responsible for any liability as a result of the solar farm?
6. Is there a right of way to the solar farm? How big is it, and where?
7. How does the solar farm lease affect my farm operation?
8. Will I be able to sell my property?
9. Will I be able to place a mortgage on my property?
10. Who is responsible for the approvals and permits from the local municipality?
11. Can this lease be transferred to another company?
12. Am I responsible for insurance for the solar farm?
13. Who is responsible for removing the solar system when it is no longer in use?
14. Does the solar farm company have the right to the land beneath the solar panels?
15. When is the solar farm allowed to access their solar leases?
16. What other rights does the solar farm have over my property?
17. Will I have any say as to where the solar farm is situated on my property?
18. What kind of alterations can the solar farm company make to my land, or any neighboring parcels?
19. At the end of the lease, will the solar farm company restore my land to how it was before? At whose cost?
20. Can I terminate the lease? If so, under what conditions?
21. What if there is a disagreement between the parties? How is any disagreement handled and decided?

Large Solar Electric System Facts

- Solar farms have 250-400 modules per acre
- It takes 8-13 acres per MW of capacity
- Most solar farms will be fenced and do not allow access
- Additional property easements may be needed
 - roadway to access solar array
 - power line (above or below ground) to transport electricity to substation
 - non obstruction easement

Additional Resources:

- Web video describing solar leasing issues by Dr Shannon Ferrell
 - <https://vimeo.com/172991201>
- Texas Agriculture Law Blog
 - <http://agrilife.org/texasaglaw/2016/08/15/extension-fact-sheet-solar-lease-considerations/>
- Landowner Considerations for Solar Leases Fact Sheet – New York State Energy Research and Development
 - <https://www.nyserda.ny.gov/-/media/NYSun/files/landowner-considerations-for-solar-leases.pdf>
- University of Maryland Risk Management Education Blog
 - <http://www.aglaw.umd.edu/blog/landowners-need-to-do-background-research-before-entering-into-a-solar-energy-lease>



Figure 1: It takes 20-30 solar modules to generate the energy for one home for one year. This solar farm has about 400 modules per acre, enough to run 13 to 20 homes per acre.



Figure 2: From left to right, Solar Cell, Solar Module, Solar Array, Solar Farm. Modules have 60-72 cells, Arrays are a group of modules wired together, a solar farm is a large area of land used for solar energy production.