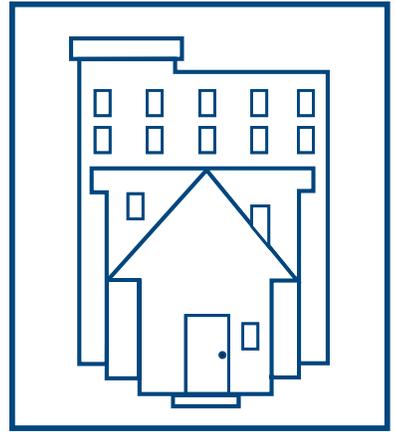


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Understanding Important Solar Lease Terms

by Evin Bachelor, Law Fellow, Ohio State University Extension
Agricultural & Resource Law Program

With all the rain and delayed planting that Ohio farmers have experienced this spring, signing a solar lease has been a very appealing prospect for many farmland owners. While this may be the right decision for a farm, it is very important that the farmland owner understand exactly what he or she is signing. Once an energy developer offers to pay you to enter into an agreement, and you sign that agreement, its terms will be legally binding.

We wanted to highlight some of the important provisions of a solar lease that you as a farmland owner should look for in your solar lease, and understand what they mean. A good solar lease will be very thorough, and include a lot of legalese. It would be a wise decision to consult with an attorney to ensure that your understanding of your solar lease reflects what the documents say.

For now, here are a few provisions to be on the lookout for in your solar lease.

THE TERM

How long does this lease last? Most solar leases last for 20 to 30 years. This is the time during which solar energy is being collected and sold. Solar energy developers like this multi-decade duration because it allows them to use of the solar panels for their expected productive lifespan.

Thirty years is a long time. Many careers are retirement-eligible after that period, and many farms will transition to the next generation in that amount of time. This long of a term is not necessarily a bad thing. It just means that a farmland owner should look back and look ahead. Think back 30 years to 1989. What all has changed on your farm? What would it have looked like to not be able to use this ground for the past 30 years? Now look

ahead. What do you expect your needs and those of your family to look like when this lease ends in 2049? Only you can determine if not being able to use your land for that long is a good thing.

PHASES

How is this lease broken up? We just explained that most solar leases will last for 20 to 30 years, but that clock usually starts ticking once construction has started on the project. Solar energy developers will often reserve a year or two during which they can conduct their final feasibility studies and obtain necessary permits. Some leases structure this pre-construction phase as merely an option phase, meaning that the energy developer will pay a small amount of rent to keep its option alive for that one or two-year period, but it does not necessarily have to commence construction.

Further, toward the end of the term, the energy developer may have written in an option to renew for another 5 or 10 years. These renewals are often structured as a right that the energy developer may exercise merely by giving notice to the landowner. Additionally, in the middle, if there is a natural disaster that puts the operation out of service for any period of time, a solar lease may stop the clock from ticking until the project is operational again and solar energy is being collected.

The important take-away for the phases is being able to know when each phase begins and ends. When all of the different phases are combined, instead of just a 30-year lease, you could be looking at a 42-year agreement. The only way to know how long it could last is to thoroughly read the entire lease.

A DESCRIPTION OF THE PREMISES

Every solar lease will contain a description of the premises. If an entire parcel is being

leased, then this part is fairly easy. However, if only a portion of the parcel is being lease, the farmland owner will want to make sure that the lease provides an adequate description so that the leased portion can be easily determined on the ground. Often, this will include a survey and maps. Knowing the boundaries is important because these leases are often exclusive, such that the farmland owner has little or no use or access of the leased land throughout the term.

EASEMENTS

What rights are being granted to the solar energy developer? Solar leases include a series of easements that give the solar energy developer the right to use your land. Some of the common easements include a:

- Construction easement: a right to cross over portions of the farmland owner's property in order to construct the solar facility
- Access easement: a right to cross over portions of the farmland owner's property to reach the solar facility
- Transmission easement: a right to install power lines, poles, and other equipment to transmit the energy produced by the solar panels to the grid
- Solar easement: a right to unobstructed access to the sun without interference from structures or other improvements
- Catch-all easement: a general right to do whatever is necessary for the benefit of the project

Solar energy developers want their easements to be as broad and generous as possible in order to maximize their flexibility with the project. This is not always to the advantage of the farmland owner. If the lease is general enough to allow the solar energy developer to sub-lease to another entity such as a telecommunications company, the

Continued on next page

Solar Lease Terms, *continued*

landowner will have a difficult time preventing the solar energy developer from doing so. The farmland owner wants to make sure that the easements being granted are specific enough to not result in any surprises.

LANDOWNER OBLIGATIONS AND RIGHTS

What does the lease require of you as the farmland owner? Usually private solar energy developers include a non-interference provision, a quiet enjoyment provision, and an exclusivity provision. All combined, these provisions are a promise by the farmland owner to not enter the solar facilities without prior permission, not interfere with the solar facilities, and not allow anyone else to do so for the duration of the term.

Further, solar leases often include a confidentiality provision that courts will enforce as legally binding. These provisions allow the solar energy developer to control the flow of its proprietary information, and also prevent landowners from talking with one another about topics such as rent rates. It is important to understand:

- What information is protected
- If there are any exceptions
- When consent might be granted
- If specific penalties apply
- How long confidentiality lasts

The solar lease may also include a provision about farmland owner improvements. These explain if and when the landowner needs to obtain prior approval of the solar energy developer in order to build a structure or plant something that may interfere with the solar project.

PROPERTY MAINTENANCE

Who is going to mow? Ohio landowners have a legal duty to cut noxious weeds, and a well-drafted lease will cover which party to the lease bears responsibility for keeping the leased land clear. Usually, the solar energy developer will take this responsibility, but it helps to have this in writing.

CLEANUP TERMS

Cleanup involves a lot of questions. Does the solar lease require the solar energy developer to restore the land to its previous state? If so, how is this measured? Will all stakes and foundations be removed? Will all improvements, like roadways, be removed? How will the solar energy developer guarantee that it will be able to pay for this cleanup in 30 years? Does it post a security, and if so, when? A thorough lease will answer these questions.

TAX AND CONSERVATION PENALTIES

Tax and conservation also involves a lot of questions because constructing and operating a solar facility will make the property ineligible for the full benefits of CAUV and most conservation programs. Does the lease require the solar energy developer to cover

real estate taxes? Does the lease require the solar energy developer to cover the three-year lookback penalty for removing land from CAUV? What will the solar energy developer do toward the end of the lease so that the land can be put back into production and made CAUV eligible again? Similar questions must be asked for conservation programs.

COMPENSATION

It's not that we saved the fun and best part for last. We just wanted to make sure that compensation is not the first and only thing considered when deciding whether or not to enter into a solar lease. While it certainly is important, some of the issues discussed above must be just as carefully understood.

The solar leases that we have seen involve cash rent that increases over time based upon a fixed escalator. The escalator is a percent increase. If the escalator increases at a rate greater than inflation, then the farmland owner will receive more bang for his or her land. However, if the escalator increases at a rate lower than long-term inflation, then the solar energy developer will have to pay less over time.

Another point of compensation to consider is how damages will be calculated for harm to property and crops. When the solar energy developer decides it is time to start construction, its option and easements grant it the right to begin construction even if there is a crop already in the ground. This makes it in a farmland owner's best interest to have this issue addressed up front. These damages will often be calculated by multiplying the number of acres by the average county yield for that crop by that crop's commodity future price with the Chicago Board of Trade for a given date. This provides an objective calculation for damages.

VERBAL PROMISES

A note of caution: if the solar energy developer makes you a verbal promise, ask for that promise to be included in the written lease. If there is a conflict between what a representative of the solar energy developer tells you and what is written in the lease, the terms in the written lease are likely to prevail.

The activity we are seeing across Ohio right now with solar reminds us of the early stages of the recent wind and shale energy booms. Some of the biggest regrets that we hear about are from landowners who thought they were getting a better deal than they actually did. Reading through, understanding, and thinking about the lease is an essential part of calculating whether or not the lease being offered is actually a good deal for a farmland owner and his or her family. Don't be afraid to reach out to your team of professionals in this process. Your attorney, tax professional, Extension educator, and others can be a great resource.

Why the Single Tree in the Field?

by Carrie Ann Tomko

That majestic tree standing all by itself — of course you notice it. Smack-dab in the middle of a field of hay, corn or beans, it seems to stand proud and tall, showcasing 50 to 100 years of growth and longevity.

When I see a large tree standing amid the crop, I wonder: Why is that one lone tree in the field? Why was that particular tree chosen?

The reason for saving a singular tree is most likely pretty simple: The tree provided shade. In the days of cableless tractors, that single tree offered a shady spot to have lunch, supper or breakfast — depending on how many meals were eaten that day in the field — as well as how desperate one is to feel relief in the shade, relishing a little cool-off from the hot sun beating down.

That single tree also provided shade for livestock animals before the tractor. The team of horses, mules or oxen could take a break from their workday alongside the farmer.

When asking around to others about the reason they think a single tree was left to grow in a field, I got the most bizarre answers: "It is a windbreak," said one know-it-all. To which I asked, "How does one tree constitute a windbreak?" This shot down that nonsensical idea.

Another jumped in with an equally ridiculous response: "That tree is a lightning rod, so that the crop does not catch on fire." My response: "Really? I have never heard of a crop catching fire." Again, that comment extinguished the crop fire notion.

Another person suggested, "It was used as a boundary marker." To this suggestion I replied, "OK, I get that; but that singular tree can impact yields by the canopy of leaves robbing sunlight to get to the crop, as well as the tree roots robbing water to hydrate the crop, and nutrients to feed the crop." Not a lot of response to that idea.

So, if it can simply be agreed upon that the tree was there to provide shade relief from the sun, the next question is this.

Ohio CAUV Values Projected to Decline Through 2020

by David Marrison, *Ohio State University Extension*

Why was that particular tree chosen?
Now that is anyone's guess.

Could it be that one tree was near a rock, and the farmer wanted to have a marker to avoid striking the rock with equipment?

Could it be that that one tree was too stubborn to be removed, so the farmer said, "Oh, heck, let's have a shade tree"?

The romantic in me would like to think that one particular tree was chosen because it had sentimental value: such as that one tree was the place where grandpa asked grandma to marry him, and they carved their initials into the tree. That is my kind of reasoning — emotional.

WHY MENTION THAT 1 SINGLE TREE?

Well, it just so happens that my family is selling a piece of farmland to a company paying top dollar per acre, where that company will put solar panels to add electric power to the grid. Ironically, the tree has to be taken down so that it will not allow a space for bats to nest. Maybe that was the reason the tree was originally saved ... to provide a nesting place for bats that eat insects.

So, the single tree that provided shade now must be removed for solar panels to be installed to power energy needs, including your air conditioner. So much for using a shade tree to provide relief from the sun.

Tomko is a professor and farmer who writes from Rittman, Ohio.



The Current Agricultural Use Valuation (CAUV) program allows farmland devoted exclusively to commercial agriculture to be taxed based on their value in agriculture, rather than the full market value, resulting in a substantially lower tax bill for the farmer.

The formula for CAUV values incorporates agricultural factors (soil types, yields, prices, and non-land costs for corn, soybeans, and wheat) to calculate the capitalized net returns to farming land based on the previous 5 to 10 years. CAUV underwent large-scale changes to its calculation in 2017 that was targeted to reduce the property tax burden of farmland.

A new report, *Ohio CAUV Values Projected to Decline Through 2020*, shows the projection of CAUV values through 2020. According to the study authors, OSU agricultural economists Robert Dinterman and Ani Katchova forecast a decrease in the assessed value of agricultural land to an average CAUV value of approximately \$600 in 2020.

Access this report at:

https://aede.osu.edu/sites/aede/files/publication_files/CAUVProjectionsFall2019.pdf

How to Protect Your Heart When Shoveling Snow

by The Ohio State University Wexner Medical Center

Here are six doctor recommendations to protect your heart when shoveling snow:

Give your body time to wake up

Don't leap out of bed and run outside to clear the snow. First, your body needs time to wake up after rest. And for some people, their heart rate and blood pressure tend to be higher first thing in the morning.

It's not a race - take it slow

Warm up first to get your blood flowing. It can be as simple as swinging your arms or lifting your legs. Start slowly with the shoveling, moving small amounts of snow and avoiding lifting too much. Take frequent breaks.

Get water first

Drink water before you go outside because you're going to lose fluids while shoveling. If you aren't hydrated enough, you can really put a strain on your heart.

Skip that big cup o' Joe and the cigarette

Don't go overboard with the caffeine. You might want an extra boost in tackling the snow, and caffeine in moderation is fine. But caffeine stimulates the heart, and you're already going to be giving it a workout. Cigarettes are another heart stimulant, so don't smoke right before shoveling (*or at all please!*)

Eat light

Avoid a heavy meal beforehand because blood is diverted to the stomach, increasing your heart's workload.

Dress in layers

Shoveling snow is a real workout and you're probably going to sweat. To avoid getting too hot (which works the heart even harder), dress in layers and peel off a layer as needed.

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<h1>CORUM</h1> <p>REAL ESTATE COMPANY</p> <p>Larry Clarke 15362 Five Points Pike Mount Sterling, Ohio 43143 Office: (614) 487-8424 / (740) 869-4570 lclarke@corum-realestate.com</p>	A line-art icon depicting a house with a chimney and a multi-story building with several windows, enclosed in a square frame.	<p><i>Real Estate Brokerage</i> Development Land & Farms Commercial Real Estate</p>
		<p><i>Real Estate Development</i> Consultants and Advisors Construction Management Site Selection Estates Workouts</p>

Notable Quotables

Talent is from God; be grateful; Fame is from Man;
be humble; Conceit is from Self; be skeptical.

-Unknown

The more you seek security, the less of it you have. But the
more you seek opportunity, the more likely it is that you will
achieve the security that you desire.

-Brian Tracy

Be more concerned with your character than your reputation,
because your character is what you really are, while your
reputation is merely what others think you are.

-John Wooden

Today is a new day. Hiding from your history only shackles
you to it. We can't undo a single thing we have ever done,
but we can make decisions today that propel us to the life we
want and towards the healing we need.

-Steve Maraboli

Your work is going to fill a large part of your life, and the
only way to be truly satisfied is to do what you believe is
great work. And the only way to do great work is to love
what you do. If you haven't found it yet, keep looking.

Don't settle.

-Steve Jobs