



Cornell University Cooperative Extension

**Capital Area Agriculture and
Horticulture Program**
Serving Albany, Columbia, Greene,
Rensselaer, Schenectady and
Washington Counties

A Silver Bullet? Proceed With Caution

A hot topic among a number of ENY landowners recently are proposals that have appeared in mailboxes around the region. For some, this priority mail envelope appears to contain a silver bullet answer for some future income.

As with all proposals, landowners need to research, or at least consider potential consequences to their property from undertaking such a project.

Some thoughts from Cornell Cooperative Extension Educators who have seen a variety of such projects come and go:

- Does the company making the proposal have to put money into an escrow account to guarantee their ability to remediate the property at the end of the lease?
- Will the property involved be re-assessed if this change is made?
- If the assessment changes on your property as a result of accepting this proposal, will the company pay your new increased tax bill?
- Will the property still be eligible for agricultural assessment or will your assessor consider this a "conversion" and invoke the five year penalty fine? If a fine is levied, who is responsible for paying it - you or the company making the proposal?
- If the company retains the right to reassign the lease on the involved property to another party, what happens with the contract if the landowner dies or sells the property?
- If the lease is terminated, does 'remediation of the property' mean that all materials installed by the company will be removed or just the material above ground and in the top 30 inches of soil?
- What will be the position of your town's zoning/planning and governing board regarding the project and use of your property?
- And finally, is this the best use for precious farmland?

These are just a few of the questions which have occurred to us as we have been fielding calls from farmers and landowners looking for more information. Like the gas leases in the Marcellus shale area and wind turbines on farmland in WNY and NNY, there are precedents for contract issues. Take the time to ask questions, look for information and make an informed decision. The future of your farm may depend on it.

--written by the CCE Capital Area Ag and Hort Program team

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Potential Lease Issues for Solar Farms

There has been a lot of activity and many, many questions about solar farm leases flying around the Capital District and New York State. All landowners considering this type of action need to take time to understand what all the implications are for their property, while resisting the high pressure sales pitch.

Most energy related contracts are designed to be favorable to the energy company. This is no surprise, as they are taking the financial risk of equipment, price fluctuation and state or federal regulation.

However, landowners are also taking a huge risk – tying up their property for 20-40 years, giving land use rights away and changing their neighborhood – potentially forever.

Potential Issues

- Landowners should confirm what their rights and obligations are on the property, which defines what the leasing company's right and obligations are also. Often the lease provides absolute control for the renter over access and rights to the property. The renter also retains the rights to remove improvements on the property or other existing items such as trees, ditches, etc.
- According to a speaker at the Sullivan County meeting, in many cases the leases could have limited what property owners could do on the portion of the property that was not being used as part of the solar farm. In one lease that was examined, if a barn existed and cast a shadow on a spot where the leaseholder wanted to put part of its solar farm, the leaseholder would have the right to take down the barn.
- The leasing company generally does not want liens on the property (and local lending agencies have not been willing to subordinate their loans for projects) held by property owners. But there is no prohibition in the agreement to them causing liens to be placed on the property which would then be the responsibility of the landowner.
- The equipment and modifications that are likely to be added to the property will increase the property assessment for the entire piece, but the renters are only agreeing to pay property taxes on the part of a piece they lease. The property owner would be responsible for the rest.
- There are property tax exemptions (Section 487 of Real Property Tax Law) that can be used for 15 years. However, Town, County and school districts can opt out of the exemption, making their taxes full value. And even if the exemption is in place, special district taxes, such as fire, water and lighting, will be charged at the new assessment.
- Installing a solar array farm on land currently under Ag Assessment will be viewed by the NYS Department of Ag & Markets as a conversion, since it will no longer be used for production agriculture. This will cause a penalty to be assessed to the land owner.
- Another serious question is the right to reassign the lease to another party with no input or approval from the landowner
- Liability issues still exist in terms of injuries any employees of the solar company might suffer on the property. As the landowner, you are still ultimately responsible for anything occurring on your property.

Other resources are available at Cornell Cooperative Extension's Capital Area Ag & Horticulture Program's webpage at: http://bit.ly/NYS_Rural_Solar

Please look for other information and resources at:
<http://blogs.cornell.edu/capitalareaagandhortprogram>