NEGOTIATING A SOLAR LEASE

A Guide for Agricultural Landowners

OREGON STATE UNIVERSITY NEWAG LAB

American Farmland Trust
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Introduction

By now, your land is considered viable for a solar installation and you're in a position to decide: Will you sign a solar lease or option agreement? Under what circumstances will you refuse to sign?

While the power of this decision lies in your hands, it should not be made in isolation. Seeking the advice of professionals, particularly an attorney, is critical.

The more time and effort you invest in gathering information, identifying critical issues, and having conversations with those involved, the better prepared you will be. Taking this approach increases the likelihood of making a decision that benefits you, your land, and those impacted both now and in the future—a decision you can feel confident about.

If you decide to move forward with a solar lease, your efforts in understanding the issues and getting clear on your priorities from the start will help you negotiate a more favorable arrangement.

This guide serves to support the process of negotiating the solar lease and, ultimately, deciding whether to sign a legal agreement. It provides tools to help you:

- **Work with an attorney,**
- **Understand key terms of the legal agreements,**
- **Identify non-negotiable issues, and**
- **Negotiate from a place of strength.**

This guide is the second in a two-part series. If you haven't already reviewed the first guide, **Exploring Solar Leasing: A Guide for Agricultural Landowners in the Pacific Northwest**, we highly recommend doing so. It provides essential background information, highlights key issues to consider, and offers communication strategies for discussing this decision with others.

Working with an Attorney on a Solar Lease

Why it's critical to work with an attorney

Solar leases are complex legal documents and will impact your land for decades. It is highly recommended that you seek advice from an attorney **before signing any legal documents or engaging in negotiations**. This helps safeguard your rights and ensures you are entering into a lease that aligns with your goals.

A lawyer will ensure the terms of the solar lease are clear, fair, and legally binding. They can identify potential deal-breakers early on, saving you time, stress, and potential financial loss. A skilled attorney will also help you develop a negotiation strategy that reflects your interests, maximizes your bargaining power, and ensures the lease terms are favorable to you.

It is also advisable that you discuss the document with your accountant, tax advisor, or any other professional you trust to support you with the financial implications of the agreement.

How to find an experienced attorney

Ideally, you want an attorney experienced in solar leases, renewable energy agreements, or long-term agricultural land leases. Solar leases differ from other types of commercial ground leases, such as those for oil and gas, so ensure the attorney's experience is specific to agriculture **and** solar projects. An attorney with experience advising agricultural clients will also be familiar with critical lease provisions related to crop damage, land use, and easements.

You can start by speaking with other landowners in your area who have entered into solar leases or by reaching out to local extension agents or professionals who can recommend an attorney experienced with renewable energy leases. Your local bar association may also have a searchable database, where you can sort attorneys by specialty.

When contacting an attorney, ask questions to gauge their experience:

- How many solar leases have you reviewed?
- Are you familiar with this solar developer?
- Can you help answer specific questions I have about this lease?
- What are the expected costs to review and negotiate this lease?

Familiarizing yourself with the basic lease terms (Section 2) and identifying non-negotiable issues (Section 3) will help reduce legal costs and streamline the process. Keep in mind, you can negotiate with the solar company to have some or all of your legal costs covered.

Top 10 Topics to Discuss with an Attorney Before Entering a Solar Lease

These topics can help guide your conversation with an attorney to ensure your legal rights, financial interests, and long-term goals are protected.

1. **Key Terms and Lease Structure**
   - Discuss the essential components of the lease, including the lease duration, payment structure, rent escalation clauses, and termination rights.
   - Ensure these terms align with your financial goals and land use plans.

2. **Impact on Land Use, Environment, and Neighbor Considerations**
   - Explore how the lease will affect land use, zoning laws, and local regulations.
   - Discuss compliance with environmental laws, potential impacts on wildlife and water resources, and how to avoid lawsuits from neighbors (e.g., runoff, erosion, glare, noise).
   - Consider how to navigate potential community opposition.

3. **Tax Implications and Incentives.**
   - Review the potential tax impact of leasing your land, including property taxes, penalties, income taxes, and eligibility for solar energy incentives.

4. **Liabilities, Risk Management, and Indemnification.**
   - Discuss how to include fair indemnification clauses, ensuring the solar company is responsible for damages to the land or infrastructure caused by their activities.
   - Review insurance requirements for risks like environmental damage, accidents, and third-party claims.
   - Ensure the lease includes environmental protections and clarifies who will be responsible for any environmental damages or disputes with neighbors.

5. **Decommissioning Funding and Land Restoration.**
   - Discuss the solar developer's responsibility for decommissioning costs and include a requirement for them to set aside sufficient funds or a financial guarantee. Your lawyer can help you craft a financially backed guarantee for decommissioning, even in the event of developer bankruptcy.
   - Ensure the lease includes clear provisions for land restoration, including removal of infrastructure, topsoil restoration, and environmental protection.

6. **Existing Mortgages, Financing Agreements, Leases, or Easements.**
   - Examine how the lease will affect any existing mortgages, loans, agreements, or other legal interests tied to the property (e.g., easements, hunting leases, or mineral rights).
   - Ensure the lease does not violate any existing terms or require lender approval, and discuss potential subordination agreements.

7. **Flexibility for Land Use, Selling, Leasing (including Agrivoltaics, and Water Rights).**
   - Make sure the lease allows you flexibility for future needs, including using, selling, or leasing your land.

- If you plan to incorporate agrivoltaics (e.g., grazing, crop cultivation, or pollinator habitats), ensure the lease permits it and allows you to enter a sublease to pass on these rights.
- Determine how available water will be allocated and used, and ensure the lease permits you to sell, lease, or bank water rights if there is excess.
- Ensure that installation of solar, even with agrivoltaics, will not nullify your water rights (this will likely involve checking in with your local irrigation district)

8. Communication, Dispute Resolution, and Exit Clauses.

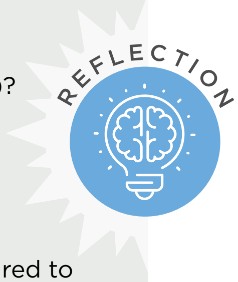
- Discuss the procedures for making decisions and resolving disputes, ensuring there are clear steps for addressing any issues.
- Include the ability to exit the lease under specific conditions, such as the developer's failure to meet milestones, changing land-use priorities, or violating key lease terms.

9. Impact on Estate Planning, Succession, and Future Generations.

- Review how the lease terms might affect your estate planning and future family decisions, particularly if you plan to pass the land down to future generations.

10. Alignment with Personal or Family Values and Long-Term Goals.

- Review how the lease fits with your values and long-term vision for the land, including sustainability, agriculture, or conservation.
- Discuss any adjustments needed to protect those goals and ensure the lease aligns with the future use of the land.



- What qualities do you most value in a professional relationship with an attorney (e.g., trust, respect, responsiveness, and clear communication)?
- What role do you want the attorney to play in the solar lease negotiation process? (e.g., Do you want to play the primary role, or would you prefer the attorney to take the lead and guide you through the process?)
- What are your expectations regarding attorney fees, and are you prepared to negotiate with the solar developer to have these costs covered?

Navigating the Solar Lease Legal Documents

Once a solar developer has approached you, it typically will not be long before they offer you some sort of legal document to sign. This legal agreement could come in the form of a letter of intent (LOI), an option to lease agreement (option agreement), a solar lease, or some combination of these legal documents. Before diving into the details, here are a couple of points to keep in mind:

- **Solar leases are written by the solar developer's attorneys.** While the agreement will strive to create a mutually beneficial arrangement, it is written to favor their client, the solar developer. **You must ensure the lease serves your best interest.**
- **Solar lease agreements are complex.** Typically ranging from 20 to 40 pages and sometimes more than 60, they are often called "lease agreements," but they serve multiple functions, including an option to lease, easements, and a lease. **It is crucial to understand the range of legal implications included in a solar lease—it is not just a standard lease!**

Key legal components of solar leases

Let's unpack these legal functions as we highlight some common components in solar lease agreements and related legal documents.

Landowner obligations

Whether the solar developer initiates discussions with a **letter of intent, option agreement**, or **lease agreement**, the initial agreement will likely include landowner obligations that set the tone of the relationship. These obligations include:

Exclusivity. The agreement will likely state that you cannot lease your land to another solar competitor during the term of the agreement.

LEGAL TIP

Make sure the exclusivity provision does not prohibit you from: (1) Leasing to a farmer or rancher on other areas of the property and (2) engaging in agrivoltaics (such as farming under solar panels) or entering a lease with another farmer to engage in agrivoltaics if you choose that route.

Non-interference. You must agree to provide the solar developer access to your property and not interfere with their activities. This includes granting access for due diligence during the development stage, construction, and operation of the solar project, and anything else allowed under the agreement.

Quiet enjoyment. Similar to non-interference, this clause requires you to allow the solar company to peacefully exercise all its rights under the agreement.

Confidentiality. This restricts you from discussing the terms of the agreement with anyone other than your attorney or professionals specified in the document.

LEGAL TIP

Confidentiality agreements will restrict your ability to communicate with other landowners if the solar project involves multiple properties. If you want to engage in collective negotiations, be sure to negotiate a broader confidentiality agreement to permit it.

Warranty of title. The solar lease will include a "warranty of title," which requires you to ensure that you own the property free and clear of any encumbrances.

LEGAL TIP

Ensure the title clause's warranty includes exceptions for any existing and recorded encumbrances, such as easements or leases.

Subordination. The lease may require that the solar developer's financial investments in the project are "first in line" from any other liens or claims on the property. If there's an existing mortgage or loan tied to the property, the lease will likely require you to get a **subordination agreement** from your lender.

Discuss this provision with your lender to ensure you understand and comply with any lender requirements.

Letter of Intent and Option Agreement

If your engagement with the solar developer begins with a letter of intent or option agreement rather than an entire lease agreement, here are a few essentials to keep in mind:

A **Letter of Intent (LOI)** is typically a non-binding document that outlines the solar developer's interest. It *may* require:

- Exclusivity
- Non-interference
- Quiet enjoyment
- Confidentiality

Legal Tips

- Get everything in writing
- Have an attorney review the document
- Negotiate compensation for rights of access
- Negotiate compensation for legal costs in reviewing the LOI

An **Option Agreement** binds you to the lease but not the solar developer. It's typically tied to the final lease agreement and will *likely* require:

- Exclusivity
- Non-interference
- Quiet enjoyment
- Confidentiality
- Binds the landowner, but not the solar developer
- Tied to the lease

Legal Tips

- Have an attorney review
- Be clear about the lease arrangement before signing the option agreement, as it could bind you to a specific lease term when you sign it
- Negotiate for appropriate compensation during the option phase, particularly since many option agreements allow the developer to access all your land but only pay for the portion they use
- Negotiate compensation for legal costs in reviewing the option agreement and the corresponding solar lease agreement

Parties to the agreement

The solar lease agreement should specify who the parties are. Typically, the solar developer will be referred to as the "**lessee**" or "**tenant**," and the landowner as the "**lessor**," "**landlord**," or "**owner**."

Ownership Clarification: If the land is held in trust or by a business entity, this must be explicitly stated in the lease. The trustee or the authorized representative of the business entity must sign the agreement to confirm ownership.

Assignments and Transfers: The provision describing the parties often addresses how the lease is handled if the agreement is transferred or assigned to another party. Be mindful that these provisions may favor the solar developer more than the landowner.

Transfers by the landowner: The lease will likely include a clause stating that it "**runs with the land**," meaning that any future landowner will be obligated to uphold the terms of the lease. You may be allowed to sell or transfer your land, but only if the new owner agrees to assume all obligations under the lease. You will need to notify the solar company before completing the sale or transfer. In the event of your death, your **executor or successor** will need to inform the solar company of the change in ownership.

Transfers by the solar developer: The agreement will likely permit the solar company to assign or transfer the lease to another party. This could occur if the solar company merges with or is acquired by another company. It could also occur if the solar company defaults on a loan or goes bankrupt, in which case the company's lender or a new lessee might take over the lease. These scenarios can cause complications if the terms of the lease are unclear about what happens in case of a transfer or change in ownership.

For instance, let's say you arrange with the solar company to incorporate agrivoltaics during the operations phase or commit to certain revegetation or remediation approaches during the decommissioning phase. Meanwhile, the solar company changes hands. An unfortunate situation could arise if these arrangements are not clearly stated in the agreement or if there is a way for the new lessee or assignee to evade certain obligations in the lease.

LEGAL TIP

It is critical that the lease explicitly requires any new lessee or assignee to abide by the exact terms of the lease unless otherwise agreed to by the landowner. The lease should specify that if a new lease is necessary for any reason, it must contain substantially all of the exact terms of the original lease.

Time period

Phases. Solar lease agreements often specify distinct phases, such as **development**, **construction**, **operation**, and **decommissioning**. These milestones must be clearly defined to ensure that both you and the solar developer understand when each phase begins and ends.

Ensure each phase has clearly defined milestones, so the beginning and ending of corresponding compensation arrangements and obligations are understood by both parties.

Renewal clauses, solar leases typically include a renewal clause allowing the solar developer to renew the lease for a set period. Typically, renewals are at the developer's option and occur automatically if the developer notifies the landowner by a specified time. Rental payments and other lease agreement terms can sometimes be renegotiated if and when a lease is renewed.

Compensation

Payment structure for each phase. Compensation for the solar lease is one of the most significant areas for negotiation. Solar leases may use various payment structures, such as per-acre payments, royalties, or a combination of both. The terms of payment typically change for each phase (i.e., payments are typically highest during the operational phase). It is highly recommended to consult with a financial advisor to dive into the details and ensure that the compensation terms are fair.

LEGAL TIP

Make sure rental payments are adequate for each phase and that you are compensated for any additional costs you incur and successfully negotiate (e.g., attorney fees, crop damages during construction, tax penalties, loss of eligibility in a government conservation program, etc.)

Payment increases. Lease agreements typically include an "escalation clause" that provides for rent increases, particularly during the operational phase.

Ensure there's a well-defined mechanism for rent increases, whether by an automatic annual percentage increase or based on an index (e.g., Consumer Price Index). The terms of these increases should be clear and understandable.

Description of the property

The lease agreement must accurately describe the property involved. Especially critical is identifying the number of acres as well as the type of access or uses for each area–i.e., the solar footprint (or inside the fence), any rights-of-way that the solar company can access, and any remaining areas of the property that the solar company needs for storage, maintenance, or construction.

When reviewing the property description, it can be helpful to keep your intention to three main areas: 1) solar footprint (i.e., inside the fence), 2) rights-of-way, and 3) remaining areas of the property. Are these clearly delineated? Do they conflict with your intentions to access or use your property?

The property description will likely be different for each phase. During the development phase, the solar company will want access to more of the property to determine the optimal area for the solar footprint.

The property description should include a formal legal description, which might be taken from the deed. However, there may be discrepancies if the deed is old. The parties may want to conduct a new survey of the land. If so, the lease should specify who pays for these costs and what type of survey is acceptable.

Ensure the acreage subject to each lease phase is well defined and described so that the compensation can be determined accurately. It is highly recommended that, in addition to a clear written description, the lease also include a map or aerial photograph to identify the project's boundaries for each phase of the solar project.

Solar footprint (i.e., inside the fence)

Most solar arrays will be fenced. The area inside is often referred to as "inside the fence" or the "solar footprint." Landowners will likely have limited access to these areas and need permission to enter.

Ensure the lease addresses your access rights within the solar footprint. For example, if you want to integrate agrivoltaics, make sure the lease agreement provides a mechanism for you to do so.

Rights-of-way (ROW)

The energy produced on a solar site must be transported to high-voltage power lines. The solar developer will create a path to get there, either by trench or pole. Neighboring properties may host solar arrays that must go through your property. This will create additional ROWs. The landowner will have restricted use of these ROWs. Depending on how ROWs are configured, other areas of your property could be affected.

Consider your current and future uses of the property. Will the ROWs affect these uses? Are you able to access all of the areas of the property you need? Make sure you are adequately compensated for the restricted use of areas affected by rights-of-way (ROW).

Remaining areas of the property

Many lease arrangements allow the developer to use the property outside of the solar footprint or ROW for various reasons, e.g. access during development and construction phases, equipment storage, etc.

> The lease agreement should specifically describe permissible reasons for the solar company's access to the remaining areas of the property and restrict access to areas where you do not receive compensation.
>
> LEGAL TIP

Solar company's rights to access and use of the land

The lease agreement will describe specific rights that the solar company has to access and use various parts of the land, i.e., solar footprint, ROW, and remaining areas of the property. Typically, a solar lease will do this by including multiple easements. An easement is a legal right to use the property of another for a specific purpose. Pay close attention to: 1) the type of easements, 2) on which part of the property 3) during which phase. Here are some commonly included easements:

Construction Easement. Grants the solar developer the right to access the land to prepare, develop, and install solar equipment. The areas affected by this easement will include the solar footprint and access roads and "laydown areas" used for storing and staging equipment, parking, office trailers, etc.

> Carefully consider the areas impacted by construction easements, as they involve heavy machinery and potential land disruption.

Access Easement. Provides the solar developer the right to cross this area to access the solar facility. It often gives the solar company the right to build or improve existing roads or access points.

> If you want a say in whether, where, or how any new roads are built, be sure to negotiate these terms at the outset and include specifics in the lease.
>
> LEGAL TIP

Transmission Easement. Grants the solar developer the right to install, maintain, and repair equipment to transmit solar energy to the grid. It also typically allows the solar company to install power lines, poles, and passageways above and below parts of the property.

LEGAL TIP

If you want any restrictions on the whereabouts or placement of transmission lines, you will need to negotiate them before signing the

Nuisance Easement. Prevents the landowner from bringing a lawsuit against the solar developer for any noise, dust, or other annoyance that the construction or operating activities may create. Note that neighbors are not included in this provision.

LEGAL TIP

Make sure the solar company agrees to indemnify or reimburse you if a neighbor files a nuisance lawsuit against you. Be sure this is explicitly stated in the lease agreement.

Solar Easement. Grants an exclusive right to the solar company for unobstructed access to sunlight for the solar panels. If this provision applies to all of your land, it may prohibit you from placing new buildings, structures, or trees on the property.

LEGAL TIP

Be sure to read the solar easement provision carefully; if it affects areas of your property that would not interfere with solar access, you will want to negotiate a more limited scope.

Catch-All Easement. Grants the solar company unrestricted access and use of the land.

Be wary if a catch-all easement is included in the lease agreement, as it is comprehensive and vague and could lead to problems down the road.

Improvements

The solar company may require you to ask for permission before building any new farm structures or buildings, or impose certain criteria that the landowner must follow to ensure that any new structures do not interfere with solar production (i.e., shade the solar panels).

> LEGAL TIP
>
> If you want to protect specific structures or guarantee the ability to add structures in the future, be sure to read the lease provisions regarding improvements carefully. The lease should specify that existing trees, buildings, and other improvements on your farm may remain. With respect to new structures, you may be able to negotiate for an improvement provision that requires the solar developer to consent to your request, so long as the improvement does not negatively impact the solar facility's access to the sun.

Also, be mindful of how any added value of improvements is accounted for. In commercial ground leases, which the solar lease resembles, the lessee (here, the solar company) owns improvements and is compensated for their added value if the property is sold. This needs to be specified in the lease, including the process for appraising the land's value and the improvements' value.

> LEGAL TIP
>
> The lease agreement should address how to account for any improvements the solar company makes to the land, including building roads or other infrastructure.

Maintenance during the operational phase

The lease should specify who will maintain the property in and around the solar project site, roads, and other infrastructure or facilities used for the solar site.

Maintenance under and around the solar arrays, including agrivoltaics

Maintaining vegetation around and under solar panels can be done through mowing and spraying herbicide or an agrivoltaic system, including sheep grazing, cultivating crops, or creating pollinator habitats.

> LEGAL TIP
>
> Reserving the Right to Pursue Agrivoltaics. Landowners wanting to pursue an agrivoltaic approach, whether initially or sometime in the future, will want to ensure that the lease explicitly reserves this right. This is critical, as failure to reserve this option at the outset may forever foreclose it, especially if the solar company you initially negotiated with is acquired or changes hands.

One option is to include a "right of first refusal" for the landowner to maintain the property inside the solar array's fence. This allows you to take care of the maintenance yourself or to lease this area to another farmer to do it under your specifications.

Another option is to explicitly require that the solar site's land be maintained a certain way–e.g., grazing, cultivating crops, and creating pollinator habitats. This latter option allows you or the solar developer to conduct the maintenance through an agrivoltaic system or enter a lease with another farmer.

Either way, the more specific the parameters are, the better. For example, any restrictions on chemical spraying should be specified.

LEGAL TIP

If agrivoltaics is pursued, the lease should require that any needed infrastructure is built and maintained.

The construction or development plan associated with the lease will need to include necessary specifications to ensure the agrivoltaic system is feasible and successful (e.g., height, angle, and spacing of the panels, type of fencing, availability, and access to water and irrigation sources, etc.). You will want to ensure that the solar lease does not restrict you from building a well or accessing and using water.

LEGAL TIP

The lease or separate sublease document will need to specify who is responsible for any damages, whether to the crops, livestock, solar panels, or equipment.

You'll also want to discuss this matter with your insurance agent to ensure adequate coverage is available should damage occur. Additionally, safety protocols will need to be established. This is particularly the case if animals are involved (solar grazing) or bees (apiaries). Are fences and gates secure, are protocols established, and is safety equipment available for maintenance and repair workers who visit the solar site?

Landowners interested in solar grazing should look to resources provided by the American Solar Grazing Association for sample solar grazing lease agreements. Landowners interested in cultivating crops or creating pollinator habitats may want to speak to representatives at pilot projects for advice, including Eagle Point Solar Farm (Eagle Point solar farm sets precedent for solar apiaries in the United States) and Jack's Solar Garden (jackssolargarden.com).

Other maintenance activities, including roads and infrastructure

Typically, the solar developer is responsible for maintaining and repairing roads and other infrastructure needed for the solar project.

> **LEGAL TIP**
>
> If the landowner and the solar developer share roads or other infrastructure, the solar lease should specify an arrangement for who is responsible for any maintenance and repair activities and paying for any associated costs. Often, these responsibilities are assigned based on usage percentage.

Other maintenance activities will also occur at the solar site, including inspecting and maintaining electrical connections and components. While these activities will be less frequent, landowners will need to consider the access rights for these activities.

> **LEGAL TIP**
>
> If agrivoltaics systems are pursued, liability for injuries and damage or harm to crop or grazing activities, equipment, and infrastructure during these maintenance visits will need to be established in the lease.

Utilities, Water-Use, and Erosion and Storm Control

Typically, the solar developer is responsible for paying any utilities associated with constructing or operating the solar facility. The lease will also need to specify any limits on water use and provide adequate compensation to the landowner if the solar developer uses water to clean the panels or for any cooling or other operational function.

> **LEGAL TIP**
>
> The solar lease should establish a system to account for usage, particularly if any utility or water bills remain in the landowner's name. In addition, the lease will need to outline who is responsible for repairing and paying for erosion or damages from storms that occur within any of the areas occupied by the solar site (solar footprint, rights-of-way, etc.).

Decommissioning Phase

Most solar leases require the solar company to restore the property to its original condition following the lease period. Restoration includes removing all equipment, restoring the land to its original grade, vegetation, and soil condition, and removing sub-surface materials to a certain depth. Ideally, the lease agreement includes a thorough decommissioning and reclamation plan. You will want to specify requirements or standards for how you want the land to be restored when negotiating the solar lease or decommissioning and reclamation plan.

LEGAL TIP

Be sure to review the lease carefully and consider how any agreed-upon terms for the decommissioning phase will be enforced decades into the future.

One option for enforcing the decommissioning plan is to require that a mutually agreed-upon third party oversee and verify the remediation process according to specified standards and terms.

LEGAL TIP

It is highly recommended that you insist that the solar company set aside adequate funds to cover the costs of decommissioning the project and remediating the land. The lease agreement could require that these funds be set aside in escrow or investment-grade security, such as a surety bond.

Early Termination

The solar lease will include a termination clause that outlines various reasons that either party can end the lease early and what happens if they do. You will want to ensure this clause includes, at a minimum, your right to terminate the lease early if the solar company fails to make payments for some time.

Some solar lease agreements allow the landowner to terminate the lease if the solar project remains inoperable for some time, such as one year.

LEGAL TIP

If early termination were to occur, the lease should specify that decommissioning responsibilities are triggered and release any security funds to pay for the decommissioning and remediation process.

Insurance and Indemnification

The solar lease will include requirements for the solar company and the landowner to have specific insurance coverage. In addition, the solar lease will include indemnification provisions that outline who is responsible for certain damages and losses. Liability insurance and indemnification were discussed in detail in Section 4. Take time to review this section.

Be sure to discuss the specifics of the insurance and indemnification provisions with your insurance agent to ensure they are reasonable and fair.

Resolving Disputes

Solar leases commonly include arbitration clauses, which require any dispute between the landowner and the solar company to be resolved in an out-of-court arbitration process. Read this provision carefully, as it often prevents any party from appealing the arbitration decision to a court.

LEGAL TIP

A more favorable arbitration clause will allow for an appeal and require mutual consent when choosing an arbitrator or arbitration service.

In addition, carefully review any "choice of law" provisions in the solar lease. This provision will specify the location and state law to resolve any dispute.

LEGAL TIP

Ensure that any disputes will be handled in the state where the property is located.

REFLECTION

- What legal concepts or aspects of the lease agreement do you feel uncertain or concerned about?
- After reading this section, what additional questions do you have for your attorney?

Identifying Non-Negotiable Issues for a Solar Lease

Before entering into any lease negotiation, it's essential to clearly define your **non-negotiable issues**—the terms and conditions that are vital to you and your land. These are the points you won't compromise on, ensuring that the agreement aligns with your values, long-term goals, and priorities.

Taking the time to identify these issues now will give you the confidence and clarity needed to negotiate effectively. It will also help you avoid agreeing to terms that could have long-term consequences or conflicts with your plans for the land.

A "List of Non-Negotiable Issues" will provide you with a clear framework to evaluate and negotiate the terms of the solar lease while ensuring your land and financial interests are safeguarded. By addressing these key areas, you'll be better equipped to enter into a solar lease that aligns with your long-term goals.

Key Areas to Consider for Your "List of Non-Negotiable Issues"

Create a list of factors that matter most to you. Below is a checklist to get you started—feel free to check off those that apply and add any other critical concerns. Use the space provided to note comments or questions for further clarification or discussion with your attorney or advisors.

Agricultural and Land Use	Comments/Questions

❍ **Protect specific areas.** Ensure protection for **prime agricultural land**, **wildlife corridors**, or other sensitive areas.
❍ **Access for farming or other activities:**
    ❍ Allow access for agrivoltaics (e.g., grazing, crop production, or pollinator habitats).
    ❍ Permit landowner to access or use certain areas (including roads, rights of way, or perimeter areas of the solar footprint)
    ❍ Permit the landowner to build structures or improvements on certain parts of the land.
❍ **Third-party agreements:** Ensure existing or future leases can continue without interference from the solar lease.	

Agrivoltaics	Comments/Questions
❍ Design the project to optimize the cultivation of crops and/or grazing underneath the panels. ❍ Ensure a sufficient water source within the fenced area for agrivoltaic needs. ❍ Commit to grazing for maintenance under the panels ❍ Permit landowner to access and use the land within the solar footprint and/or perimeter for cultivating crops, grazing, and/or pollinator habitats. ❍ Permit landowner to sublease the land within the solar footprint for cultivating crops, grazing, and/or pollinator habitats.	

Environmental Protections	Comments/Questions

❍ Restrict **chemical spraying**
 	
❍ **Construction and decommissioning plans**
    ❍ Require a clear construction and decommissioning plan that the landowner approves (e.g., require double ditching during construction and decommissioning to protect soil tiles and topsoil).
    ❍ Require a clear reclamation plan that the landowner approves (e.g., topsoil restoration, vegetation replanting).
    ❍ Set aside security funds for decommissioning costs.	

Liability, Insurance, and Indemnification	Comments/Questions

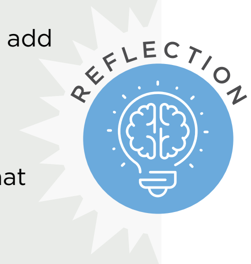
❍ **Ensure Fair indemnification.**
❍ Require the solar company to pay for or reimburse you for **damages** caused by the solar project.
❍ Ensure the solar company will cover the costs of **lawsuits** filed by neighbors or the community due to the project.
 	
❍ **Require the solar company to obtain adequate Insurance**
    ❍ **Commercial liability insurance** for general damages, including damages from storms and natural disasters.
    ❍ **Workers' compensation and other liability insurance** to cover injuries to workers or guests associated with the solar project.
    ❍ **Environmental insurance** for potential environmental contamination, soil damage, or subsurface damage.	

Financial Compensation and Rent	Comments/Questions

❍ **Minimum rent payments:** Ensure a specific structure and minimum amount in rent payments for each phase (ideally determined with the help of your financial advisor).
 	
❍ **Compensation for losses**, ensure compensation for:
    ❍ **Lost eligibility** in government conservation programs.
    ❍ **Reduced crop production** based on historical revenue.
    ❍ **Increased insurance costs.**
    ❍ **Cancellation penalties** and **lost future income** from other agreements (leases, hunting rights, etc.).
    ❍ **Professional fees** related to negotiating the lease (attorney, accountant, etc.).	

Exit Clauses and Termination	Comments/Questions
❍ **Termination rights.** Ensure the lease permits you to exit under specific conditions (e.g., failure to meet milestones, changing land-use priorities). ❍ **Early termination:** Ensure that if the lease is terminated early, the solar company is responsible for decommissioning the site and providing for any financial consequences.	
Long-term Impact and Legacy	Comments/Questions
❍ Specify that certain areas of the land must be preserved for **future farming** or other uses, even if solar development is in place. ❍ Ensure the lease includes a **clear plan for repurposing** the land once the solar project is decommissioned.	

Relationship with the Solar Developer	Comments/Questions
❍ **Establish clear communication channels** with the solar developer to ensure transparency throughout the lease period, including expectations for collaboration (e.g., maintenance, land use changes, or disruptions to farming activities). ❍ Include clear procedures for **resolving disputes**, ensuring there are clear steps for addressing any issues. ❍ Ensure you have the **right to participate in key decision-making processes** that affect your land or operations (e.g., changes to panel layout, expansion of the project).	
Other	Comments/Questions
❍	



What other issues are critical for you and your land's future? Be sure to add these to your list.

Which of these non-negotiable points is highest priority? Mark the most critical issues with a star or notation. This will help you focus on what matters most during the negotiations.

Discussion with professionals: *Have a conversation with your attorney, financial advisor, and any other trusted professionals to ensure these issues are addressed and protected in the lease.*

Negotiating a Solar Lease with Strength

Negotiating a solar lease can be intimidating, especially when you are facing a developer with more resources, knowledge, and experience. It can feel like there is a power imbalance, and it's easy to fear that you might give away too much information or agree to terms that don't align with your needs. But it's important to remember: **You have power too.**

Your land is valuable, and your needs, priorities, values, and goals matter. By approaching the negotiation process with clarity and confidence, you can ensure that you are not just reacting to the developer's terms but actively shaping the outcome. With the right tools and strategies, you can negotiate effectively and secure a solar lease that meets your needs, preserves your land, and aligns with your values. And remember, you can bring someone with you to the negotiations, for example: an attorney, business partner, or family member.

Here are **5 key negotiation tips** to keep in mind:

Tip 1. Learn about the Solar Developer

Understanding the developer you're negotiating with is critical. Getting to know their position and background gives you insight into their strengths, weaknesses, and the overall stability of the project. As you do your due diligence, keep these considerations in mind:

- **Financial stability:** Is the developer financially sound? A financially unstable developer could lead to project delays or worse, leaving you with the cleanup bill if they go bankrupt.
- **Experience:** Do they have a proven track record in solar energy production? Lack of experience could result in delays or cash-flow challenges.
- **Reputation:** What is their reputation with other landowners and the industry? Reviews and references can provide insight into how the developer manages or mismanages projects.
- **Understand who you're talking to.** Sometimes, the person contacting the landowner initially is a land broker working on behalf of the developer. Their job is to assemble parcels for the developer or to "sell" the project to the developer. Be sure to verify whether the party you are negotiating with is a broker or a developer. If they are a broker, determine whether a developer is also involved or whether the broker has the authority to negotiate on behalf of the developer.

REFLECTION

Create an action plan for learning about the solar developer. Here are some starting points:

- **The developer.** Ask them for their most recent financial and annual reports, a portfolio, or a description of the full project. Ask them to refer you to other landowners they've previously done business.
- **Your state's secretary of state office.** Confirm that the company is registered to do business in your state. See if financial statements have been filed by creditors of the company.
- **Credit check services.** Consider paying for a credit check on the business.
- **County recorder's office.** Check for recorded solar leases in the public records. Consider contacting the landowners. While they are not able to discuss confidential information, they may be willing to talk about aspects of their relationship with the solar developer.
- **Solar Energy Industry Association.** SEIA adopted a business code to encourage good faith, understanding, and transparency in the solar industry. Ask the developer if it is a member of the association and complies with the code.
- **Attorneys who have worked on solar leases.** While attorneys will not be able to discuss confidential information about their clients, they may be willing to generally speak about the reputation of a solar developer and their willingness to work with landowners.

Tip 2. Know Your Power

You hold significant power in this negotiation. Your land, your priorities, and your ability to walk away from a bad deal are your strongest negotiating tools. Being well-prepared and understanding your options gives you leverage to secure favorable terms..

- **Know Your Value:** The more research and due diligence you've done, the more you'll be able to bring to the table. For example, if you have concerns about environmental damage, agrivoltaics, or water rights, bringing those up early on gives you negotiating leverage. You may also discover that the solar developer values your input for community engagement or sustainability goals.
- **Know your non-negotiables:** Identify your hardline issues that you will not compromise on. This will give you the confidence and clarity needed to negotiate effectively. It will help you avoid agreeing to terms that could have long-term consequences or conflicts with your values or plans for the land.
- **Know when to walk away:** Be prepared to walk away from the negotiation if the terms aren't acceptable. One approach is to identify a clear "Best Alternative to a Negotiated

Knowledge is power. Your increased knowledge and insights about issues most important to you will give you power to engage in a reciprocal dialogue and come to a mutually agreed upon solution, or, to know when it is time to walk away.

Agreement" or BATNA. What is your best alternative if the solar project isn't a good fit or the deal doesn't go through? Perhaps it's continuing to farm the land, leasing it to another developer, selling it, or using it for other purposes. Having a clear BATNA strengthens your position, allowing you to confidently walk away from a bad deal.

REFLECTION

Make a list of alternatives available to you if the solar agreement does not work out. Identify 2–3 pros and cons for each of the alternatives. Which is the best of these alternatives? Keep this BATNA in mind as you negotiate.

Tip 3. Find Common Ground

Negotiation is most successful when both sides work together to create solutions that satisfy both parties' interests. Finding common ground doesn't mean compromising on what's important to you; it means getting creative and figuring out ways that both you and the developer can achieve your goals. By focusing on mutual benefits, you can create a more sustainable and equitable agreement that aligns with both parties' priorities.

- **Focus on interests, not positions:** Understand both your interests and the developer's interests. For example, the developer wants to efficiently use land for solar production. Perhaps you want to preserve the land for future agricultural use. Look for ways to meet both interests, such as incorporating agrivoltaics to save maintenance costs and continue agricultural use on the land.
- **Generate options for mutual gain:** Look for creative solutions that benefit both sides. Can solar panels be placed on non-agricultural land? Could agrivoltaics be implemented to continue farming under the panels?
- **Understand the overlap between your goals and the developer's**. One technique for this is to identify the Zone of Possible Agreement (ZOPA). The ZOPA represents the area where both parties can agree. Understanding your minimum requirements and the developer's priorities helps you find that overlap and move toward an agreement.
- **Use objective criteria:** Always tie negotiations back to objective criteria (e.g., industry standards, environmental regulations, financial fairness). This helps prevent the negotiation from becoming personal or one-sided. Using criteria that is objective and measurable can ensure fairness and avoid personal biases.

Tip 4. Set Clear Expectations Upfront

The uncertainties of both the process and outcome of negotiations can feel overwhelming. To help ease your mind and streamline the process, it can help to clarify the path forward. At the outset of the negotiations, be sure to get clarity on the negotiation process by setting mutual expectations and getting assurances that your fundamental needs will be met. Your needs might include:

- **Timeline**: Ensure both parties agree on the timing of the negotiation and have a clear understanding of when decisions will be made. You can propose milestones or set deadlines to help keep things moving.
- **Attorney Costs:** If you're working with an attorney, ensure the solar developer agrees to compensate you for some or all of these fees, especially if it's part of the negotiation process.
- **Negotiation Flexibility:** Ensure that the solar developer is willing to negotiate on key issues, not just present you with a "take-it-or-leave-it" offer or template. For this, consider disclosing upfront what your absolute deal-breakers are. Discuss this strategy with your attorney.
- **Use "I" Statements:** One strategy is to use "I" statements to express your needs. It helps center your perspective while not sounding confrontational. For example:
  - "I need to ensure that the lease terms are fair and align with my financial goals, and I would appreciate it if we could discuss potential attorney fees upfront."
  - "I value transparency and would like to know if the solar developer is open to addressing some of my key concerns, such as agrivoltaic options and access rights, before we proceed."

REFLECTION

Take some time to consider your expectations and fundamental needs in the negotiation process.

- What are the most critical milestones and deadlines that you need to establish upfront to keep the negotiations on track and meet your timeline?
- How comfortable are you with expressing your expectations regarding attorney fees and deal-breakers at the outset of negotiations? What strategies can you use to assert these expectations clearly and confidently, ensuring the developer understands your needs, while maintaining a constructive and focused negotiation process?

Tip 5. Collaborate to Build Strength

Working with others can enhance your bargaining power and provide valuable perspectives.

- **Collaborate with other landowners:** If multiple landowners are involved, consider collective negotiations. This not only boosts your collective bargaining power but can also save on legal costs. However, ensure that all landowners share a similar vision for the solar project before going this route.
- **Collaborate with professionals:** Build a team of trusted advisors, including your attorney, financial advisor, and environmental experts. They can help you understand the nuances of the lease and ensure your interests are fully protected.

By collaborating with other landowners or professionals, you strengthen your position and ensure that your voice is heard throughout the process.

Key Takeaways

Learn About the Solar Developer: Research the developer's financial stability, track record, and reputation to ensure they're a reliable and trustworthy partner.

Know Your Power: Understand your alternatives, prioritize your non-negotiables, and know when to walk away to strengthen your negotiating position.

Find Common Ground: Focus on shared interests and explore creative solutions, such as agrivoltaics, to meet both your goals and the developer's.

Set Clear Expectations Upfront: Define the negotiation timeline, attorney costs, and flexibility to ensure the process runs smoothly and efficiently.

Collaborate: Work with other landowners or professionals to boost your bargaining power and ensure your interests are fully supported.

Take some time to consider your expectations and fundamental needs in the negotiation process.

- What are the most critical milestones and deadlines that you need to establish upfront to keep the negotiations on track and meet your timeline?
- How comfortable are you with expressing your expectations regarding attorney fees and deal-breakers at the outset of negotiations?
- What strategies can you use to assert these expectations clearly and confidently, ensuring the developer understands your needs, while maintaining a constructive and focused negotiation process?

Final Thoughts

Negotiating a solar lease can feel like a complex and intimidating process, especially when you're engaging a developer with more resources, expertise, and experience. However, as an agricultural landowner, **you bring invaluable power to the table.** Your land is a precious resource, and your knowledge, values, and long-term priorities are essential factors that will shape the success of the negotiation.

Preparation is key. By thoroughly understanding the developer's needs, identifying your non-negotiable points, and clearly communicating your expectations from the outset, you can steer the negotiation in a direction that reflects your values. Collaborating with an attorney and other trusted professionals can further strengthen your position.

Approaching the negotiation with clarity, confidence, and a well-researched strategy will set the tone for a positive, transparent relationship. **Your voice matters in every decision about your land's future.** With the right preparation, you can secure an agreement that not only meets your immediate needs but also aligns with your long-term goals for the land.

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