

POINTS TO CONSIDER BEFORE SIGNING A LEASE FOR WIND TURBINES

Land owners that are approached by proponents of wind projects to sign leases allowing for the construction and operation of wind turbines on their lands, should consider the following points before signing on the “dotted line”.

The following points are not intended as legal advice. They are only for information purposes.

Issue	Why it matters
<p>It is essential that the land owner get independent legal advice concerning the ground lease (“lease”) so that he/she can understand all of the legal requirements and implications associated with the lease. Each land owner will have unique issues that will need to be assessed by legal counsel and financial advisors.</p>	<p>Saying you did not understand what you were signing will not protect you against unanticipated consequences of the lease.</p>
<p>The lease will provide the wind energy company (“Lessee” or “Wind Energy Company”) with the right to access the leased lands at all times. This would include the right to use any access routes on to the leased lands. The land owner will need to consider how this broad right of access will affect his/her use of the rest of the lands adjacent to the leased lands.</p>	<p>Wind Energy Company’s access rights apply at all times and so could lead to disturbances and interfere with a land owner’s operations.</p>
<p>Wind Energy Company has broad rights to redesign its wind farm project on the leased lands including “enlargement”. Land owner needs to consider how additional turbines and equipment on leased lands could affect his/her use of the surrounding lands.</p>	<p>This could mean more turbines and/or turbines located in places undesirable to land owner.</p>
<p>Wind Energy Company will often require alternate or additional access routes to get to the wind turbines on the leased lands. Land owner will need to consider what restrictions, if any, should be placed on Wind Energy Company’s choice of access roads.</p>	<p>Access routes could have a direct effect on land owner operations that are continuing on the leased land or abutting lands.</p>
<p>The term of the lease can be anywhere from 25 to 50 years. In the case of a 50 year lease, the term may be much longer than the actual operation phase of the wind turbine project. The land owner will need to consider whether to lease for a period extending beyond the actual operation of the wind turbine project.</p>	<p>The financial benefits under the lease may be significantly less when the project is no longer generating electricity. In addition, decommissioning and restoration obligations may not begin until the end of the term of the lease.</p>
<p>The lease should provide specific measures for compensation for damage to land owner’s land, crops or livestock (as applicable).</p>	<p>If specific compensation for loss, or damage, to crops is not dealt with in the lease, land owner may need to sue for compensation.</p>

<p>Wind Energy Company will require an “effects easement” on, over and across the lands (not just the leased lands) for certain visual (i.e., blinking lights), audio and electrical and similar disturbances arising from the operation of the project.</p>	<p>There are no limitations on the level of “disturbances” (such as blinking lights and noise) other than as may be required by any applicable laws or regulations.</p>
<p>There should be a requirement that Wind Energy Company carry out its activities on the leased lands in compliance with any and all applicable laws, rules, regulations, etc.</p>	<p>Without this requirement, land owner could be liable for the failure of Wind Energy Company to comply with laws (such as environmental laws) on leased lands.</p>
<p>The lease will often include an obligation on the land owner to not allow “any other party” to interfere with wind flow across the leased lands. Any obligation relating to non-interference should be limited to the lands of the land owner.</p>	<p>Land owner only has control over his/her own property. Land owner should not be responsible for preventing neighbours from interfering with the wind flow across the leased lands.</p>
<p>The land owner should only give representations to the best of his/her knowledge concerning the state of the leased lands. Avoid making broad unqualified statements (i.e., the leased lands are not contaminated).</p>	<p>Representations made by land owner in the lease that later turn out to be untrue will expose land owner to potential breach of lease claims by Wind Energy Company.</p>
<p>Wind Energy Company should be responsible for any environmental contamination on leased lands or surrounding lands relating directly or indirectly to the wind project. Wind Energy Company should also agree to indemnify the land owner from any claims, damages, losses, expenses, etc. arising from environmental contamination relating to the project.</p>	<p>Any environmental contamination relating to the wind project that must be cleaned up by the land owner could be costly and could significantly reduce, or eliminate, financial benefits under the lease.</p>
<p>The land owner should consider requiring Wind Energy Company to conduct environmental soil and groundwater tests at the beginning and end of the lease to confirm that contamination has not occurred as a result of the project.</p>	<p>Without upfront testing it may be difficult to establish that the contamination arose from the operations of Wind Energy Company.</p>
<p>Land owner should require that Wind Energy Company post security to ensure that money is available to conduct decommissioning and remediation activities at the end of the lease.</p>	<p>Without such security the land owner could be liable for decommissioning and/or cleanup of contaminated property.</p>
<p>Land owner will need to ensure that the ultimate remedy for a material and ongoing breach of the lease includes termination of the lease.</p>	<p>Without a termination option for material breaches, a land owner could be “stuck” with a defaulting Wind Energy Company for a long time.</p>

<p>Land owner should be satisfied that the lease contains a requirement for Wind Energy Company to obtain sufficient insurance such as commercial general liability insurance, automobile liability insurance and worker's compensation.</p>	<p>Adequate Insurance ensures that Wind Energy Company has additional resources to meet certain financial obligations under the lease (eg. damages to the leased property arising from its operations).</p>
<p>The lease will often contain a requirement that the land owner provide a blanket approval for all applications, permits and other documents that Wind Energy Company requires for the project. Land owner should consider whether he/she should provide such agreement without first knowing whether the approval or permit could have a negative impact on the other remaining lands or the land owner's operations.</p>	<p>Land owner should know what the other approvals and permits say before agreeing to support them.</p>
<p>Land owner should be aware that Wind Energy Company can assign the lease to a third party without land owner's consent. Land owner should consider whether he/she wants to have the ability to require Wind Energy Company to obtain his/her prior written consent subject to the consent not being unreasonably withheld. Further, Wind Energy Company should not be released of its obligations even where an assignment is authorized unless land owner is satisfied that the assignee will be able to fulfil all of Wind Energy Company's obligations under the lease.</p>	<p>Land owner could be left with a less experienced and less financially viable Wind Energy Company.</p>
<p>Leases will often contain provisions allowing Wind Energy Company to provide its interest in the lease as security to a lender for financing purposes. It is essential that land owner consult with his/her lawyer and the bank (if applicable) to determine what impact such an arrangement may have on the ability of the land owner to get a loan or whether there could be any reduction in the value of the land owner's property.</p>	<p>These types of financing arrangements made by Wind Energy Company may affect the ability of the land owner to obtain a loan using his/her land as security. It may also pose a concern for an existing lender to the land owner where land owner's land is being used as security.</p>