

Negotiation Part 2

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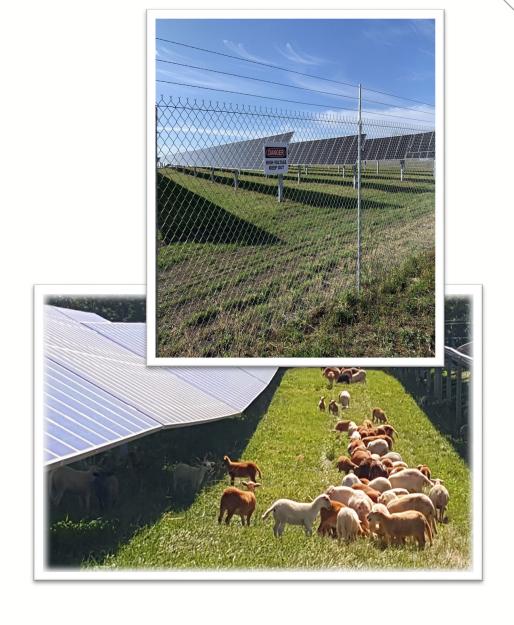
Maintenance

1. Consider locations of maintenance areas

- 1. Inside the project site
- 2. Around the project site
- 3. Temporary construction use areas
- 4. Easement areas, roads
- 5. Transmission facility areas

2. Maintenance needs

- 1. Vegetation, noxious weeds, pollinator habitat
- 2. Fences
- 3. Access points
- 4. Project infrastructure
- 3. Waiver of nuisance impacts from ongoing maintenance is common



Landowner's reserved rights

Factors to consider

- 1. The "occupied area" of project site has a **larger footprint** than other types of energy developments.
- Typical for developer to have exclusive rights in the occupied area.
- Also, to have a general exclusive right "to collect and convert the solar resources" on the property.
- 2. The developer may seek to lease only a **portion** of a farm.
- Consider landowner's uses of remainder of the property.
- 3. Capitalizing on the **development period**.

Reserved rights to consider

1. Crop production

- During development phase
- Negotiate crop damages formula:
- NASS county avg. x price x acres x multiplier

2. Grazing

- During development phase
- Inside or outside the project site?
- Removal of infrastructure at construction

3. Oil and gas

- Surface estate conflicts
- Prohibition near project site
- May require accommodation agreement

4. Hunting and recreational uses

- Developer may establish zones
- May conflict with prohibitions against leasing

Landowner protection: insurance

Common approach: developer to maintain commercial general liability insurance policy with landowner as named party.

- For loss or liability caused by developer's occupation of property
- For combined single limit coverage per occurrence
- Different amount during development phase?
- Does stated amount address landowner needs?
- Is there a "self-insurance" allowance?
- Required notice of termination to landowner



Landowner protection: indemnity

Common approach: Developer to indemnify against liability for physical damage to property, landowner and public caused by developer's negligence.

- Exceptions for negligent acts or omissions and willful misconduct of landowner or landowner's guests or tenants.
 - Other limiting language?
 - What about wildlife interferences?
- Rights to take "reasonable security measures" to protect against liability,
 - Including building fencing in locations developer determines.

Assignment and condemnation

Common approach: *Broad* assignment rights as determined by developer.

- "Or to anyone under sublease"
- Require notice of assignment to landowner.

Common approach: Sharing of condemnation award based upon determination of value attributed to property versus improvements.

- Developer entitled to "value of leasehold estate"?
- Extinguishment of lease terms upon taking.

Termination

Common approach: Developer may terminate at any time.

- With notice to landowner?
- Landowner may **not** terminate during development phase
- Landowner may have limited rights to terminate upon material defect and failure to cure, according to procedures defined in lease.

Decommissioning and restoration

Consider post-construction restoration also

- Provisions for restoring construction areas, laydown yards, parking lots to condition pre-construction condition, including:
 - Soil compaction
 - Drainage interferences



Decommissioning and restoration

Common approach: Developer will remove solar facilities at end of lease term and has one year to complete removal, with easement rights.

- Limitations to removing above ground facilities or X feet below surface, may not be sufficient for return to agricultural production.
- Restoration provisions? "Shall return in good order and condition"
- Soil compaction and drainage impacts?
- Removal of roads and other improvements?
- Clarification of owner's right to remove facility if developer fails to do so
 - Reimbursement and salvage value
- Consider bond or other financial security
 - What is a sufficient amount? "Net removal cost"
 - When must it be established?
 - Payable to whom?
 - Some leases defer to whatever bonding local or state regulations require
 - Review or increase in bonding amount over lease time period or new developer



