Legal Considerations With Energy Leases

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Special Thanks

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Overview

- Titling of property
- Conservation easements
- Tax implications
- Authenticity of the company
- Federal, state and local laws
- Lease details
Titling of Property

• Do you own the property as a tenant in common, life estate holder, or joint tenant?

• Can you by yourself sign the lease or need co-owners or future interest owners to agree to the lease?

• EXAMPLE:
  – In a tenant-in-common relationship, one tenant in common cannot bind other tenants in common with a lease; all tenants in common would need to agree for the lease terms to be binding.

• [http://go.umd.edu/PropOwn](http://go.umd.edu/PropOwn)
Conservation Easements

• Conservation easements limit the landowner's use of the property to the conservation objectives of the landowner and holder of that easement.

• Check the terms of the easement and the easement holder, such as Maryland Ag Land Preservation Foundation or Eastern Shore Land Conservancy, before entering into the lease agreement.

• If you are unsure of whether the land has a conservation easement, and who the easement holder may be, you should check the deed to the land in question.

• http://go.umd.edu/easementsonfarmland
Tax Implications

- Land for used for **agricultural purposes** is most likely benefitting from agricultural use tax assessment.

- Development of the property for a solar farm will cause the land to be taxed as **commercial property** instead.

- Because the solar farm could impact property taxes, consider language requiring the solar energy company to pay any resulting increases in property taxes.

- Contact the State Department of Assessments and Taxation (SDAT) for tax implication questions.

http://www.aglaw.umd.edu/blog/considering-alternative-energy-on-the-farm-consider-the-property-tax-consequences?rq=property%20tax
Are they registered to do business in Maryland, Delaware, or Pennsylvania (depending on where you are located)?
  – Check with the State to determine if the company is licensed

Check on the company with the Better Business Bureau, request the company’s financial statements
  – utilize other sources of relevant information on the developer
LEASE DETAILS
Future Use Of The Land?

– What rights will you be allowing the wind/solar company in the way of future development?

– May want to include language in the lease that specifically limits what the developer can do

– Developer may also want to look at limiting the height of structures, or amount of land used, that you or future owners can build upon.

– **Remember**, leases can last up to 25/30 years on average which potentially affects future generations
  
  • To learn more about planning for future generations, see [http://go.umd.edu/FarmEstatePlan](http://go.umd.edu/FarmEstatePlan)
What happens at the end?

- How will the project be cleaned up or removed at the end of the lease term?
  - Will the solar company or you take care of this?

- Will the land be restored to the condition it was before the solar/wind farm was constructed?
  - The land may not be in the same condition as before unless those terms are agreed upon in the lease.

- Consider taking “before” pictures
FEDERAL AND STATE LAWS
Federal Law

- Will participation impact USDA program eligibility?
  - Environmental Quality Incentives Program (EQIP)?
  - Conservation Reserve Program (CRP)?
  - USDA loan programs?
State Law

• Biggest state law impact on these operations will be state tort law, specifically the tort of nuisance

• A nuisance is an activity or conduct that unreasonably interferes with a neighbor’s use of their property. Falls in two classes:
  – Private nuisance – you only interfere with another’s use of their property
  – Public nuisance – you interfere with the public’s interest in property
Nuisance

Potential nuisance claims with wind farm:

• Noise and vibrations from the turbine blades
• Shadow flicker
• Ice throws
• Blade shear
• Turbine collapse

Potential nuisance claims with solar farms

• Reflected sunlight* (neighboring landowner)

*Theory stated by legal commentators
State Law Claims

- Landowner does not have right to sunlight unobstructed from adjoining lands.

- This could change if neighboring land also leased to solar company.
Zoning Moratoriums

- **What are they?**
  - A zoning mechanism used to suspend the right of property owners to obtain development approvals for a temporary period of time while zoning officials study a particular issue and recommend the adoption of new laws or standards to deal with this issue.

- **Not limited** to alternative energy projects.
- **Triggered** when there are no laws/regulations surrounding a new issue.
- Gives the local government time to develop legal standards to cover a new issue.
- Must be limited to **ONLY** the issue being researched.
WRAP-UP
Wrap-up

• Take away point is:

• Do your due diligence on the company and the lease

• Have reviewed by a competent attorney
Wrap-up

• Understand how lease will benefit you and impact you

• Will potentially be tying up your land for years, want to understand how it will operate
Wrap-up

• Resources available:
  – Maryland Secretary of State, http://www.sos.state.md.us/
  – Maryland State Bar Association Ag Law Section Directory, http://go.umd.edu/LegalDirectory
  – Various articles by Ashley Ellixson, Paul Goeringer and Sarah Everhart
    • aglaw.umd.edu
Thanks!

Any Questions?

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