

ARE YOU THINKING ABOUT LEASING YOUR FARMLAND FOR SOLAR DEVELOPMENT?

A Guide for Leasing Land for Solar Development



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Section 1:

Solar in Wisconsin

IS LEASING LAND TO A SOLAR DEVELOPER AN OPPORTUNITY FOR LANDOWNERS?

Interest in solar as a renewable energy resource is rapidly expanding across Wisconsin as the state moves towards replacing energy from fossil fuels like coal and natural gas with wind and solar. State law prioritizes renewable energy development. To that point, Section 1.12(3)(b) of Wisconsin law states it is the goal of the state that:

[T]o the extent that it is cost-effective and technically feasible, all new installed capacity for electric generation in the state be based on renewable energy resources, including hydroelectric, wood, wind, solar, refuse, agricultural, and biomass energy resources. [Emphasis added.]

This energy conversion creates a significant opportunity for Wisconsin farmers and other rural landowners to lease portions of their property for solar facility development.

Large investor-owned utilities like We Energies, Alliant, Xcel, and Wisconsin Public Service, along with cooperatively-owned utilities like Dairyland Power Cooperative and private solar developers, are responding to state energy policy by developing solar arrays across the state for electric generation. These companies, and/or solar development companies who wish to work with them, are actively seeking land to build these solar arrays. Solar array development sites range from a few acres generating under five megawatts of electricity, to hundreds of acres generating 100 megawatts or more of electricity.

Solar arrays are a collection of multiple solar panels generating electricity as a system. See the photo below of a solar array installed by the University of Wisconsin – Platteville.



Photo Credit: University of Platteville

The U.S. Department of Energy estimates that more than ten million acres will be needed to scale up solar energy by 2050. Of these ten million acres, the U.S. Department of Energy estimates that roughly 80 percent will be farmland. Wisconsin has 14.2 million acres of farmland. This makes our state attractive to solar developers.

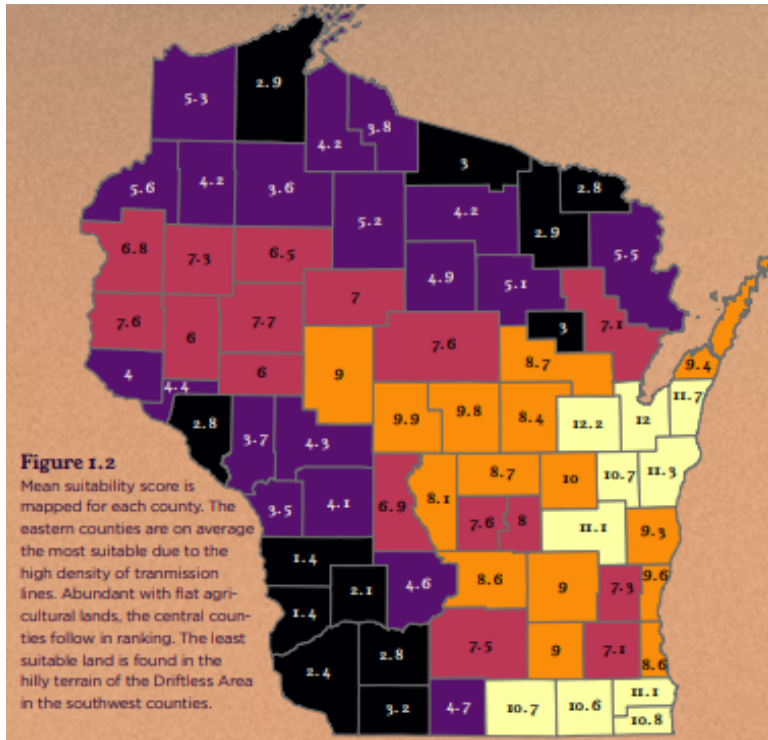


On average, one megawatt of solar energy will require five to seven acres of land and will power 190 homes for one year.

The Center for Land Use Education at UW-Wisconsin Stevens Point published a map of the Wisconsin counties most favorable to solar energy production based on terrain, primary land use type, and proximity to transmission lines, pictured below (Figure 1.2).

installed solar capacity, with 2.69 percent of the state's electricity coming from solar as of March 31, 2024. See <https://www.seia.org/state-solar-policy/wisconsin-solar> for more information.

SEIA estimates Wisconsin will add 5,017 megawatts



Source: Ryan Michalesko - UW Stevens Point

However, even if land is not located in the most favorable parts of the state indicated by the map, there may still be solar development potential depending on the local conditions. Solar developers seek level sites free of trees, buildings, and other obstructions to the sun. For example, ridgetop land in Southwest Wisconsin may still create a favorable location for siting a solar array. Solar developers also prefer land located near roads and needed power transmission facilities, including three-phase transmission hubs and power substations.

According to the Solar Energy Industries Association (SEIA), 188 solar companies are operating in Wisconsin, including 46 manufacturers, 84 installers/ developers, and 58 classified as others." This includes installers who are installing solar panels on residential homes. SEIA reports that Wisconsin currently ranks 19th in the nation for

(25,085 acres to 35,119 acres) of energy over the next five years. This would move Wisconsin up to 13th place in the nation for solar energy output.

RENEW Wisconsin's website contains a current map of where the state's more than 20 solar farms are located. See <https://www.renewwisconsin.org/solarfarms/>.

In short, interest in solar energy in Wisconsin is transforming the energy landscape. In turn, farmers and other rural landowners are being presented with significant opportunities to change their land uses and financial situations by participating in solar development. However, it's crucial for landowners to carefully consider the implications of leasing their land for solar development, ensuring that it aligns with their long-term interests. What could a future under a solar lease look like for a landowner?

Section 2:

Exploring a Solar Proposal

DO YOUR HOMEWORK

Solar leases are often a welcome source of new income for farmers and other rural landowners. However, a key mistake is focusing solely on the money being offered. Rather, landowners need to do additional homework upfront. There are often a number of solar companies seeking to sign up landowners for leases. The first offer received may not be the best. The information presented in this section provides important items to think about before negotiating with a solar developer.

WHO IS THE SOLAR DEVELOPER?

Just as you would vet a potential tenant for any other rental property, it is important to vet solar developers who approach you for your land. Get to know the company's history, experience, and goals, and build a relationship with the developer from the first conversation to help maintain a good relationship throughout the solar project.

As with any new relationship, trust but verify as you learn. Ask the developer about other completed projects and other landowners it has worked with. You may wish to discuss communication expectations and concerns, including how the developer works with neighbors and local municipalities. If the solar developer is using a "take it or leave it" attitude, or pressure is being applied to sign the agreement without the opportunity to read

it first, this is usually a warning sign the proposed agreement might not be what it seems. A small payment for not negotiating on the front end may mean a larger loss down the road. Only negotiate and work with solar developers who patiently explain the terms of the lease agreement.

Next, be wary of a solar developer making promises not included in the written lease terms. Unwritten promises are likely unenforceable. Lease agreements typically include a provision towards the end stating the written lease agreement "constitutes the sole and entire agreement of the parties and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral." In short, anything promised outside of the written lease agreement is not actually included in the lease agreement. To ensure a promise is enforceable, include it in the written lease terms.

Choosing to work with a reputable solar development company who (1) has completed other successful developments, (2) puts their commitments in writing, and (3) welcomes a constructive negotiation process, typically carries less risk than an untested developer of dubious origin who makes promises they cannot be forced to keep.





WHAT LAND IS THE SOLAR DEVELOPER INTERESTED IN?

Before signing, have you thought about the best farm location for solar development? The developer will want the solar array to be placed closest to roads, near transmission facilities, and away from trees and buildings that could block the sunlight. However, this location may be the most productive farmland or a future building site. Think about potential issues in advance and make sure both parties agree which land will be included in the lease.

You may own less productive lands that would also work for a solar array. However, here too, will this alternative land be needed if you decide to expand your farming operation in the future? Overall, how does this land fit into your future farm plan/transition? How will your farming operation be disrupted by construction? Do local setbacks and other regulations apply? If the land is near or includes woodlands you own, does the solar developer have a right to cut those trees?

Be clear about which fields, and how many acres, the solar developer is interested in. Make sure you have the correct property description(s) and that the agreement is clear on how much of the property the solar developer is obligated to lease.

Once the landowner and the solar developer agree on the property to be included in the lease, they will also need to agree on how to measure the acreage that is actually selected and used for solar development. This is important because it will often determine how much rent the landowner actually receives.

Also ask if there is an option or obligation related to any of your other properties – even if they're not explicitly included in the solar proposal. Some leases include landowner obligations, easements, or rights of first offer for adjacent properties that they own but have not explicitly included in the original lease. Be sure that if your land (included or adjacent) is taking on a new obligation, that you are getting paid for it.

WHAT IS THE POTENTIAL FOR LANDOWNER FINANCIAL RETURN?

Solar lease rates vary per acre, depending on the size of the land, soil quality (i.e., lower price if the ground is low and wet), location and distance to the electric grid, and the power purchase agreement price. The price solar developers are willing to pay for leased acreage varies across the country based in large part on the relative cost of producing electricity in the region. More expensive electricity markets like California and New York lead to relatively high lease rates being paid to the landowner. At the same time, solar developer profit margins likewise vary, with 10-20% being fairly typical.

Wisconsin electricity rates are 21% lower than the national average. Therefore, solar lease rates in the Badger State tend to be in the more modest \$500 to \$1,500 per acre range when construction is completed, with the main variable being how close the leased land is to a power substation. Income potential primarily depends on property location to electric transmission infrastructure, the number of acres being leased, and the land's suitability for solar construction.

Solar lease rates may vary depending on the stage of the project as well, with lower rates during siting, moderate rates during construction, and a higher rate once the project is operational. Some leases may also include an "inflation adjustment" clause, allowing the rent rate to grow over time.

Alternatively, rather than a flat rate per acre, some developers may tie lease payments to the amount of power the system is expected to produce. If this is how the lease payment will be determined, ask the solar developer upfront what are the minimum and maximum system sizes that can be installed. Yet other developers tie payments to a base rent plus a percentage of the income that is generated by the solar array. These latter two rent calculations bring more risk, but also a greater potential financial reward.

Be sure to also ask about the schedule for lease payments. When do lease payments start? How regularly will you be paid? Is there a development or due diligence period when there are no payments? If so, how much time is allowed to the solar developer to determine the land's suitability before payments begin?

A final payment consideration: farm budgets are used to variability based on the quality and price of the commodity being produced. Are you better off having an assured income stream or are you more comfortable with a variable income stream?

HOW LONG IS THE LAND COMMITTED?

Solar leases generally last for 15 to 25 years, with renewals for additional periods. These renewals are often automatic or unilateral, meaning that only the solar development company typically needs to agree to continue the lease in the future.

Solar leases also often include a unilateral termination provision where the solar developer can terminate the lease for any reason, at any time, as to any part of the property. You will want to ask the developer if they have exercised this provision before with another landowner and what circumstances might cause the developer to terminate the lease early. In short, this is a risk you will want to measure before signing the lease. It is also important to clarify if and how the landowner may be able to terminate the lease before it expires.

You will also want to understand what happens when the lease agreement ends. Is the solar developer responsible for restoring the leased property? If the lease developer sells the business or goes bankrupt, who will pay for de-commissioning?

WHAT DOES THE REGULATORY APPROVAL PROCESS LOOK LIKE?

While landowners are actively negotiating solar leases, developers are often also navigating application processes with MISO (Midcontinent Independent System Operator) and the Wisconsin Public Service Commission (PSC) to ensure their projects meet regulatory requirements and can connect to the grid efficiently.

MISO is the regional transmission organization serving Wisconsin, along with fourteen other states and Manitoba. MISO operates all transmission facilities in that geographic area and is responsible for approving and facilitating power generators that seek to connect to the transmission system and deliver power to utilities or other buyers. MISO's interconnection application process is an 18-month process, which can only be started after the solar developer can demonstrate land access and control (via leases or other options) for a majority of the proposed project site.

The PSC also guides the development of major electric generation and transmission projects based on public need, environmental implications, land use considerations and economic benefits. Before constructing a generation facility of 100 megawatts or more in Wisconsin, developers must acquire a Certificate of Public Convenience and Necessity (CPCN) from the PSC.

The PSC and Wisconsin Department of Natural Resources (DNR) have joint review of solar energy generation and energy storage projects. The solar developer must submit an engineering plan and a CPCN application. Among other things, the CPCN application includes a project overview, technical description of the project, project maps, construction sequence, potential impacts on natural and community resources, local government impacts, landowners affected and public outreach, waterway/wetland permitting activities, and DNR information regarding erosion control and storm

water management plans. Utility-proposed projects may also require an Agricultural Impact Statement from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP).

Both MISO and the PSC require solar developers to submit a plan that includes proposed and alternative proposed sites for review. The PSC's CPCN application requires the developer to identify alternative site acreage equal to 25 percent of the proposed project. For example, if the acreage needed to construct a 120-megawatt solar project is 600 acres, the solar developer would need to include 720 acres in their application - 600 acres of proposed site(s) and 120 acres of alternative site(s). Because the PSC will only approve acreage needed to fulfill the proposed needs (the 600 acres needed for 120-megawatts of energy generation, in this example), the landowners of the alternative 120 acres may never see solar development on their site - and in turn, may never see operational rents. While inclusion as a proposed -- versus alternative site -- is not definitive for the future of the land, whether your land will be identified as a proposed site or an alternative site may be a question worth asking the developer.

Timely landowner negotiations are crucial for the successful development of solar projects in Wisconsin. As previously mentioned, regulatory approvals, including both MISO and PSC applications, require the solar development company to provide proof of land access and control, meaning that any relevant leases must be in place before the solar development company can begin a formal application cycle.

Section 3:

Negotiating a Solar Lease



LANDOWNER CONSIDERATIONS BEFORE NEGOTIATING A SOLAR LEASE

After getting to know the developer and navigating the general terms of a proposed solar lease, it is time to get down to the nitty-gritty of negotiating a legally binding lease. Negotiating a lease with a solar developer may be challenging because the developer typically is advantaged by their longer experience researching, drafting, and negotiating lease agreements. This means solar lease agreements often benefit the solar developer more than the landowner. Moreover, the agreements are often long and include complicated language that is difficult to understand for most non-attorneys. To offset this advantage, landowners interested in leasing land to a solar developer should first do their homework. This includes retaining an experienced attorney before negotiating and signing a land lease.

STANDARD SOLAR LEASE AGREEMENT TERMS AND CONDITIONS

Solar lease agreements are often long and complicated. Other common contractual provisions (followed by a description) include:

- (1) Whether or not an option on the land is granted: the solar developer may seek an option (i.e. a contract giving the buyer an exclusive right to lease or purchase the property) on the land if the company is not planning to build a solar array right away
- (2) Description of the leased premises: usually a legal description of the land being leased
- (3) Lease term: often 15 to 25 years with automatic renewal periods thereafter
- (4) Rent to be paid: often a dollars-per-acre rate; may include different lease payments for renewal periods, rules for future increases, and various payment schedules

(5) Improvement of leased premises to be provided: describes what is being constructed, site and construction plans, signage, fencing, and utility easements

(6) Ingress, egress, utility, and solar easement: includes the right to construct solar array and transmission facilities and related easements, and who may enter

(7) Maintenance and security: typically maintenance and security are the developer's responsibility

(8) Title and quiet possession: landowner warrants leased land is free and clear of liens and other restrictions that might interfere with the solar production facility

(9) Title to site improvements and infrastructure: title to site improvements typically remain with the solar company until lease expiration and require solar company to repair any damage to the land under lease

(10) Uses and operations: solar developer's activities on the leased land should be related to building and maintaining a solar array

(11) Subordination, attornment, and non-disturbance: the lease is subordinate to any mortgage on the land

(12) Mortgage of leasehold interests: protection of mortgages on property

(13) Government approvals and compliance: require solar company to obtain necessary licenses and government approvals for site improvements; this often requires landowner to cooperate with permitting efforts

(14) Assignment: developer may/may not assign lease to a company purchasing the solar developer without prior written consent; consider whether you may wish to sell the property in the future and if you may/may not assign the lease to a person purchasing the property without prior written consent

(15) Notices: notices to be placed in writing and sent to designated places

(16) Insurance: require solar company to maintain a specific amount of commercial general liability coverage; \$1 million coverage is fairly typical

(17) Operating expenses: solar developer to pay for all water and energy used onsite

(18) Taxes: landowner pays property taxes, but solar developer pays for any increase attributed to the solar facility

(19) Maintenance by property owner: landowner will maintain any adjacent property in good condition and without obstructions

(20) Liabilities to third parties; risk of loss: solar developer and landowner hold each other harmless for death or injury caused to third parties resulting from their own negligence or intentional acts

(21) Indemnification: solar developer and landowner also agree to indemnify (essentially reimburse) the other for third-party claims of negligence or intentional misconduct committed during the construction and operation of the solar array (e.g. developer damaged the roads or a neighbor's buildings)

(22) Liability Waiver: often the landowner is also asked to waive liability for any property damage or personal injuries to themselves from "known or unknown dangers" associated with normal operation of electrical generating facilities, including noise, electromagnetic fields, glare, runoff, and altered drainage patterns

(23) Tenant's performance and surrender: solar developer shall pay rent as required by the agreement and surrender the leased land when required

(24) Default and termination for default: defines what is a default if not cured within a specified time period after receiving notice of breach; what are the aggrieved party's rights if the other party defaults

(25) Right to terminate: solar developer has right to terminate and vacate if site is determined to be unsuitable; 30 days is a typical minimum notice period

- (26) Rights to site improvements and infrastructure upon termination: defines what happens to the solar farm at lease termination, including whether solar company removes solar array or abandons it to the landowner
- (27) Binding on successors: if the solar developer is sold or the landowner sells the land, the lease remains binding
- (28) Access to premises: provides solar developer and its contractors access to the site
- (29) Governing law: landowners will want to ensure the agreement is governed by the laws of Wisconsin and that any dispute would be heard in the Wisconsin circuit courts
- (30) Entire agreement: unless an oral commitment is included in the agreement, it is not part of the agreement
- (31) Survey and testing: solar company has right to conduct surveys and soil tests
- (32) Oil, gas, and mineral rights: landowner retains mineral rights, but developer may seek to prohibit drilling beneath solar array during the lease term
- (33) Hazardous waste: landowner represents there is no hazardous waste on the leased site and the solar company is responsible for any release it or its contractors cause
- (34) Mechanic's or construction liens: solar company agrees to ensure no liens are placed on the leased land by contractors or subcontractors
- (35) Time of essence: an expression that the obligations under the lease should be completed in a timely manner
- (36) Severability: if any part of the lease is unenforceable for any reason, the remainder remains in effect
- (37) Real estate broker: addresses whether landowner has, or has not, signed a listing agreement and whether a broker's commission might need to be paid, and by whom
- (38) Dispute resolution: provides for informal negotiations before arbitration or a court filing; landowner should keep open the route to the circuit courts if there is a dispute (Continued to next page)
- (39) Right to record: solar company is entitled to record the written lease or a shortened memorandum with the county Registrar of Deeds
- (40) Interpretation: applies rules of construction if there is a lease ambiguity; typically, ambiguities are construed against the party drafting the lease
- (41) Date of agreement: solar developer and landowner agree the agreement takes effect when it is last signed

Inclusion in this list does not indicate whether a term is fair or favorable to either the landowner or the solar developer. Consult with your own attorney to understand exactly what is being presented in your lease and to discuss negotiation options.



Section 4:

Frequently Asked Questions

In addition to the laundry list of general contractual considerations addressed in Section 3, the authors would like to more address a few frequently asked question topics in greater detail.

A. Farm Operation

If you are currently farming the land (or leasing the land to a farmer), you should consider the impact of the lease on farm operations.

You should negotiate whether the leased land can still be used by you for another purpose, whether during the initial development phase and/or during operations, and, if so, how the leased land might be used.

For example, during development or if the project is delayed, do you have a right to use the land for agricultural purposes in the interim? Once the panels are operational, could you still use the leased land for other agricultural purposes such as cutting hay or raising livestock like sheep or goats which are good for maintaining the land beneath the solar panels? Can you spread manure from your dairy or livestock operation beneath the solar panels? Also, could you face potential liability for farm dust or farm chemicals falling on the solar panels?

Some farmers have converted the land – if the lease agreement allows – to pastureland for sheep, goats, or some other type of livestock. Research is being done to determine if there are other potential agricultural uses allowing land beneath a solar array to remain in production agriculture. You may hear these concurrent uses during the operational phase referred to as “agrivoltaics” or “ecovoltaics.”



Sheep graze under solar panels in an agrivoltaics system.

If you are able to continue to farm the land, whether during development or operations, your lease may provide for crop damage payments. You should review the language carefully to determine if it provides appropriate measurement (for acreage and yield) and reimbursement (price) to reimburse you (or the tenant farmer) for any loss. Make sure you understand the timeline of when or how the farmer may be asked to stop farming the land and how that will impact crop damage payments. For example, if the developer requires you to stop farming the land in December, it may have a different result on your farm operation, and your crop damage payment, than May or August.

Also be sure to discuss the timing of the crop damage payments. Will you be reimbursed on an annual basis, or is the developer proposing a lump sum payment after several years?

Land may continue to be farmed under a solar lease, but it should be carefully discussed and documented in the written lease to be enforceable.

B. Farm Lease

If you are a rural landowner and your land is leased to a farmer, be sure that you understand your obligations as a landlord under both the farm lease and the solar lease. Make sure that any obligations to stop farming the land that might be enforced by the solar developer are coordinated with legally required notice of lease termination to the farmer.

Learn more about terminating a farmland lease in Wisconsin at <https://farms.extension.wisc.edu/articles/terminating-a-farmland-lease-or-tenancy/>.

C. Farmland Preservation

If the potential farmland is enrolled in the Farmland Preservation Program, check with the Wisconsin Department of Agriculture, Trade & Consumer Protection to determine if the enrolled land is eligible for solar leasing. More information is available at https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx.

D. Easements, Mortgages, Liens, and Other Property Rights

Carefully review any other easements or restrictions on the property that might limit your ability to sign a solar lease. An attorney and title company can help you review and manage any existing restrictions on your land before signing a solar lease.

E. Property Maintenance

Who will be responsible for maintaining the property under the solar panels? How high can the grass grow beneath the solar panels before it must be cut? If it is you, will you be compensated for your equipment, fuel, and time, and can you use herbicides to control the grass or weeds? If it is someone else, who is responsible, and how will they access the leased site? Will they be able to apply herbicides, particularly if your farm is organic?

For land being acquired for a substation or transmission lines, Wisconsin law provides certain rights to landowners, including a requirement that the utility controls weeds and brush. However, a developer may ask you to waive those rights in the lease. Carefully consider which rights you may or may not be willing to waive. You can learn more about these landowners' rights at [https://psc.wi.gov/Documents/Brochures/Right-of-](https://psc.wi.gov/Documents/Brochures/Right-of-Ways%20and%20Easements%20for%20Electric%20Facility%20Construction%20In%20Wisconsin.pdf)

[Ways%20and%20Easements%20for%20Electric%20Facility%20Construction%20In%20Wisconsin.pdf](https://psc.wi.gov/Documents/Brochures/Right-of-Ways%20and%20Easements%20for%20Electric%20Facility%20Construction%20In%20Wisconsin.pdf).

F. Drainage Tile Maintenance and Repair

If your land has drainage tile, you will want to ensure the agreement makes clear the solar developer is responsible for immediately getting the tile repaired, allowing access and reimbursing you for tile repair, or will compensate you for any flooding that might occur until the tile is repaired.

H. Access

Have you discussed including a right of entry on the leased land to ensure you can access other lands you own or rent through it? This is particularly important if there are farm lanes going through the land that will be leased.

G. Signing Bonus and/or Attorney's Fees

Does the proposed lease provide for a signing bonus upon lease execution? If there is, is there a time limit for obtaining the bonus? Beware that a time limitation on the bonus might pressure you to sign a lease before the lease has been reviewed by a competent attorney or before you have fully considered your options.

Some solar developers offer to pay the reasonable cost of an attorney reviewing the lease agreement for the landowner. This offsets a possible financial disincentive for the landowner to move forward with a lease. Make certain you are able to choose the attorney of your choice and that the attorney you select is experienced in reviewing solar leases.

I. Town and County Regulation

Does the solar array comply with all county and town zoning ordinances? Will the local government allow the construction of access roads if needed? The lease may require you to cooperate with the developer's permitting process, and you may wish to be clear about what will be required to do so.

The Wisconsin DNR also cites potential considerations for local units of government, including appropriate zoning; impacts on wetlands, waterways, and floodplains; risk of introducing invasive species; erosion and sediment control; impacts on endangered species; and end-of-life disposal, among others. See <https://dnr.wisconsin.gov/topic/Sectors/SolarInstallations>.

J. Insurance

Who pays for liability insurance and what coverages should be required? If the solar developer obtains the insurance, you will want to be included on the certificate of insurance as an additional insured party. If you also are required to carry insurance, the solar developer will likely want to be included on the certificate of insurance as an additional insured party.

K. Confidentiality

Does a confidentiality clause apply to the parties to the agreement? If so, how does it apply to you, your family members and employees? Are you subject to any penalties if someone doesn't comply?

L. Decommissioning | Removal | Land Restoration | Removal Bonding

Landowners typically will want the solar array removed at the end of the lease. What happens when the lease agreement ends? Is the solar developer responsible for removing the solar array and restoring the leased property?

As you discuss restoration, you may wish to consider: How deep will the electrical lines or

foundation supports be buried? Will they obstruct any future development on your farm?

If the lease developer sells the business or goes bankrupt, who will pay for de-commissioning? Landowners will want to consider requiring the solar developer to place funds in escrow or to obtain an irrevocable bond to finance land restoration, as well as the time by which these funds must be secured.

N. Eminent Domain

State law governs the use of eminent domain for energy generating plants and most electric transmission lines. Wisconsin law provides that Wisconsin corporations furnishing electric power to the public, and some rural electric cooperative associations, may exercise eminent domain to acquire land for additions or extensions to electric generation plants or for the purpose of conducting tests or studies to determine the suitability of a site for placement of such a facility. While utility companies typically possess this authority, legal scholars have contended that there is lack of clear eminent domain authority for non-utility actors nationwide. Scholars indicate there are good arguments that eminent domain is not necessary for solar energy generation projects. Unlike long, linear projects like interstate highways, electric transmission lines, and interstate pipelines which require assembling numerous contiguous parcels, they argue that land assembly for solar is not always a major barrier.

Case law related to eminent domain continues to develop across the nation, but at the time of this writing, the authors are not aware of any actions for eminent domain for solar generation that have been initiated in Wisconsin.

O. Property Taxes

If your land is currently being used as farmland, it likely has been qualifying for use value assessment. Use value assessment allows a property to be assessed on income potential rather than market value. This results in a far lower property tax bill for the landowner. What will happen to the property tax bill if and when the land is converted to solar?

Your local assessor is responsible for determining any change in classification of the land. Your local government may also have ordinances directing the assessor about how to classify the land. If your local assessor determines that the underlying land is no longer in agricultural production, you will likely lose the property tax benefits of use-value assessment and taxation, leading to a higher valuation and overall tax bill.

If an agricultural practice can be established beneath the solar array (such as agrivoltaics or ecovoltaics discussed above), it may reduce the risk that the property is reclassified. However, use-value assessment depends on the land being “primarily devoted to agricultural use,” so it is unclear to what extent agrivoltaics will impact use-value assessment. Learn more about agricultural assessment at <https://www.revenue.wi.gov/DOR%20Publications/pb061.pdf>.

However, please note there is an exemption from property taxes for solar energy systems that convert and transfer or store energy from the sun into usable forms of energy. See Wis. Stat. Section 70.111(18). It appears that this means that while the land beneath the solar array would be taxed (and likely at the new classification value), the panels, battery storage, and related structures may be exempt from tax.

Further complicating matters, according to the Wisconsin Department of Revenue, if the solar energy system qualifies as a utility, the utility pays

an annual license fee to the state in lieu of property taxes. The payment is measured by the gross operating revenues from the prior year. See Wis. Stat. Chapter 76.

If the solar energy system does not qualify as a utility and is therefore locally assessed, the taxable property is assessed based on market value and the solar operation would be subject to local taxation discussed above. However, please note there is an exemption from property taxes for solar energy systems that convert and transfer or store energy from the sun into usable forms of energy. See Wis. Stat. Section 70.111(18).

In addition to the higher tax bill, if the land was originally zoned agricultural and the assessor determines it has been converted to non-agricultural use, you will have to pay a conversion penalty unless the land changed from agricultural (Class 4) to undeveloped land (Class 5), agricultural forest (Class 5m), productive forest (Class 6), or buildings and improvements such as a residence for the farm operator’s family (Class 7). Learn more about use-value conversion fees at

Although it may be unclear what future property tax bills for the property may look like under a solar lease, the landowner and solar developer should discuss whether the developer will reimburse the landowner for any increase in property taxes and/or the conversion penalty if one is due.



Property Tax Case Study

In an effort to better understand the property tax implications, the authors reviewed property tax data for parcels involved in currently operational solar projects. The property tax bills appeared as follows:

	2023	2022	2021	2020	2019	2018	2017
Parcel 1	\$42.24	\$41.96	\$40.03	\$106.92	\$108.09	\$99.69	\$96.95
Parcel 2	\$12.08	\$11.45	\$10.91	\$148.92	\$147.65	\$129.31	\$124.84
Parcel 3	\$67.58	\$68.67	\$65.51	\$175.66	\$176.65	\$163.00	\$159.37
Parcel 4	\$24.13	\$21.62	\$20.63	\$142.56	\$142.37	\$125.28	\$120.85
Parcel 5	\$749.75	\$758.93	\$780.45	\$78.14	\$37.03	\$32.24	\$32.84
Parcel 6	\$0.00	\$0.00	\$0.00	\$108.99	\$124.28	\$108.26	\$110.24

Parcels 1-4 are located in Manitowoc County as part of the Two Creeks Solar project. The project became operational in 2020. The 2023 tax bills for parcels 1-4 each indicated a non-zero land value and a zero-dollar improvement value. Parcels 1-4 were all located in the same township.

Parcels 5 and 6 are located in Grant County as part of the Badger Hollow Solar project. The project became operational in 2024. The 2023 tax bills for parcel 5 indicated a non-zero land value and a zero-dollar improvement value. The 2020 and 2021 tax bills for parcel 5 indicated a significant increase in assessed land value and a reclassification from use value assessment. The 2023 tax bill for parcel 6 indicated a zero-dollar land value and a zero-dollar improvement value. Parcels 5 and 6 were located in the same township.

This information should not be considered conclusive but is included to show the variability of property tax outcomes.



Conclusion and Reminders

LAND LEASES TO SOLAR DEVELOPERS CAN BE BENEFICIAL FOR LANDOWNERS

This Fact Sheet is not intended to encourage or discourage landowners from signing a solar lease, but has been prepared to provide landowners with the resources and questions to ask before signing a lease, all in an effort to ensure landowners are equipped to make the best possible decision for all involved, including family members and future generations. Negotiating and agreeing to a solar energy lease can be financially rewarding. However, the financial benefits of leasing land to a solar developer is maximized when the landowner diligently conducts their research and negotiates a lease agreement that primarily prioritizes their own interests over the interests of the solar developer.



DISCLAIMER

The information provided within this fact sheet does not, and is not intended to, constitute legal advice. All information, content, and materials available here are for general informational purposes only and may not constitute the most up-to-date legal or other information. Seek legal guidance from competent legal counsel.