



CAROLINECOUNTY
you belong here
CAROLINE COUNTY COMMISSIONERS OFFICE

JAMES TRAVIS BREEDING, PRESIDENT
LARRY C. PORTER, VICE PRESIDENT
NORMAN FRANKLIN BARTZ, III., COMMISSIONER
109 Market Street, Room 123
Denton, Maryland 21629

January 14, 2025

Re: WARNING REGARDING SOLAR LEASE OPTIONS AND LEASES

Dear Caroline County Property Owners,

If you have been approached to sign a letter of intent, an option, or a contract to lease your land for use as a **solar electric generating facility**, and are considering doing so, we urge you to consult with your lawyer before signing anything. The lease document often references and incorporates a number of other documents including an option agreement (their option to enter into the lease, not yours), a lease agreement, and an easement agreement (allowing them to access and use your property for evaluation, construction, operations, and maintenance). **Attached to this letter is a list of the issues which we suggest that you investigate before “signing up” – many of these issues have arisen from past experiences of landowners who have leased to solar developers.**

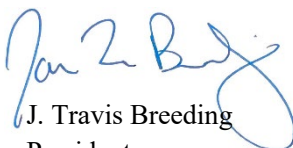
Caroline County has 200,000 acres of agricultural land, of which 91,000 acres (46%) is classified as “*Prime Farmland*” by the U. S. D. A. (soil with the highest productivity for producing food crops and, thus, is of national importance for preservation as farmland); and 50,000 acres (25%) is classified as “*Farmland of Statewide Importance*” (the second highest level of productivity, these acres are of State-wide importance for food production).


The Commissioners are concerned that if enough agricultural land is converted to solar facilities, it will begin to affect the viability of agriculture in this County and the region. Communities require a critical mass of farms and farmers to sustain agricultural suppliers, markets, processors, storage facilities, and other industry infrastructure. As more land transitions out of agriculture, the demand for these supportive services erodes. As those supportive services go out of business or consolidate, it is more difficult for remaining businesses to continue operations. If enough landowners convert their land to solar, it could significantly impact those who choose to keep their land in agriculture.

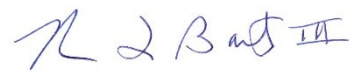
Thank you for your consideration of the above information.

Sincerely,

Caroline County Commissioners


J. Travis Breeding
President


Larry C. Porter
Vice-President


N. Franklin Bartz, III
Commissioner

OFFICE OF THE COUNTY COMMISSIONERS

Katheleen Freeman, County Administrator | Daniel Fox, Deputy Administrator | R. Stewart Barroll, County Attorney
109 Market Street, Room 123 | Denton, Maryland 21629 | (410) 479-0660 | info@carolinemd.org

ISSUES TO INVESTIGATE BEFORE LEASING YOUR LAND FOR SOLAR:

1. Who is the person soliciting you to sign the option or contract? By whom is the solicitor employed? Are you being pressured to sign quickly? Are verbal promises made to you before signing accurately reflected in the written instruments so that you can enforce them?
2. Is the solar company reputable? How many other solar or wind facilities has the company constructed? How many such facilities does it presently own? What is the average length of time the company actually retains title to a facility before it sells to a third party?
3. Can you speak to landowners who have one of the solar company's facilities on their land?
4. Will such remedies as eviction and suit for damages be available to you as the lessor in the event the solar company fails to pay rent or, through its agents, commits any other serious breach of the lease?
5. Whether you as lessor have the right to require the solar company to purchase a decommissioning bond payable to you as the lessor.
6. If there is an agricultural land conservation easement on your land, will entering into the lease violate the terms the easement? Will entering into the lease prevent you from entering into a **future** land conservation easement?
7. If there has been a previous transfer of the development rights (TDRs) on your land, will entering into the lease violate County or State law?
8. Will entering into the lease affect existing leases of your land (for example, sharecropping, hunting, residential, *etc.*)?
9. Is the land to be leased in the portion of the County which the County has designated as appropriate for installation of solar facilities?
10. Will entering into the option or lease cause a change in the fair market value of your property and, thus, your equity in the property? If so, will this trigger a breach of your mortgage or deed of trust, as these instruments usually prohibit the landowner from granting a long-term legal interest to another party without the lender's written consent?

11. Will title to the equipment (solar panels, *etc.*) be pledged as collateral to the solar company's creditor in a publicly recorded financing statement? How does this affect your ability to deal with the solar company if a dispute arises?
12. Whether you must disclose the existence of the option or lease to potential lenders, appraisers and buyers of your land.
13. Will the facility include one or more battery energy storage systems (BESS)? If so, is there a written emergency plan? What does the emergency plan provide to limit the risks of toxic exposures to airborne fumes in the event of fire? [BESS fires are extremely difficult, if not impossible, to extinguish.]
14. Will entering into the lease, and the possibility of the presence of BESS units on your property affect existing insurance coverage of your land?
15. Whether as the lessor of the land, you should require in writing that the solar company obtain your written consent before the company can transfer or assign its interest in the lease.
16. Whether you as lessor will be required to grant any easements or rights-of-way over your remaining land to the solar company.
17. Is there any way to absolutely guarantee that when the facility ceases operation (which may occur prior to the expiration of the lease, decades from now), that the then-owner of the facility will remove the equipment and restore the land to its previous condition?
18. If there is to be a decommissioning bond, will it be payable to you or to the County? If the County were to agree at the time to undertake the restoration of your land, how could it do so without permission to enter upon your land? Is it likely that the County would require indemnification from the landowner?
19. Is there any way to be certain that the amount of the decommissioning bond (whoever it is payable to) will be sufficient to remove and dispose of the equipment (title to which is likely held by the secured creditor of the solar company), and restore the land to its previous condition?
20. How will the proposed solar facility affect wildlife, including habitat loss, fragmentation, and degradation, and collision risks?
21. Whether the military has reviewed and approved of the proposed solar facility, as solar facilities can adversely affect military and civilian flight paths due to the glare of reflected sunlight from the panels.

22. Whether your use of your own land will be limited, *e.g.*, will you be able to plant trees as wind blocks or construct farm buildings and bins on areas near the solar array?
23. Whether the lease provides for how damage to the farm, the solar array and infrastructure, and shared roads/ROWs will be repaired or replaced, especially the issues of tiling, fencing and ditches.
24. Whether the solar company is responsible for mowing, weed control, and maintenance of fencing, roads and ditches.
25. Whether you will be able to spray crops, or be otherwise restricted in planting or harvesting, because of the solar facility.
26. With respect to your farming and non-farming beneficiaries, will the rental income stay with the farm or flow to the landowners?
27. Whether you have the right to consider other offers after signing the letter of intent, option or lease.
28. Who will be responsible for environmental and legal compliance and any liability, fines, or other penalties which may arise over the life of the project? You remain the owner of the land.
29. Who will pay the increased property taxes after the use of your land is changed from agricultural to commercial?
30. What is your income tax liability for the option fee and rent you will receive?
31. To what extent will your land become a major construction zone, with heavy and loud trucks and equipment during construction, grading, soil erosion, soil compaction, and the installation of underground equipment and fences around the perimeter of the solar footprint?
32. Whether the solar company will require you to obtain a subordination agreement from your mortgage lender, to ensure that your lender will not evict the solar developer if you fail to pay your mortgage (which your lender may refuse to sign).
33. Whether the lease will prohibit you from further encumbering the land, including refinancing or getting an additional mortgage.
34. Whether you should purchase specific liability insurance to cover potential losses, such as violations of environmental regulations, personal injuries

caused by solar array equipment or vehicles, or a neighbor's "nuisance" suit against you because of the glare, electromagnetic signals and low noise levels emitted by the solar array, stormwater displacement, disruption of wildlife patterns affecting hunting, *etc.*

35. Whether throughout the project, the solar company will have adequate comprehensive liability insurance to cover damage to your land and the company's equipment. Should you insist on being named as an additional insured on the company's policy?
36. How are the improvements added to your property by the solar company to be accounted for if you were to sell your property?
37. As the solar array will impact stormwater on your property, will the solar company be responsible for managing stormwater? Will it pay for any required changes to stormwater management or increased maintenance of the stormwater system (*i.e.*, erosion control and keeping drainage ditches/pipes free flowing)?