



Legal Issues Related to Solar Farms

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The Legal Stuff

Q: What is the difference between an accountant and a lawyer?

The Boring Stuff

Accountants know that they are boring.



*Eight incredibly important
legal issues!*

*You will not believe number
6!*

Legal Issues for Landowners and Governments



Issue #1: Know Your Dance Partner

- Early stage solar developers:
 - Identify sites for potential solar farms and perform initial due diligence and solar farm design;
 - Form special purpose project entity to enter into develop project and enter into agreements;
 - Obtain all zoning approvals and permits prior to construction commencement;
 - Apply for interconnection and power purchase agreement;
 - Market project.
- Issues for government/owner at early project development:
 - Many projects are not viable;
 - Developer is smaller entity;
 - Agreements are with project entity with no assets.



Know Your Dance Partner (2/3)

- Late stage solar developers:
 - Typically larger companies with large portfolio of projects;
 - Enter into agreement to purchase the project company;
 - Usually enter the transaction prior to commencement of construction;
 - Take control of project company prior to large deposits and payments to the utility being required;
 - Finalize design, diligence, permits, and agreements;
 - Take project through construction; possibly involving loan.
- Issues for government/owner at late stage development:
 - Still many contingencies;
 - Construction risk;
 - Still legally dealing with project company with few assets; however, have security of larger entity backing the project.



Know Your Dance Partner (3/3)

- Final ownership:
 - Transferred to long-term owner at commercial operation date;
 - Ownership includes tax-equity (federal and possibly state);
 - Typically, permanent loan involved.
- Issues for county/owner with long-term ownership:
 - Project company has more assets but also a lien from the lender;
 - Operations and maintenance;
 - Decommissioning security.

Issue #2: Initial Lease Considerations



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- Parties:
 - Project company;
 - Land owner (all of them).
- Term:
 - Long-term;
 - Usually 20 or 30 years with up to 4 renewal rights of 5-years each.
- Rental payments:
 - Following construction, significantly higher than farming equivalent;
 - Prior to construction, limited rent;
 - Rent paid per acre.
- Contingent.

Issue #3: Project Not Proceeding



Issue #3: Project Not Proceeding

- A number of issues could prevent project from proceeding;
 - Economics;
 - Permitting;
 - Interconnection;
- Ensure that your partner (i) has a track record of projects being constructed and (ii) is focused on your project;
- Consequences are lost time and opportunity.

Issue #4: Knowing Your Boundaries



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- Landowner's Concerns:
 - Is any remaining property usable?
 - Will there be a need to encumber other properties with easements?
- Government Concerns:
 - Wetlands;
 - Endangered Species;
 - Buffers;
 - Access.

Issue #5: Paying For What is Lost



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- Crop loss offsets;
 - Can agree to compensation for crops destroyed before harvesting
- Rollback taxes.

Issue #6: Lender Rights



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- When can you terminate lease?
 - Lender will likely require additional notice and cure period.
- When can you remove personal property?
 - Lender will require some waivers and additional notice.

Issue #7: Normal Permitting Requirements

- Zoning permit (often conditional use permit or special use permit);
- Buffer requirements;
- Stormwater and erosion control;
- Building/electrical permits.

Issue #8: Decommissioning



Issue #8: Decommissioning

- Majority of components of solar panels are metal and glass;
- Most parts are currently commercially recyclable, and others may be in the future;
- Solar panels may even have a life past the lease term;
- However, want a plan and assurances decommissioning will occur appropriately;
- Landowners and governments can address security through a reasonable bond.

Bonus Issue: Where Do Local Governments Start



Template SE Development Ordinance

- Developed by NCSEA and NC Clean Energy Technology Center in 2013;
- Issue: Only 24 of 550 Cities had included solar in their zoning code (18 out of 100 counties);
- Many Stakeholders including:
 - representatives of the solar industry, local NC planners, State Farm Bureau, NC Department of Agriculture, NC Department of Environmental Quality (DEQ), NC Association of County Commissioners, NC League of Municipalities, military, University of North Carolina School of Government, NC Conservation Network, Duke Energy Progress, North Carolina State University Forestry, and FAA.
- Template is available online (make sure to get the most recent);
- Good starting point, but it is not the final product.

System Classification (1/2)

- Level 1 System:
 - System covering no more than half the footprint of the primary structure on the lot;
 - A permitted use provided it meets applicable height, setback, aviation notification, and related district standards.
- Level 2 System:
 - Ground-mounted system with a limited footprint (no more than $\frac{1}{2}$ an acre in residential districts and 10 acres in other districts, excluding industrial districts);
 - Subject to additional solar development standards (administrative approval).

System Classification (2/2)

- Level 3 System:
 - Systems that do not meet the requirements of Level 1 or 2 systems;
 - Most solar farms are Level 3 systems;
 - Subject to the same solar development standards as Level 2;
 - Require a public permit hearing (conditional/special use permit).

What is Included in Template

- Zoning permits and approvals required;
- Parcel line setbacks;
- Height limitations;
- Aviation notification;
- Level 2 & 3 requirements:
 - Site plan;
 - Visibility;
 - Decommissioning;
- Other resources.

Questions?

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