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Solar Development in Ohio

Trends, Processes, and Legal Issues with Solar Energy Development

Session 2: The Solar Development Lease

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Spring Webinar Series
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TEACHING
EXTENSION RESEARCH

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OSU Extension Ohio Solar Development 2023 Webinar Series

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Session #1
Solar Energy Overview & Trends

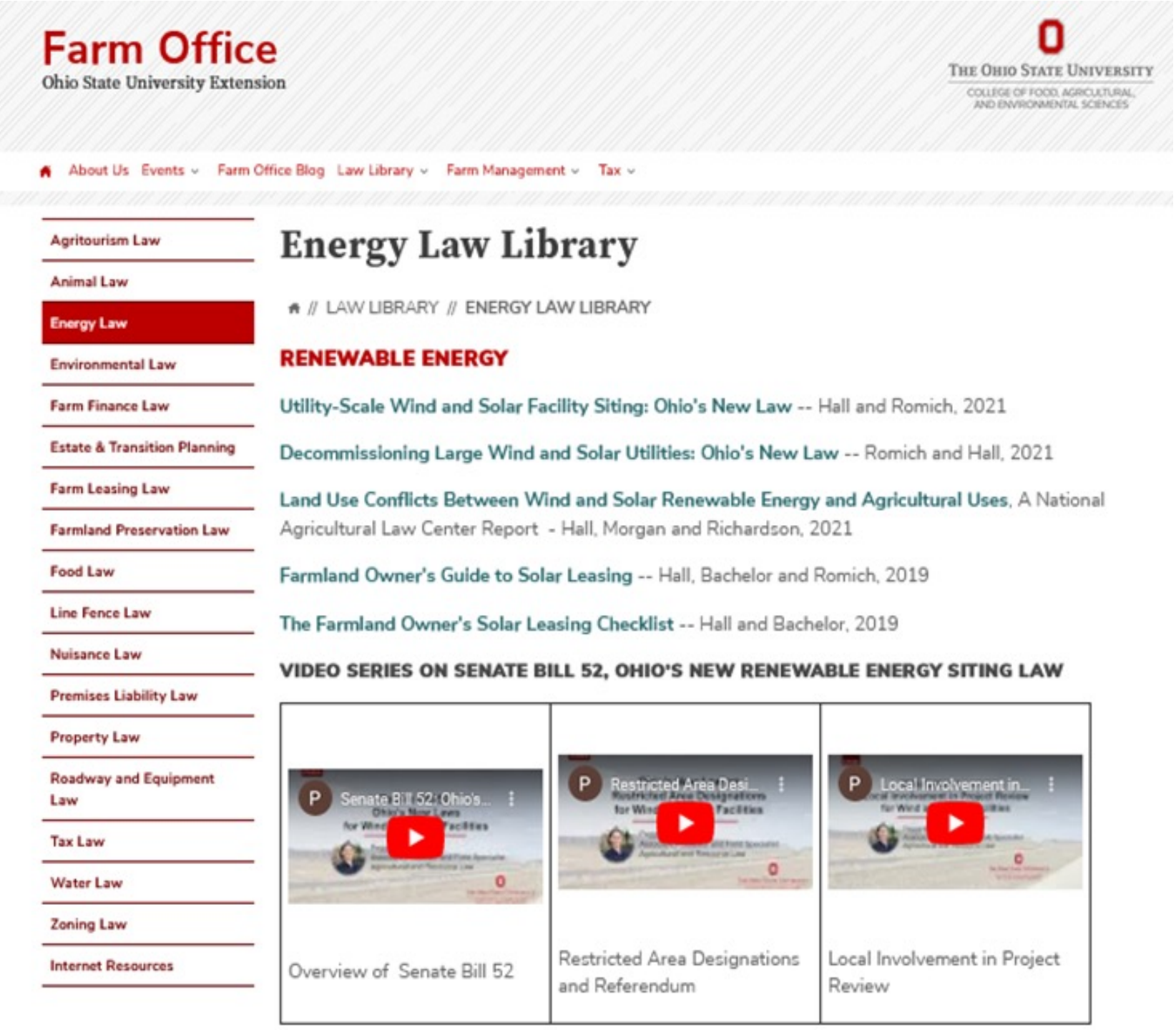
Session #2
The Solar Development Lease

Session #3
Connecting to the Electric Grid

Session #4
Solar Project Approval in Ohio

Session #5
Pre & Post Construction Considerations

Information for landowners considering a solar lease.



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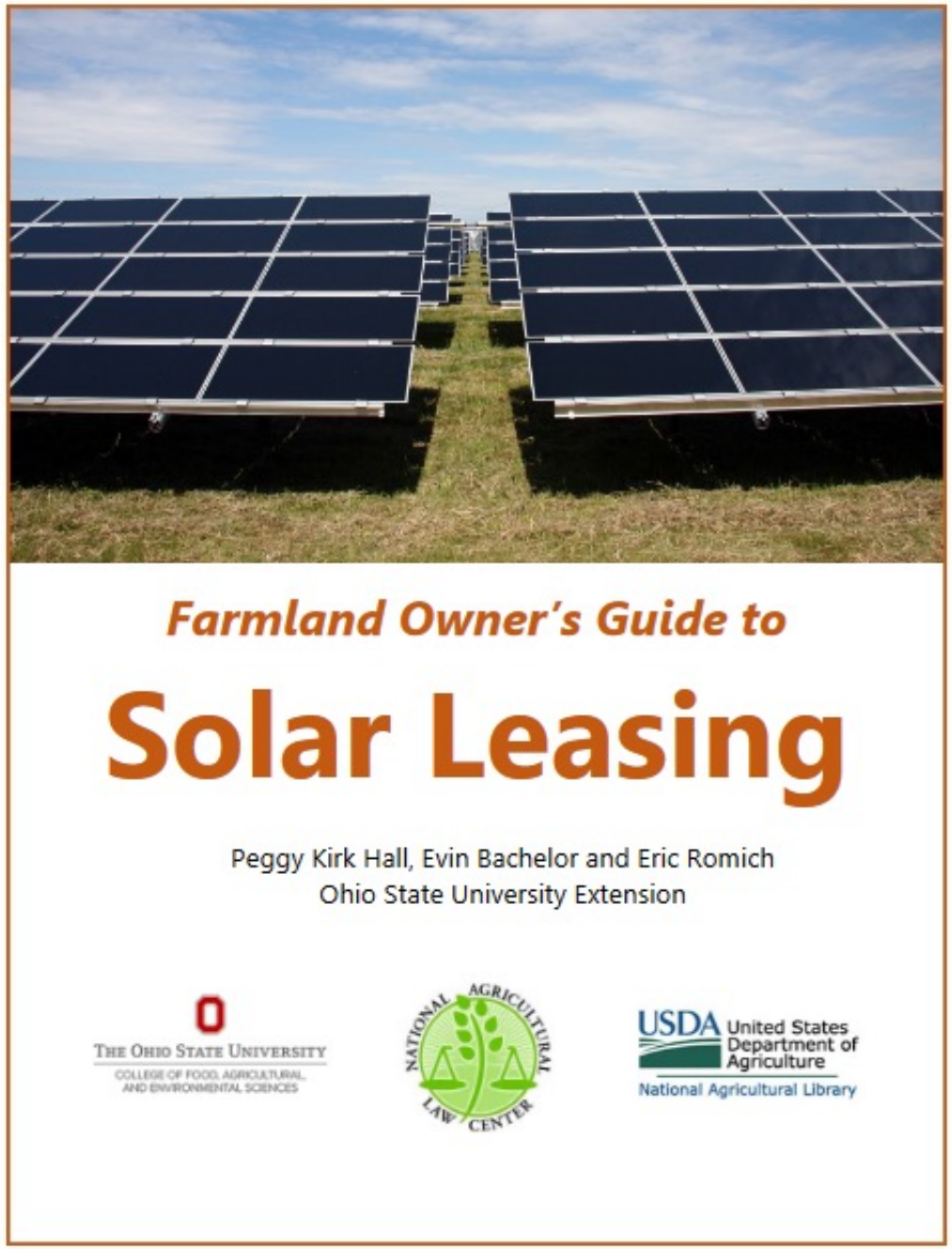
Recordings and slides for this series will be in the **Energy Law Library** at **farmoffice.osu.edu** along with our other solar resources.

https://farmoffice.osu.edu/our-library/energy-law



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For additional details on today's webinar, see our **Farmland Owner's Guide to Solar Leasing**

https://farmoffice.osu.edu/our-library/energy-law

Lease Agreement: Developer must show evidence of **site control**.

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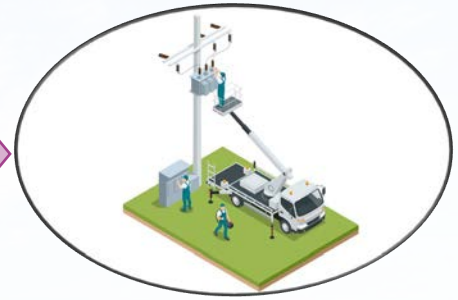
Critical Layers of Solar Development Regulatory Oversight

1. Approval to **Interconnect** to the Power Grid
   - Public Utilities Commission of Ohio
   - PJM



2. Permit to **Construct**, Own, and Operate
   - Ohio Power Siting Board
   - County Restricted Zone
   - Local Zoning

3. Qualified Energy Facility **Tax** Exemption
   - Ohio Department of Development
   - County Commissioners

Image Source: Adobe Stock

Session #2:
The Solar Development Lease

1. A practitioner's view.
2. Initial considerations for solar leasing.
3. Understanding the solar lease and common lease terms.
4. Best practices for solar leasing.

ATTORNEY

Andrew Wecker

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Andrew Wecker joined Wright & Moore Law Co. LPA in December 2022, wher he leads the property law practice and landowner advocacy. Rated AV pre-eminent by Martindale-Hubbell, in 2022, Columbus CEO magazine included Andy in its list of Best Lawyers in the category of real estate. Andy cares about homegrown prosperity in Ohio and the people who make, fix, raise & grow things. He works with them to find and finance the places to do what they do for the rest of us. He also works for landowners when they are approached by developers for easements and long-term land leases for cell towers and alternative energy projects.

Andy grew up in Medina County in Northeast Ohio, graduated from Ohio University in Southeast Ohio, and has lived and worked in both Northwest and Southwest Ohio before he settled down in Central Ohio with his wife Kendra. He graduated from the Moritz College of Law at The Ohio State University. They have five children who have all been active in 4-H with lamb, poultry and rabbit projects, as well as serving other 4-H'ers in roles such as junior fair board member, camp counselor, life guard and registered nurse.

Andy was president of his local board of education when the community passed a bond issue to build and then start construction a new high school, stadium and elementary school. One of his proudest achievements was to keep a quality woodshop and drafting program in the high school to go with his school district's strong FFA program. He belongs to the advisory council of the C. William Swank Program in Rural-Urban Policy at OSU's College of Food, Agricultural and Environmental Sciences, as well as the member advisory committee of Consolidated Cooperative, which provides electricity, fiber optic broad band and gas to its members.

When they are not at work, Andy and Kendra enjoy spending time with each other, their children and their friends, preferably outdoors at their place, o Alum Creek Reservoir or the west basin of Lake Erie, camping, boating, hiking, hunting, fishing, or gardening.

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1. What role do you play in solar energy development leasing?

2. Have you and your law firm seen any changes in solar leasing over recent years?

3. As you work with clients on solar leasing, what general advice do you provide them?

4. What specific legal issues do you frequently encounter in solar leases?

5. Are there “best practices” you recommend to landowners who are going through the solar leasing process?

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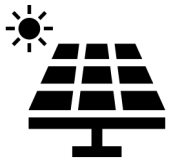
Initial considerations for solar leasing

Leasing farmland for solar development: initial considerations

WHAT ADVISORS DO YOU NEED?

Solar leasing attorney, farm business attorney, estate planning attorney, accountant, financial planner, lender, insurance agent, farm management professionals.



DUE DILIGENCE

Who is the developer and what type of project is envisioned?

LENGTH OF THE COMMITMENT

A solar lease can last for 20 to 50 years.

COUNTY AND TOWNSHIP AUTHORITY

Restricted area designations, power to reject, local zoning regulations.

Leasing farmland for solar development: Initial considerations

NEIGHBOR AND COMMUNITY RELATIONS

Leases, mortgages, government programs, mineral rights, easements, joint owners.

CHANGES TO THE FARM AND OPERATION

Physical impacts, changes to land base, revenue generation, borrowing capacity, other land uses.

FAMILY MATTERS

Heritage, consensus, retirement and care needs, estate and transition plans.

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Understanding the solar lease and common lease terms

A few principles

1

NO TWO LEASES ARE ALIKE

Structure and terms can vary tremendously, depending on developer and type of project

2

NEGOTIATION IS POSSIBLE

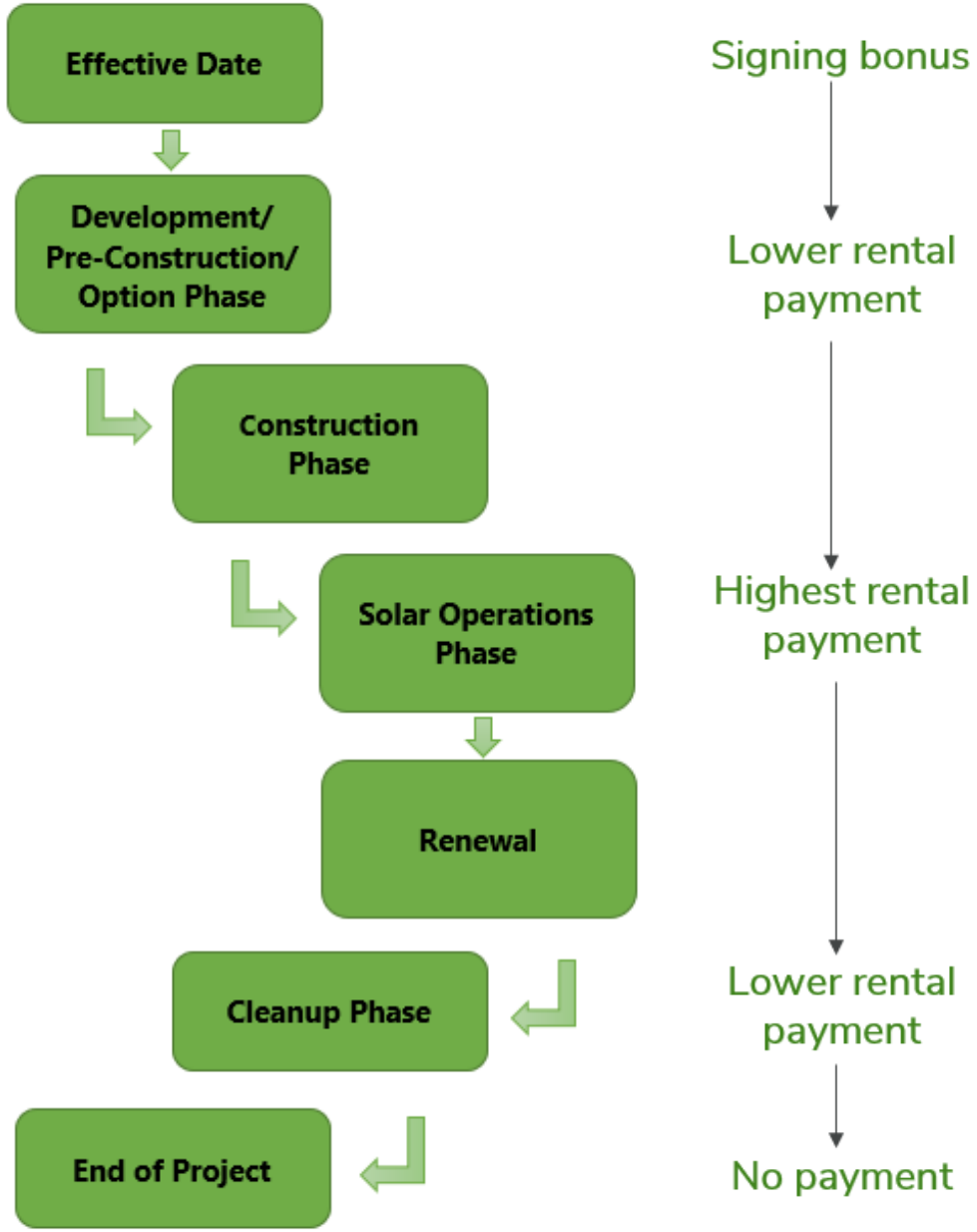
And might be expected?

3

THE “BIG PICTURE” IS CRITICAL

The lease is one piece of one part of a larger process

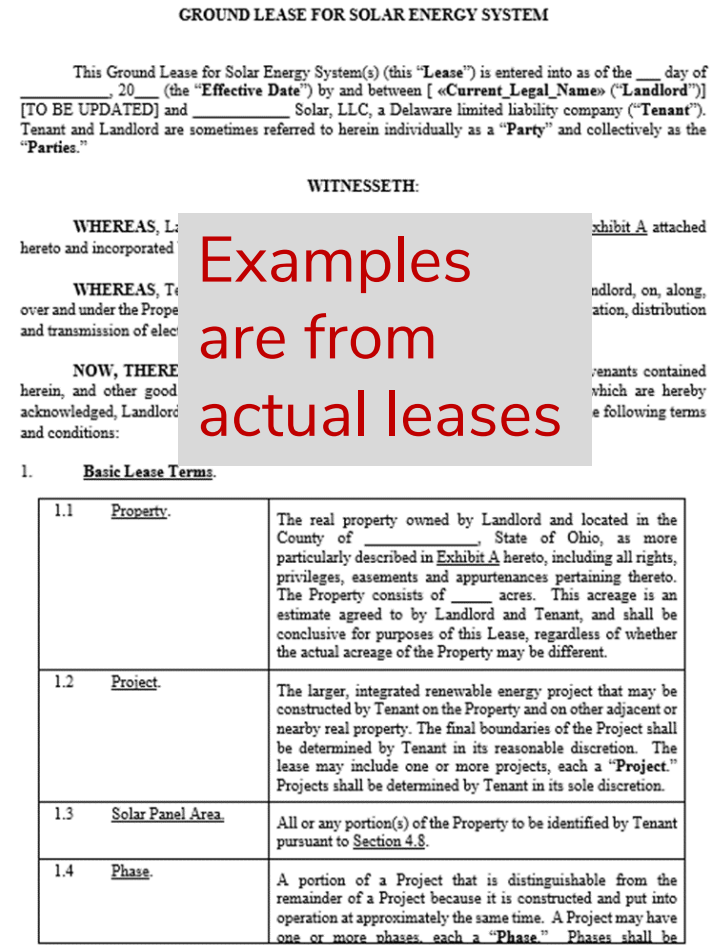
Life cycle of a solar lease



Common lease terms

1. Lease periods and payments
2. Easements
3. Property management and use
4. Taxes
5. Decommissioning and cleanup
6. General legal clauses

… not an exhaustive list!



GROUND LEASE FOR SOLAR ENERGY SYSTEM

This Ground Lease for Solar Energy System(s) (this "**Lease**") is entered into as of the ___ day of _____, 20___ (the "**Effective Date**") by and between [«**Current_Legal_Name**» ("**Landlord**")] [TO BE UPDATED] and _____ Solar, LLC, a Delaware limited liability company ("**Tenant**"). Tenant and Landlord are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

WITNESSETH:

WHEREAS, L… …xhibit A attached hereto and incorporated

WHEREAS, T… …ndlord, on, along, over and under the Prope… …ation, distribution and transmission of elec…

NOW, THERE… …enants contained herein, and other good … …which are hereby acknowledged, Landlord… …e following terms and conditions:

Examples are from actual leases

1. **Basic Lease Terms**.

1.1	Property.	The real property owned by Landlord and located in the County of _____, State of Ohio, as more particularly described in Exhibit A hereto, including all rights, privileges, easements and appurtenances pertaining thereto. The Property consists of _____ acres. This acreage is an estimate agreed to by Landlord and Tenant, and shall be conclusive for purposes of this Lease, regardless of whether the actual acreage of the Property may be different.
1.2	Project.	The larger, integrated renewable energy project that may be constructed by Tenant on the Property and on other adjacent or nearby real property. The final boundaries of the Project shall be determined by Tenant in its reasonable discretion. The lease may include one or more projects, each a "**Project**." Projects shall be determined by Tenant in its sole discretion.
1.3	Solar Panel Area.	All or any portion(s) of the Property to be identified by Tenant pursuant to Section 4.8.
1.4	Phase.	A portion of a Project that is distinguishable from the remainder of a Project because it is constructed and put into operation at approximately the same time. A Project may have one or more phases, each a "**Phase**." Phases shall be

1. Lease periods and payments

"Lease Term"	Collectively, (i) a "Due Diligence Period" commencing on the Effective Date and terminating on the earlier to occur of the fifth (5th) anniversary of the Effective Date of this Lease or the beginning of the Construction Period or the termination of this Lease, (ii) a "Construction Period" commencing on the date upon which the Company occupies the Leased Premises and commences physical construction of the Solar Facilities at the Leased Premises (the "Commencement of Construction") and ending upon the start of the commercial operation of the Solar Facilities (the "Commercial Operation Date") and (ii) the "Operations Term" of thirty (30) years, commencing on the Commercial Operation Date and terminating on the thirtieth (30th) anniversary thereof (the "Expiration Date"). Company shall have the right (but not the obligation) to extend the Lease Term by up to ten (10) years (the "Extension Period") by giving written notice to Landowner no later than six (6) months prior to the Expiration Date.

The “option” phase

- Grants developer the **right to develop**, if developer exercises the option.
  - Developer can back out, but landowner cannot.
- Can be contained **within a lease** or be a **separate** document.
  - Signing a separate option might bind a landowner to a lease presented after exercising the option.
  - “Material terms” but not all lease terms might be stated in the option.

2. Exercise of Option. If Lessee chooses to exercise its right to enter into the Lease with Lessor, Lessee shall notify Lessor in writing (“Notice”) at the address set forth above. Along with the Notice, Lessee shall deliver to Lessor a lease incorporating the terms and conditions that are generally set forth herein, and include other terms, representations, covenants, and conditions as are customarily included in Ohio real estate ground leases or Solar Land Leases. The lease shall be dated as of the date that Lessee exercises its option and shall cover all of the Lands, or such parts of the Lands as Lessee shall designate. As of the date of the Notice, the term of this Option Agreement shall be automatically extended until the lease is signed by Lessor and Lessee. Any changes to the finalized lease agreement will be mutually agreed upon by both the Lessor and Lessee.

The option phase

- **Length** of option period is important.
  - 2 to 5 years was common, now some are 7+ years.
- Lease should outline the **landowner's rights** during the option period.
  - Continue using the land for agricultural production?
  - Obligations during this period?
- Usually has a requirement for developer to provide a **written notice** to exercise the option.

"Option Term: Five (5) years. Developer shall have the right to terminate the option.

Initial Consideration: Within fifteen (15) days of execution of the Option, developer shall pay to owner $X as initial consideration.

Option Payments: $X per acre per year shall be paid to Owner on an annual basis during the term of the Option."

The development or construction phase

- Starts after exercising the option, occupying the property, or once construction begins.
- Developer typically pays a different (higher) rental amount during this phase.

> B. Construction Period Rent. During the Construction Period, Company shall pay to Landowner the Construction Period Rent. Company's obligation to pay Construction Period Rent shall commence upon the Commencement of Construction and shall cease upon the day prior to the date upon which Company is obligated to pay Operations Rent.

Construction phase: crop loss payments

- For crops in ground when construction begins.
- Address how to determine value.

"During initial construction, Developer shall pay Owner for damages to crops on a per acre basis (prorated for fractional portions of an acre), for any and all portions of the Premises that are taken out of commercial crop production during the construction of the Solar Facilities and any and all crops that are removed or damaged as a direct result of Developer's construction and operations."

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The operations phase

- Begins when facility is in “commercial operation,” i.e., generating power.
- Period of highest payment.
- “Per **usable** acre.”
- Payment might lower when failure to produce power is not the fault of the developer.
- Can include extensions or renewals for additional periods of time.

The cleanup phase

- Begins when energy production ends.
- Lease might state a definition period for the phase – one year appears common.
- Developer typically pays a lower rental amount during this phase.
- Some leases **don't address** this period.

First numbers we heard . . . 2016

$15-40 per acre per year

$800-1200 per acre per year?

Acceleration for inflation

1.5	Development Period.	The period commencing on the Effective Date of this Lease and ending on the earlier of (a) the date that is five (5) years after the Effective Date, or (b) the Operations Date, if not extended or sooner terminated as provided in this Lease.
1.6	Development Rent.	During years 1 and 2 of the Development Period, an annual payment of $15.00 per acre of the Property. During years 3 through 5 of the Development Period, an annual payment of $25.00 per acre of the Property. Such payment terms are more fully set forth in Section 6.1.
1.7	Operations Period.	With respect to any Project, the period commencing on the Operations Date and expiring thirty (30) years thereafter, as more fully set forth in Section 3, and which may be extended pursuant to Section 3.
1.8	Operations Rent.	During the Operations Period, an annual payment equal to the sum of: • $850.00 per acre of land within the Solar Panel Area, as more fully set forth in Section 6.2; AND • $35.00 per acre of the Property outside of the Solar Panel Area. The Operations Rent shall be adjusted upward annually by two and one-half percent (2.5%) (the "**Inflation Adjustment Factor**") each year pursuant to Section 6.2.

2. Easements

Incorporated into the lease agreement: signing the lease establishes the easement.

Common types

The solar easement

Section 1.2 Solar Easement

(a) **Open Access to Sun**. Owner hereby grants and conveys to Project Company an exclusive easement on, over and across the Premises for the following: the open and unobstructed access to the sun to any Solar Facilities on any of the Project Properties and to ensure adequate exposure of the Solar Facilities to the sun. In addition, Owner hereby grants and conveys to Project Company an exclusive easement prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the "**Solar Easement**") throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any Solar Facility is or may be located at any time from time to time (each such point referred to as a "Site") and for a distance from each Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises.

(b) **Owner Improvements**. Trees, buildings and other improvements located on the Premises as of the date of this Lease will be allowed to remain, and Project Company may not require their removal. Owner may not place or plant any trees, buildings or improvements (an "**Improvement**") on the Premises after the date of this Lease which may, in Project Company's sole judgment, impede or materially interfere with the open and unobstructed access to the sun to

Access easement

- Grants access to the solar project area.
- Might include right via current routes and right to build new routes.

> "Owner grants an easement over, across, and on the Premises for ingress to and egress from the Solar Facilities by means of any existing roads and lanes, or by such route or routes as the Developer may construct from time to time at its discretion. Such right will include the right to improve existing roads or lanes, or to build new roads."

Construction/temporary easement

- For construction purposes
  - Access, laydown yards.
- Easement may terminate after construction ends.
- Provisions for cleanup of the area after construction and termination of the easement.

"After the construction of the Solar Facilities, the Developer will remove any construction debris and will restore the portions of the Premises not occupied by the Solar Facilities to substantially the same condition that such portions of the Premises were in prior to the construction of the Solar Facilities."

Transmission easement

- For placement of transmission infrastructure such as poles, towers, wires.
- Can be above and/or below ground.

> "Owner grants an exclusive easement on, over, and across the Property for one or more line or lines of poles and/or towers, with such wires and cables as from time to time are suspended therefrom, and/or overhand and/or underground wires and cables, for the transmission and/or collection of electrical energy and/or for communications purposes, along with all necessary and proper foundations, footings, towers, poles, cross arms, guy lines and anchors and other appliances and fixtures for use in connection with said towers, wires, and cables."

Transmission easement payment

1.9 Transmission and Access Easement Fee.	A one-time payment of $2.00 per linear foot for each permanent road or underground cables installed on the Property outside of the Solar Panel Area, provided, that Tenant may install multiple underground cables within the same trench without any additional consideration, provided further, that if cables are installed within twenty (20) feet of the centerline of a permanent road, then one payment equal to $4.00 per linear foot (as measured along the centerline of the road) shall cover both the permanent road and underground cables installed within such corridor. A one-time payment of $3.00 per linear foot for any above ground transmission line installed on the Property outside of the Solar Panel Area, provided that Tenant may install multiple transmission lines on the same line of poles without additional consideration. Such payment terms are more fully described in Section 6.3.

Nuisance easement

- Grants developer the right to be a "nuisance."
- Developer might offer similar easement or "good neighbor payment" to neighbors.

"Owner grants an easement and waives any claim arising in nuisance for conditions common to solar energy projects, such as construction activities, maintenance activities, noise originating from equipment, reflective glare, and other nuisances."

3. Property management and use

- Drainage interference.
- Surface damages.
- Vegetation management inside and outside project area.
- Responsibility for noxious weed management.
- Maintenance of access and transmission areas.
- Hunting and other recreational rights around project area.
- Liability for environmental harms.

Not always present in a lease—Might require negotiation and lease revisions.

(l) Drain Tile Damages: If, during Lessee's construction on or development of the lands, Lessee or any agent or employee of lessee causes any damage to the drain tile system on Lessor's land, Lessee shall pay the actual costs of repair of such damage.

A. Damage. The Parties anticipate and acknowledge that Landowner may suffer damage to crops, grass, fences, and other property or improvements on the Property outside the Leased Premises during Company's construction, installation, decommissioning, relocation, and maintenance of Solar Facilities. Company shall pay Landowner fair compensation for any such losses or damage to the extent such damages are outside the Leased Premises or then existing roadways. Except for such losses and damage, Company shall not be responsible for any losses of income, rent, business opportunities, profits or other losses arising out of Landowner's inability to grow crops on or otherwise use the Property.

Hazardous Substances. Landowner represents and warrants to Company that Landowner has no knowledge of any substance, chemical or waste on or affecting the Property identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (collectively, "Hazardous Substance"). Notwithstanding any provision contained in this Lease to the contrary, Landowner will have sole responsibility for the remediation and cleanup of any Hazardous Substance discovered on the Property, unless the presence of the Hazardous Substance is caused by the activities of Company. Landowner agrees to indemnify, defend, and hold harmless Company from any and all Losses relating to any Hazardous Substance

4. Taxes

- Real property taxes
  - Remain with landowner.
  - Increase paid by developer?
- Current Agricultural Use Valuation recoupment penalties.
  - Penalty of last 3-year savings assessed by county auditor for all of a parcel converted from commercial agricultural production.
  - Gray area: is there a penalty if only part of the parcel is converted? ORC 5713.34(A)(3) applies to conversion for energy facilities.
- Personal property taxes
  - Paid by developer.

B. Tax Obligations of Company. Company shall pay all personal property taxes and assessments levied against the Solar Facilities when due. If the Property experiences any increase in the amount of real property taxes assessed as a result of the installation of the Solar Facilities on the Property, including any reclassification of the Property, Company shall pay or reimburse Landowner an amount equal to the increase in such real property taxes no later than ten (10) days prior to the date each year on which the applicable real property taxes are due to be paid, provided that Landowner provides Company sufficient notice with copies of the applicable current and past statements of real property taxes payable for the Property and any related information demonstrating the reasons for any increase in real property taxes.

(i) During the term of the lease, Lessee shall be responsible for any real property taxes attributable to Lessee's Improvements and/or Equipment located on the Leased premises.

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5. Decommissioning and cleanup

- Ohio created new decommissioning laws effective October 2021.
  - Requires a bond, decommissioning plan, 12-month cleanup, and restoration of land to its pre-construction state.
  - Applies to “large” facilities (over 50 MW).
- But it’s still important to include these issues within the lease, even for large projects.
  - And is critical for “small” projects.

Decommissioning and cleanup

Considerations:

- Timeframe for completion
- Removal of infrastructure
- Restoration to what condition?
  - Baseline data
- Landowner cleanup rights
- Bond requirement

Section 4.4 Removal of Project Company's Improvements

(a) **Project Company Will Remove Solar Facilities**. At the end of the Term, including upon any early termination of the Lease, Project Company will remove all its Solar Facilities, including any foundations, to a depth of three (3) feet below grade, within twelve (12) months from the date the Term expires or the Lease terminates. Owner grants Project Company an easement for such removal, which easement will survive for twelve (12) months after the expiration or termination of this Lease.

(b) **Owner's Right to Remove Solar Facilities Upon Failure by Project Company**. If Project Company fails to remove any of the Solar Facilities within the required time period, such Solar Facilities will be considered abandoned by Project Company and Owner may remove these Solar Facilities from the Premises and dispose of them in its sole discretion without notice or liability to Project Company. In such event, if Owner removes such Solar Facilities at Owner's expense, Project Company will reimburse Owner for all reasonable costs of removing those Solar Facilities as required by the Lease, less any salvage value received by Owner, within thirty (30) days after receipt of an invoice from Owner.

(c) **Security for Removal**. Commencing with the fifteenth (15th) year of the Operating Term, Project Company will establish security payable to Owner to cover Project Company's obligations under Section 4.4(a) above (the "**Restoration Security**") through one of the following means to be selected by Project Company in its sole discretion: (i) by establishing an escrow account with a bank selected by Owner, or (ii) by delivering to Owner a letter of credit, bond, corporate guarantee from an investment grade company or equivalent security. The amount of the Restoration Security will be equal to the Net Removal Cost (as defined below),

Decommissioning and cleanup

C. Removal. Company shall remove all its Solar Facilities within one (1) year from the date the Lease expires or terminates and shall pay rent to Landowner, at the rate applicable to the Solar Facilities immediately prior to such expiration or termination, with respect to the portion of such one-year period during which the Solar Facilities are being removed by Company. Except as provided in the immediately preceding sentence, Company is not obligated to restore the Property. If Company fails to remove any of the Solar Facilities within the required time period, Landowner may remove these Solar Facilities from the Property and dispose of them in its sole discretion without notice or liability to Company. If Landowner incurs costs to decommission and remove any of the Solar Facilities due to Company's failure to do so within the required time period, Company hereby indemnifies Landowner for such costs reasonably incurred and agrees to reimburse Landowner for those amounts reasonably incurred within sixty (60) days of receipt of adequate documentation of the costs.

General legal terms

Force majeure

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Best practices for solar leasing

Best solar leasing practices for landowners

1. Rely on advisors.
2. Understand the “big picture” for the project.
3. Do due diligence on potential developers.
4. Prepare for conflict in family and community.
5. Align with operation, estate, and transition plans.
6. Understand the lease.
7. Negotiate lease terms, using an attorney.
8. Track the solar project.
9. Establish baseline data and monitor construction.
10. Enforce the lease.

Publications and videos are available at farmoffice.osu.edu and go.osu.edu/farmenergy

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Law Bulletin

The Ohio State University College of Food, Agricultural, and Environmental Sciences

Law you need to know from OSU Extension's Farm Office *October 2021*

Utility-Scale Wind and Solar Facility Siting: Ohio's New Law

Peggy Kirk Hall, Associate Professor & Field Specialist
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Ohio is experiencing significant growth in the development of utility-scale solar generation facilities. As of September 2021, there were 44 solar project applications submitted to the Ohio Power Siting Board (OPSB). Combined, the 44 utility-scale solar projects represent over 75,000 acres of development that would convert the land use from primarily agricultural to utility-scale electric generation. This solar energy development in Ohio comes on the heels of a surge in wind energy development over the last decade.

Converting thousands of acres of rural land to a large scale solar or wind energy facility can have a significant effect on the local community. Even so, Ohio law has not historically allowed counties and townships to play a substantial role in the utility siting process, raising an important question: should local governments and residents have a stronger voice in determining whether and where to site large scale solar and wind facilities in their communities? This question was at the heart of newly enacted Senate Bill 52, which becomes effective on October 11, 2021.

In S.B. 52, the Ohio legislature amended existing utility siting laws, giving local communities a voice in the siting process. The new law authorizes counties to designate restricted areas where solar and wind developments may not locate. It also creates referendum procedures that allow county residents to vote on restricted area designations. Local communities will have advance notice, a public hearing, and a right to reject a proposed project, and county and township officials will have a seat at the table for facility review and approval by the Ohio Power Siting Board. In this law bulletin, we explain each of these components of Ohio's new law. We tackle the third component on decommissioning in a separate law bulletin, "Decommissioning Large Wind and Solar Utilities: Ohio's New Law."

The Three Parts of Senate Bill 52
Effective October 11, 2021

1	2	3
Restricted area designations & referenda	County involvement in project reviews	Decommis-sioning plans & bonding requirements

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Law Bulletin

The Ohio State University College of Food, Agricultural, and Environmental Sciences

Law you need to know from OSU Extension's Farm Office *October 2021*

Decommissioning Large Wind and Solar Utilities: Ohio's New Law

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Important questions have been raised in response to Ohio's growth of large scale solar and wind development. What will happen to facility infrastructure at the end of its life? Who is responsible for the infrastructure? What land restoration measures will be taken? Can the land return to its prior use? These questions recently made the topic of facility removal or "decommissioning" an issue of concern for the Ohio legislature. In newly enacted Senate Bill 52, the legislature amended existing laws to better address the process for decommissioning utility-scale wind and solar facilities. In this law bulletin, we discuss the importance of planning for the end of a wind or solar facility's life span and explain the decommissioning provisions of Ohio's new law.

Why is planning for project end-of-life so important and challenging?

Farmers across Ohio are being approached to lease large tracks of ground for solar development. While solar energy is a renewable emission free energy source, it is not without conflict. A typical solar lease agreements can range from 25 to 50 years. The long-term change in land use will significantly alter the landscape of the farm and will possibly affect future reuse of the farmland following project decommissioning.

Because there have not been any utility scale solar projects decommissioned in Ohio, there is strong debate regarding if the impacted lands can successfully be returned to productive agricultural use. For example, many farmers fear the equipment used to construct and remove the solar project will trigger long term impacts to the farm such as soil compaction and damage to drainage tile. As a result, it is essential that long term planning and best practices for project decommissioning and site

Farmland Owner's Guide to

Solar Leasing

Peggy Kirk Hall, Evin Bachelor and Eric Romich
Ohio State University Extension

The Ohio State University College of Food, Agricultural, and Environmental Sciences · National Agricultural Law Center · USDA United States Department of Agriculture, National Agricultural Library

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Law Bulletin

The Ohio State University College of Food, Agricultural, and Environmental Sciences

Law you need to know from OSU Extension's Farm Office *August 2019*

The Farmland Owner's Solar Leasing Checklist

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Entering into a long term solar lease is a big decision. Whether you're just starting to think about leasing your land for solar energy development or already have a lease offer awaiting your signature, the best time to make sure that a solar lease is in your best interest is now, before you sign.

This law bulletin provides a number of things to do, issues to consider, people to consult, and questions to ask before and after signing a lease. The checklist is not an exclusive list. It's a starting point to help you get organized and to spark other questions about your situation. We've provided additional lines for you to add your own questions to the checklist.

Before Signing a Lease

1. Read the Farmland Owner's Guide to Solar Leasing. Our online guide is intended to help you understand solar energy development in Ohio, initial considerations for leasing, legal documents used in leasing, and common solar lease terms. It can help you have the conversations you need to have before deciding if you want a solar energy project on your land. The guide is available for viewing or downloading at no cost on the OSU Extension Farm Office website at http://www.farmoffice.osu.edu/.

2. Assemble your team of experts. You don't have to make an important decision like this on your own. Include the following on your team of experts who can help you make an informed decision: attorney, accountant, insurance provider, lenders, Extension educators, family members, business partners, neighbors.

3. Research the solar energy developer. It's always a good idea to know who you're dealing with in a business transaction. Research the developer who's contacted you about a solar lease. Does the developer have a good reputation with other leasing landowners, the Better Business Bureau, Public Utilities Commission, and Attorney General? Does it have other solar energy projects pending or in existance, and any problems with existing projects? Your own research and your team of experts can help you answer these questions.

4. Talk to your family. A solar lease can take a lot of land for a long period of time. Consider the following questions to make sure that you understand what this lease would do to your land, your family, and your plans for the future.

- How would the land and farm operation be impacted by this lease?
- What are the family's long term goals for the farm, and does this lease interfere with or support those goals?
- How does the family feel about not being able to use the land for a long period of time?
- How does the family feel about seeing and living with a large scale solar development on the farm?
- _____
- _____

5. Seek out Extension experts. OSU Extension has expertise that can help guide you in the decision making process. Check out OSU Extension's Energize Ohio website, https://go.osu.edu/utility_solar, for information about solar energy. A few questions Extension experts might help with include:

- Is there any data on rental values and crop damage payments in my area for solar leases?
- Are you familiar with this solar energy developer or its reputation?
- Can you connect me with other landowners in the area who have or are considering solar leasing?
- _____
- _____

Coming up next

Session #1
Solar Energy Overview & Trends

Session #2
The Solar Development Lease

Session #3
Connecting to the Electric Grid

Session #4
Solar Project Approval in Ohio

Session #5
Pre & Post Construction Considerations

Approval to connect to the grid is a necessary and critical part of the solar development process. We'll provide an overview of the electric utility system, regulatory jurisdiction, and interconnection procedures and timelines.

Questions and Discussion

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