



Information for Owners of Maine Farmland on Commercial Solar Development

Recent Maine legislation encourages an increase in solar development. Solar developers are racing to secure potential sites for solar installations, including on undeveloped agricultural land. Developers are approaching farmers and offering payments for signing “option agreements” that give the developer the right to enter into a lease agreement with the landowner, and secure access to a farmer’s land.

Maine Farmland Trust (MFT) supports solar and renewable energy production on farms as long as it does not significantly diminish the potential for agriculture. On-site energy production can support farm viability and reduce energy costs, but we also want to ensure that solar development in the state does not result in the loss of important soils or impede farmers’ ability to access the land they need now and in the future. MFT also believes it is important for farmers to have access to the information and resources they need to make informed decisions about their land.

Solar developers are eager to secure option agreements, but landowners should take the time to carefully examine the terms of the option agreement, the terms of any potential lease agreement, and the financial aspects of the deal. **MFT strongly recommends that landowners consult an attorney familiar with solar development before entering into any agreement with a solar developer.** The following list of issues and considerations is a general resource for landowners considering leasing land for solar development, or evaluating option and lease agreements.

Some General Considerations

Roads/Fencing and Agricultural Use: Solar installations and any new roads or fencing may limit a landowner’s ability to use their land for agriculture.

Taxes: Option and lease payments will result in taxable income for the landowner. Solar development on land taxed under Maine’s Farmland and Open Space Tax Law could lead to a withdrawal penalty.

Mortgages: Entering into a solar option or lease without a mortgage holder’s consent could cause the landowner to have to repay their loan immediately.

Conservation Easements: Solar development on land protected by a conservation easement or other non-development agreement might be prohibited. Solar development may also eliminate the chance for a landowner to sell a conservation easement on their farm.

Local Approval: Solar development may be subject to local land use requirements and need approval.

When evaluating offers by solar developers, landowners should remember that they can negotiate terms and payments, and explore whether there are other developers who would offer a better deal.

Option Agreements

What it is: An option agreement gives the solar company the right, usually the exclusive right, to enter into a lease with the landowner. The landowner may be offered a one-time payment for entering into the option. The option might establish a lease rate that will only go into effect if the developer “exercises” the option and the parties enter into the lease. Developers will likely only exercise a small proportion of the options that they hold, so the landowner may never enter into a lease agreement with the developer. Option agreements will prevent a landowner from negotiating with other developers, and could make it more difficult sell their land. Landowners may want to consider negotiating a shorter option period, or seek higher payment for a longer option.

May contain lease terms: The option agreement may contain lease terms that will go into effect automatically if the developer “exercises” the option. Such terms should be reviewed carefully.

Items to consider when evaluating lease terms, or option agreements that may include lease terms:

Clarity: Who is responsible for each part of the agreement? Don't give developers open-ended rights to do things that are necessary for their project or that require the landowner to protect the developer's interest. Spell out rights and obligations in detail.

Dispute Resolution: How will disputes be resolved and who will resolve them? Avoid arbitration, which is not transparent and can be expensive, and ensure that the lease is interpreted according to, and disputes settled under, Maine law.

Liability, Insurance and Sub-Contractors: Who is responsible for injury or damage relating to the solar installation? Require that the developer and all contractors are insured and that their insurance also covers the landowner. Factor the cost of any insurance that the landowner will need into the project's finances. Ensure that the developer is responsible for disputes with sub-contractors, sub-lessees, and others.

Taxes: Who pays property taxes on the leased land? The lease should also say who will pay any penalty resulting from the change in use of land under Maine's Farm and Open Space Tax Law.

Security and Fencing: Who is responsible for the security of the solar array? If the array will be fenced, will access by the landowner (sufficient for farm equipment) be allowed?

Best Management Practices: Consider requiring that the developer employ all applicable best management practices and that the development does not negatively impact the farm's use for agriculture.

Access and Property Rights: Consider limiting the developer's access to certain people at certain times, or requiring notice to the landowner. Avoid giving the developer an easement or "right of way," which can be permanent and not easily terminated.

Assignment: Be sure that the lease spells out the requirements for any transfer of the lease to another party. The landowner should be able to make sure that the new leaseholder has the ability to meet the obligations under the lease, such as decommissioning.

Term and Changes to Lease: Be specific about the length of the lease term and any extensions. Require that the landowner agree to extensions and that any changes to the lease are in writing and signed by both parties. Specify when and how either party may end the agreement. Consider the ability to end the lease if the solar development is not generating energy for a certain period.

Buy-out: Is there a buy-out provision at the end of the lease term or at certain times during the term when the landowner can purchase the solar development? If so, make sure price, contracts, decommissioning responsibilities, etc., are clear and fair.

Decommissioning: Developers should be responsible for decommissioning the site by a certain date. Landowners should require money to be set aside for this purpose in an escrow account or through a decommissioning bond, and should also require:

- Removal of non-utility owned equipment, fencing, structures, and foundations to a depth of at least three feet below grade, together with any roads (unless landowner requests they remain).
- Restoration of land to its original condition, replacing topsoil that has been removed or has eroded during the lease term, replanting cleared areas with native plants, and providing soil/water reports from an independent lab showing that the property is free of contaminants and is suitable for agricultural production..

As stated above, **MFT strongly recommends that landowners consult with an attorney familiar with solar development before entering into any agreement with a solar developer.** An attorney can be found through the Maine Bar Association Referral Service at <https://mainebar.community.lawyer> or by calling [\(800\) 860-1460](tel:8008601460). Legal assistance for qualifying landowners may be available through the Conservation Law Foundation's Legal Food Hub, which can be found at www.legalfoodhub.com or by calling (844)529-4769 Ext. 2.