Considerations When Leasing Agricultural Lands to Solar Developers

By Mike Nuckols, Local Foods and Horticulture Program Manager

In July of 2019, Governor Cuomo signed *The Climate Leadership and Community Protection Act*, which sets a goal for New York State to reduce net carbon emissions to zero by 2050. This legislation and related federal programs have created strong incentives for development of both small and large-scale solar projects.

Until recently, solar development has largely been absent from the North Country; however, interest is rapidly expanding. In general, developers of solar projects seek level sites free of trees near major (three-phase) transmission hubs, to include power substations, and near roads. These site requirements often coincide with agricultural lands. The size of these projects can range from a few acres for small community projects that deliver under 5 megawatts to dozens of acres for projects exceeding 20 megawatts (and higher).

Financially, solar leasing can be a sudden and substantial windfall for landowners. That said, farmers need to approach such deals with caution. Consider the following when evaluating a lease agreement:

• **Do your research to ensure a fair deal.** Consider that multiple companies are investing in solar projects throughout the state. The first company that approaches you may not always give you the best lease offer. Is their offer reasonable and fair compared to similar projects in the area or region? Are you being pressured to sign a contract without time for adequate review? Is payment tied to electrical rates and/or production expectations or is it a fixed annual lease? Lease rates can vary considerably depending on the location (near a three-phase transmission hub), local power demand and rates, state and federal incentives, installation costs, site accessibility, and the amount of land available nearby.

• **Ask the developer if they are willing to locate the solar installation onto portions of your land with the least impact to your farm.** Selection of solar locations are often based upon access to the power grid and roads with little consideration for the intrinsic current and future value of the farmland underneath. Ideally, solar systems should be placed on soils of lesser agricultural value, retaining acreage with the best soils and geology for strictly agricultural purposes. If you needed to expand production, would you have enough of the right kind of land available to do so? Or, would you be left with the rocky soil unsuitable for production? Furthermore, do you have right-of-entry through the project to reach other land on your property? If the project is not built or if it is significantly delayed, can you continue to use the land in the meantime?

• **Address compatible agricultural uses within the leased parcel.** Continued use of the land for other agricultural purposes is another consideration. Research at Cornell University has shown that sheep can be successfully incorporated into fenced solar installations as a way to reduce the amount of mowing required. Does the contract allow you to place sheep within the leased area? Does the contract allow the solar company to hire other farmers or companies to mow or graze the property? How will they access the site? Can the alleys between solar arrays be cut for hay? How high can the grass get before it becomes a detriment to solar production? If there are trees near the property, or if an adjacent pasture is allowed to revert to forest, does the developer have a right to cut those trees? How deep will electrical lines be buried? Recent demonstration projects have shown that vegetables can be grown under solar panels if they are mounted high (eight-feet). Would the developer accommodate that type of installation? Can the land under the panels be cultivated for crops that tolerate light shade? Will herbicides be used to control vegetation? Can manure be spread on the parcel? Compatible and incompatible agricultural land uses should be detailed in contract documents.

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• **Consider the tax implications carefully.** Installation of solar on a property may potentially have significant tax implications. Land classified as agricultural may be reclassified as industrial or commercial with higher tax rates. Removal of agricultural exemptions could result in retroactive penalties. Solar panels may be considered taxable improvements. Landowners might consider language in leasing contracts to address such tax increases. They might also consult with town tax assessors prior to signing agreements.

• **Comply with zoning and related ordnances.** County, town, and village zoning laws might prohibit solar installation to prevent nuisances to adjacent property owners. Is solar allowed on your land? Furthermore, will the Town allow the construction of access roads and associated infrastructure? Farmers might include language in contracts that requires the developer to complete all required studies, such as environmental impact statements, to adhere to all zoning requirements, and to obtain all relevant and necessary permits. Consideration must also be given to existing covenants, conservation easements, or similar deed restrictions.

• **Comply with stormwater and erosion control requirements.** Control of stormwater runoff and erosion during construction, especially on sites exceeding one acre, is required by environmental regulations. Furthermore, changes in drainage due to grading and soil compaction are possible; the effects of such changes may not appear for several years. Will the developer meet all stormwater permitting requirements during construction of the solar array? Will they install all required erosion control practices? If erosion occurs, who is responsible for repairing the damage? The method of installation will greatly impact the amount of soil disturbance to be expected. The installation of large concrete pads will result in significantly more impacts than a contractor using screw piers or piles, whose footprint is comparatively small. Furthermore, who owns any soils that are excavated while leveling ground or installing concrete pads? Can the contractor remove them from the site? Will they bring soils in from other locations, which may potentially be contaminated with industrial chemicals or contain invasive weed seeds?

• **Closely review end-of-lease terms.** In general, lease agreements will be for the life of the solar panels, typically twenty to thirty years. At the end of the lease agreement, will the contractor be required to remove the installation, to include access roads, should they not renew the lease? Furthermore, if that contractor goes bankrupt, what assurances are given that the site will be restored? Is the contractor willing to post a bond for decommissioning and site restoration? If concrete pads are poured, will they be abandoned in place? If earthwork is required to level the site, will natural top-soils be replaced? Some companies include right-of-first refusal at the end of the contract period. Such a clause could prevent farmers from leasing to other companies for higher rates. Is that acceptable to you?

• **Make sure your bank approves.** If you have a mortgage, your lender might need to approve or endorse the lease agreement.

• **Address insurance and liability concerns.** Should an accident occur on the property, what happens? Will the solar company provide insurance? Or, will you have to increase your liability insurance to cover potential losses. For example, if the panels were blown into a roadway or adjacent property during a windstorm, who is responsible? If you damage panels during routine farm operations, who repairs them?

• **Consult an attorney.** Solar leasing contracts can be complex. The issues presented in this paper represent only a fraction of solar leasing concerns. Given the long-term ramifications, we strongly recommend that you have lease agreements reviewed by an attorney to avoid unexpected surprises such as transfer of mineral rights or mandated renewal after the performance period expires. Due diligence is required to avoid exaggerated claims of financial windfall or outright scams.

Solar leasing has the potential to significantly help farmers balance their budgets with minimal impact to farm operations and should be carefully considered. For more detailed information on solar leasing, consult the following publications:

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Guide to Land Leases for Solar, Solar Energy Industries Association.

(https://www.seia.org/sites/default/files/resources/SEIA%20Guide%20to%20Land%20Leases%20for%20Solar_July%2027%202016.pdf)

Landowner Considerations for Solar Leases, New York State Energy Research and Development and New York State Department of Agriculture and Markets

(https://s3.amazonaws.com/assets.cce.cornell.edu/attachments/17044/Solar_Lease_Landowner_Considerations_May2016.pdf?1470164409)

List of Community Solar Projects and Associated Developers

(https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Solar-for-Your-Home/Community-Solar/Community-Solar-Map)

Leasing your Farmland for Wind and Solar Energy Development: A Beginner's Guide for Farmers; New York Farm Bureau, December 2016.

(http://www.nyfb.org/application/files/2014/9780/6349/file_y349d211hx.pdf)