FACT SHEET

LANDOWNER CONSIDERATIONS FOR SOLAR LAND LEASES

NEW YORK STATE OF OPPORTUNITY. | NY-Sun

New York's solar market is growing fast–575% in the last four years alone–so demand for sites to install large-scale solar electric systems is high. Across New York State, solar developers are contacting farmers and landowners to secure long-term land leases for siting solar arrays. The amount of land desirable for a lease generally ranges from 10 to 30 acres, depending upon the size of the solar array.

Before considering such a lease or contract, you should know installing solar panels on farmland may trigger a "conversion penalty" and may increase the taxable value of the overall property. To fully understand the impact of these factors, landowners are urged to consult with an attorney and their municipal assessor before signing any documents.

What is shared solar?

NY-Sun, Governor Andrew M. Cuomo's initiative to add more than 3GW of installed solar capacity in New York State by 2023, encourages and supports the installation of solar arrays to generate clean and renewable energy statewide. Tens of thousands of New Yorkers have already put solar panels on their homes. Many buildings, however, are not suited for solar panels due to shading, roof condition, or other factors. New Yorkers now have the opportunity to subscribe to larger "shared solar" systems. Shared Solar provides opportunities for renters, homeowners, businesses, and municipalities to subscribe to a portion of shared solar energy projects. The siting of these systems is creating an even greater interest in the leasing of farmland.

Is solar right for your land?

The size of a solar installation is measured by its capacity to produce energy. A 1-megawatt (MW) installation will generate approximately 1,174,000 kilowatt hours (kWh is how electricity usage is measured on your utility bill) each year. A 1-MW system will generally require about six acres of land for 3,000 to 4,000 individual solar panels, and will cost $2 million to $3 million to build. Systems built on open land will connect directly to the electric grid and will have their own utility meter. Solar panels are typically warrantied for 25 years, but a system can last longer than that if panels are replaced over time.

What are the per acre lease rates?

Rates can vary. If you are approached by a developer or have interest in leasing your land, research the going rate for land leases in your area. Contact multiple solar developers to gauge interest in your land. Certain site characteristics are especially attractive for solar development, such as cleared land that is south-facing with road access and in close proximity to the substation. Do research online about solar lease rates in other areas and consider working with a real estate professional.

Prior to signing a lease with a solar developer, landowners should examine possible tax consequences and issues associated with the construction of roads, fencing, and electrical poles. Landowners should consider asking an attorney to carefully examine the land lease terms.

Do you receive an agricultural assessment on your property?

Under the Agriculture and Markets Law, if a landowner receives an agricultural assessment and converts the land to a nonagricultural use, the landowner may be subject to a monetary payment for converting the land. A conversion of land is "an outward or affirmative act changing the use of agricultural lands" (AML §301(8)).

Municipal assessors are responsible for tracking conversions when they occur. Landowners are also required to notify the assessor within 90 days whenever a parcel receiving an agricultural assessment is converted to a nonagricultural use. A fine of up to $1,000 can be levied against a landowner who fails to report the conversion.

Who is responsible for paying a conversion penalty?

The landowner on record is responsible for paying the conversion penalty. Your assessor can work with you to determine what the conversion penalty may cost. Make sure you know where the solar array will be placed on your property so that a comparative analysis of benefited acres versus total converted acres, by mineral, organic, and farm woodland soil groups can be determined.

Are solar panels considered real property and taxable?

Yes. A solar energy system is "real property" once it has been permanently affixed to land or a structure [Real Property Tax Law (RPTL) § 102(12)(b); 8 Op. Counsel SBEA No. 3]. The definition of "real property" also includes a "power generating apparatus" [RPTL §102(12)(f)]. As such, it is taxable unless it qualifies for an exemption (RPTL § 300).

Will the siting and construction of a solar array on my property affect other taxes?

Possibly. The assessor must determine the contributory value of the solar array to the value of your property. If the value of the converted acreage devoted to the solar array increases, it may affect your taxes. An increase in taxable value may affect your county, town, village, and school taxes as well as other taxes that may be levied, such as highway, fire, ambulance, library, lighting district, drainage district, and other taxes and levies. It may also affect special district taxes for municipal water and sewer districts if the land is no longer predominantly used for agricultural purposes.

Isn't there an exemption from the payment of school, county, town, and village taxes for solar arrays?

Possibly. There is an exemption statute in State Law that applies specifically to solar energy systems: Section 487 of the RPTL. Section 487, which also covers wind power systems and farm waste energy systems, provides a 15-year exemption from real property taxation for the increase in value resulting from the installation of a qualifying system. However, the statute allows municipalities and school districts to opt-out of this exemption. To find out if your county, town, village, and/or school district has opted out, talk to your local tax assessor.

Further information may be found on the following web sites:

tax.ny.gov/research/property/legal/localop/487opt.htm to read Frequently Asked Questions concerning the solar energy system exemption and statute.

New York State Taxation and Finance web page: **tax.ny.gov/pdf/publications/orpts/legal/raq2.pdf?_ga=1.190577835.1031257166.1423842465** (Note: to obtain updated information talk to your assessor.)

If my lease exceeds the 15-year exemption, what happens to my tax bill?

Leases beyond 15 years will likely have an effect on your tax liabilities going forward. Absent the exemption, the local government may seek to value the solar array at full value.

This assessment would again depend upon the contributory value of the solar array on your property at year 16. This question should be discussed with your local tax assessor.

What are other potential impacts that I should be aware of?

Solar arrays must be connected to the electrical grid, which may require the installation of power poles. Landowners should make sure that pole placement and the height of the wire will not interfere with their ability to farm the land. The same can be said concerning the siting of access roads. Make sure the access road is constructed so that it does not shed water onto your fields and that the finished grade does not interfere with normal drainage patterns. Also, ask about the material used to finish the surface of the access road. Will the size of the stone interfere with the operation of your equipment if some of it ends up in your field? See if the access road can be used by you and your farm equipment to access your property. Design the road so that it also serves both your needs and that of the solar company. Be sure to discuss these aspects of the construction of the solar project with the developer before you sign the lease.

Who is responsible for dismantling the solar array once the lease expires or is not renewed?

In the contract, make sure that there are provisions that determine who is responsible for dismantling the facility if the company is no longer in business or if the solar array ages out and is no longer viable, ensuring the property is returned to its pre-leased condiition.

What if I do not like the area of my property that the solar company has selected for their lease?

If you are interested in the possibility of a lease to a solar company, talk to them about the siting of the solar arrays on your property. Does it have to be placed on your best farmland (such as on Soil Groups 1-4)? Can the solar arrays be placed on land that is not suited for agricultural production, such as support land, sloping pasture, or underutilized areas of the farm? Can the land beneath the solar arrays be planted with crops or grazed by non-climbing animals? There are a number of possibilities that should be explored. Think about how the siting of a solar array on your property can benefit your farm operation and ask questions.

Does the town where I live have local laws that regulate the siting of solar facilities?

Possibly. Some municipalities have provisions in their zoning code to address the siting of solar arrays within the community. Other municipalities have placed a temporary freeze on the siting and installation of such facilities until they have decided on the best method to review and/or regulate the use within the town or village. Some municipalities are also in the process of drafting amendments to their zoning code to address this issue. Resources for local governments can be found at the NY-Sun PV Trainers Network website: **training.ny-sun.ny.gov**.

What can I do and how can I influence the local process?

Become or stay involved. If you do not participate in the local process, your point of view cannot be heard. Also, speak with your assessor to determine what impact the siting of a solar array may have on your farm or property and the bottom line (taxes versus lease payments).

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