



# Solar and Agriculture

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# About the Center

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- The National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
  - Created in 1987, the NALC is a unit of the University of Arkansas System Division of Agriculture
  - The Center also works in close partnership with the USDA Agricultural Research Service, National Agricultural Library
- We provide objective, non-partisan research and information regarding laws and regulations affecting agriculture

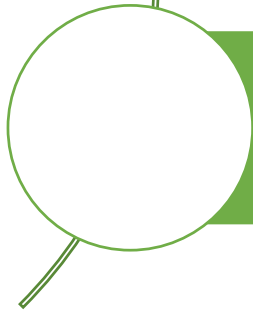


# Overview

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Background on Solar



Solar Leasing Agreements



# Why Solar?

- Growing voluntary demand for renewable energy
- It's getting cheaper
  - Between 2010 & 2020 the cost of utility scale PV systems fell 82%
    - National Renewable Energy Laboratory
- Not as helpful with baseload power needs
  - Storage is an issue and it's not always sunny when we need electricity



# Land Use and Solar Developments

Competing issues are the name of the game

- Renewable energy vs. location (i.e. “Not in My Backyard”)
- Opportunities for landowners vs cost to farmers that rent land
- The loss of land (typically ag land) vs other locations



This even impacts other landowners in the area that choose not to participate in the leasing program

- TX pastureland rental rates in 2022 averaged \$7.70 per acre...want to guess the highest solar rental rate I've heard of from TX?



# What are Developers Looking for in Solar?

- Lots of sunshine
- Flat ground
- Well drained soils
- Close to transmission lines w/ capacity



What other group of potential users of real property like these same conditions?



# Dual Use Wind and Solar Projects

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- Both project have an initial construction phase where they use a lot of land, but after that they can vary.
  - With wind projects it is common to see normal agricultural operations happening all the way up to the concrete pad where the turbine tower is located.
    - They also typically bury any cables deep enough that not even plowing poses a threat to them.
    - The concrete pad can be massive though...up to 40 truckloads of concrete plus rebar
  - Solar is not so simple because the panels take up a lot of room at the surface of the property
    - Much more difficult to use the property for agriculture here.
    - Potential though for wildlife habitats or other environmental benefits
    - Infrastructure to make these types of projects has to largely be specially manufactured at this point making it much more expensive



# State Laws on Solar

- States are passing laws and regs regarding solar
- They are not all created equally
- Relevant laws may be scattered throughout state law
- These should influence how landowners review and negotiate a lease

States are stepping up efforts to regulate solar development...

- Not nearly as well developed as mineral developments in states with a long history like TX & OK

State	General Lease Terms	Decommissioning	Tax	Zoning
Arkansas			Ark. Code § 26-26-407	
Georgia			GA Code § 48-5-7.1 (2019)	
Kentucky			Application of Kentucky Ad Valorem Tax and Sales and Use Taxes on Equipment	Model Solar Zoning Ordinances
Mississippi			MS Code § 27-35-50 (2019)	
Missouri			MO Rev. Stat. § 137.017 (2019)	
North Carolina		S.L. 2021- 165, H.B. 951	N.C.G.S. § 105-129.16A	N.C.G.S. § 153A-49
Tennessee	Tenn. Code Ann. § 66-9-204	Tenn. Code § 66-9-207		





# Taxation of Solar Leases

- Two main issues to watch for:
  1. Property tax increase for the landowner because of the shift from ag use to commercial use of the property
  2. Tax policy for the state on renewable energy
- For the landowners
  - Read the contract CAREFULLY as this can be a big issue
    - Example from a lease - To the extent that the installation of the System(s) on the Premises results in any Property Taxes being assessed against the Property, Owner shall be solely responsible for the payment of all such Property Taxes.
- For Companies
  - Federal Investment Tax Credit of 26%... **\$6.6 billion** in the next 10 years in MO
  - Property tax...not so simple



# Solar Leases: Things to think about when looking to lease and protecting the land

- Wind projects are VERY site specific because they must put the turbines in a place where they will receive the most wind...solar is more flexible
  - The location of high voltage transmission lines is a significant driver in where these are built because of the cost of building the lines
- Land that is relatively flat, open, well drained, and conveniently located is perfect land for solar projects...it's also what agriculture typically looks for
- These leases are typically pretty long. 25 to 40 years is fairly common
- Because of the length you need to negotiate with the company before signing...is this something that will still be beneficial 25 years down the road
- Continued...



# Solar Leases, continued

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- Not all leases will turn into solar projects!
- Make sure that the lease does not give away other rights if you don't get a solar farm
  - OK wind farm example
- Prices can vary substantially
  - I've seen/heard of between \$400 and \$2,500 per acre, but these can vary
  - It's a good idea to be able to increase the rent over time based off of inflation or other built-in measures
- Access to the property will typically be restricted and many leases make the landowner liable for any damage to turbines or solar panels
  - Do you really want to be responsible for the neighbor's child shooting one of the panels?
- Read the contract carefully and have an attorney that is familiar with the issue review it as well!



# Decommissioning the Solar Project

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- This is not always addressed in solar leases
  - Landowner should negotiate having this in there
- The issue is not as complicated or as expensive as wind, but it is still a large potential cost
- Things to consider for landowners:
  - Language requiring cleanup (be very specific!)
  - Bonds to cover cleanup are another option as are liquidated damages for early termination
- Things to consider for lawmakers:
  - For abandoned oil and gas wells some states have programs where these companies pay into a fund and if at the end of the lease the company is bankrupt then money from the fund can pay for remediation of the site.





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