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# Legalities of Leasing: An Overview of Wind Energy Lease Agreements

A Presentation to  
The Michigan Wind Energy Conference

By  
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# Fraser Trebilcock Davis & Dunlap, P.C.

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# Agenda

- The Wind Project
- Why Lease?
- The Lease Agreement
- Easements
- Top 10 Tips

# The Wind Project

- Pre-Development
- Construction
- Operation
- Remediation/Decommissioning

# Pre-Development

- Developers approach landowners about leasing property
- Developers need site access to assess viability – erect anemometers
- Option agreements – usually a fixed fee
- Typically, 3-5 year period

# Construction

- ❑ Developers exercise options and enter into long-term lease agreements and easements
- ❑ Developer will typically pay landowner a fixed fee and possibly a commitment bonus
- ❑ Construction will typically take 6-9 months

# Operation

- ❑ Turbines are installed and begin generating electricity
- ❑ Developer needs access to land to maintain equipment
- ❑ Operational life of a turbine is 15-25 years
- ❑ Lease agreement or easement governs relationship, including payments

# Remediation/Contract Renewal

- At the end of the project, provide for removal of structures and site restoration
- Option to renew the lease may be exercised
- Opportunity to renegotiate terms

# Why consider a lease?

- ❑ Landowners have a valuable wind resource blowing across their property
- ❑ Developing a wind farm is an expensive and complex process
- ❑ Developers have the experience and financial backing to install and operate a wind farm

# Benefits of Leasing

- Landowner
  - Increases and diversifies income
  - Maintains ownership of the land
- Developer
  - Less up-front costs
  - Potential for better cash flow - payments align with revenues

# The Lease Agreement

- A legally binding contract between the landowner and the developer
- The developer rents a portion of the landowner's property for a term of years
- Governs the rights and duties of each party over the life of the wind project from inception to decommissioning

# Lease Agreement Components

- Term - 20-50 years
- The Land and Approved Uses
- Payments
- Liability
- Duties
- Other Common Terms

# The Land and Approved Uses

- ❑ Should precisely specify the land covered
- ❑ Access, including roads and maintenance
- ❑ Location of pads for transformers and substations
- ❑ Reservations – farming, grazing, mineral extraction, hunting, etc.
- ❑ Upwind blockage
- ❑ Buffer zones, e.g. noise

# Payment Options

- Royalty Payments
- Royalties Plus a Guaranteed Minimum Payment
- Fixed Fee
- One-Time, Lump Sum

# Royalty Payments

- 1-4% of revenue received from electric generation
  - Revenue - electricity, RECs, etc.
  - Pooled or by turbine
- Variable payments
  - Seasonal variations in the wind resource
  - Turbines' operating availability
  - Price of electricity
- Audits

# Royalties Plus

- Percentage of revenues, with a guaranteed minimum payment
- Protects landowner against
  - Possible operations problems
  - Lower than expected wind resource

# Fixed Fee

- Developer pays flat, fixed fee on a monthly or yearly basis
  - Per turbine
  - Per acre
  - Per MW
- Simple – no need for audit
- Certainty

# Lump Sum

- ❑ Developer pays one large payment for use of the property for the lifetime of the project
- ❑ Immediate
- ❑ Simple
- ❑ Certainty
- ❑ May make property less valuable to subsequent owner

# Liability

- Mutual indemnification for damages caused to each other, e.g. crop damage, damage to equipment, etc.
- Address responsibility for damages to third parties

# Developer's Duties

- ❑ Make payments
- ❑ Avoid interference with landowner's use of the property
- ❑ Keep land free from any liens
- ❑ Comply with all federal, state, and local laws
- ❑ Obtain and comply with all necessary permits
- ❑ Not to dispose or release hazardous substances on the land

# Landowner's Duties

- Allow access
- Not engage in activities that would impede the wind resource
- Assist and cooperate with the developer to obtain permits
- Cooperate with the developer to obtain any subordination agreements or approvals from existing lien holders

# Other Common Terms

- ❑ Taxes
- ❑ Assignment
- ❑ Termination and default
- ❑ Dispute resolution
- ❑ Choice of law and venue
- ❑ Force majeure
- ❑ Ownership of installed property
- ❑ Recordation

# Easements

- “Non-possessory” property interest
- Gives the developer a “right of use” over the landowner’s property
- Often used to ensure that neighbors do not do something that would be detrimental to the wind project

# Sample uses for easements

- Right to lay cables connecting the turbines to the power grid
- Right to cross land for construction, operation, and maintenance of turbines and related equipment
- Right to prevent obstacles (buildings, trees) which might interfere with the free flow of wind across the turbines
- Right to produce noise, shadows, or other minor nuisances

# Top 10 Tips

10. Record the agreement
9. Address the problem of default
8. Be flexible
7. Clearly define terms and conditions
6. Remember that all terms are negotiable

# Top 10 Tips

5. Be clear about your goals
4. Talk with the neighbors
3. Know the other party
2. Do your homework
1. Consult an attorney

# Resources

- Great Lakes Renewable Energy Association – [www.glrea.org](http://www.glrea.org)
- American Wind Energy Association – [www.awea.org](http://www.awea.org)
- Windustry - [www.windustry.org](http://www.windustry.org)
- Michigan State University Extension – <http://web1.msue.msu.edu/wind/>

# Conclusion

Questions or Comments?