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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>

Conservation Easements



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- 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>

Authenticity of The Company



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- 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?



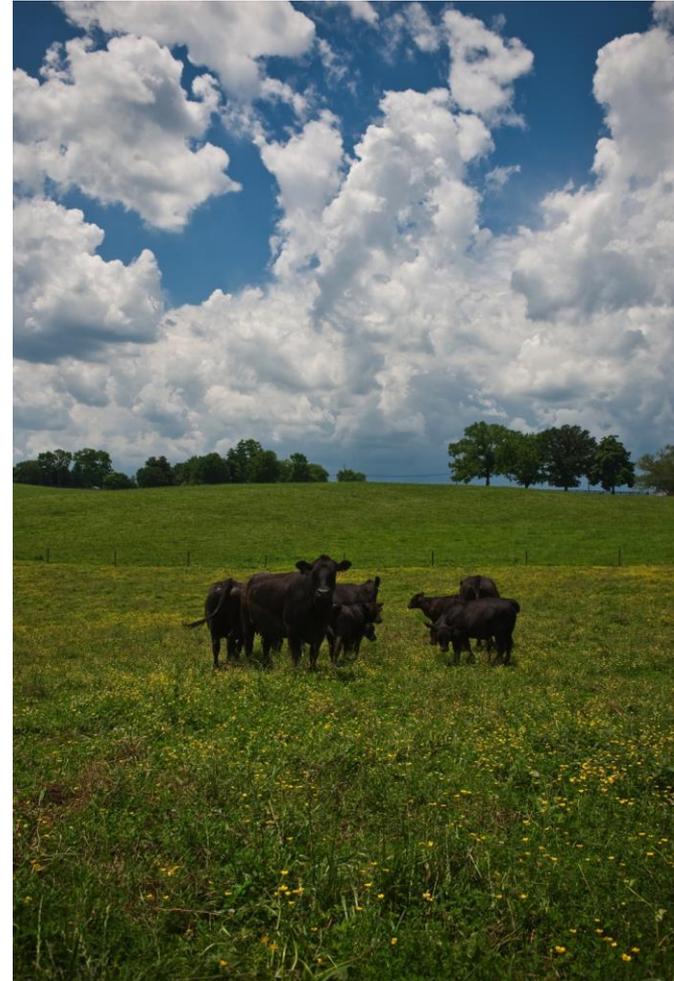
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- What rights will you be allowing the wind/solar company in the way of future development?
- May want to include language in the lease that specifically limits what the developer can do
- Developer may also want to look at limiting the height of structures, 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



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- 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

THAT'S A WRAP!



OVER.

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:
 - Feitshan and Brewer, *Threshold Issues for Landowner Solar Leasing*, <http://bit.ly/1U2FXwx>
 - Ferrell, *Wind Energy Leasing Handbook*, <http://bit.ly/1PdIVeu>
 - Lashmet, *Key Solar Leasing Considerations for Landowners*, <http://bit.ly/1r3e1y9>
 - Maryland Secretary of State, <http://www.sos.state.md.us/>
 - Maryland State Bar Association Ag Law Section Directory, <http://go.umd.edu/LegalDirectory>
 - NC State Cooperative Extension, *Solar Leasing Collection*, <http://bit.ly/1Y1x7BK>.
 - Oklahoma State Extension, *Wind Leasing Page* <http://bit.ly/1U2Hfre>
 - Various articles by Ashley Ellixson, Paul Goeringer and Sarah Everhart
 - aglaw.umd.edu



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Thanks!
Any Questions?

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