

Wind Projects: Land Owner Options

Many Kansans are interested in taking advantage of our great wind resource, or have been approached by developers seeking access, or aggregators putting together lease packages to offer to wind developers. Land owners must be careful, and work with an attorney, to understand all the ramifications of any contract they may sign, and to insure the best deal for themselves in terms of compensation and responsibilities.

The Land Owners' Interests.

Land owners have numerous interests in their land, not all of which they've thought about. These include:

- Best Compensation Over Time
- Duration of the Agreement
- Exclusivity with the Developer
- Liability
- Tax Consequences
- Need to Continue Farming the Land
- Assurance of Development
- Transferability
- Termination Rights
- Decommissioning Responsibility for Structures

The Developers' Interests

These are not the same as the Land Owners'. They include:

- ▶ Exclusive Rights to the Land
- ▶ Easy Access to Multiple Adjoining Tracts
- ▶ More Rights than Needed For Longer than Needed
- ▶ Best Wind, Closest to Transmission, No Problems
- ▶ Lowest Compensation Possible to Land Owner

What to Seek in a Lease or Easement

Compensation Information is often confidential, so it is hard to compare different leases. Windustry has compiled a list from published sources. Land owner payments *per MegaWatt (MW)* range roughly between \$2,000 and \$4,000 per year. • Keep in mind that commercial turbines in Kansas range from 650 KW to 3 MW, so a larger turbine on the same footprint can generate considerably more revenue. • Some leases include a royalty and/or escalator clauses beginning year 10 and 20.

Length of the Contract Generally a set number of years, often 20 or 40. Be suspicious of permanent easements or those for very long periods of time, or with automatic renewal periods.

Reserved Rights especially those allowing the landowner to continue farming or grazing; activities associated with mineral rights; construction or land improvement activities; hunting if it can be done without harm to wind equipment, and "catch-all" provisions which preserve other rights.



Can You Do This Alone?

This flyer only scratches the surface of the complex legal issues wind leases or easements entail. If you are approached by a developer or aggregator, **you need the assistance of an experienced attorney.** Be aware that a developer or aggregator is pursuing their own interests. This does not mean they are necessarily doing anything illegal, only that their interests are quite different from the land owners.

Common Issues:

Taxes and Utilities - in other states, real estate taxes may increase due to the development. The developer should pay utility services utilized.

Assignment - developers may want to assign the agreement, including the right to finance by placing a mortgage on the developer's interest; by subleasing; by selling the lease or easement to another party. Does the land owner have a say?

Damages and Insurance - If things go awry, who is liable? Indemnification and insurance provisions allocate responsibility, and can be used to insure that the land owner is held harmless or covered by liability limits. Development may also result in increased land owner's insurance premiums. The land owner's lender may also have a say in these issues.



Some Types of Legal Agreements

Purchase this might include purchase, option to purchase or right of first refusal to purchase.

Leases A landlord/tenant relationship for a set period of time. Can also be an option to lease. It is a conveyance for a term of time.

Easement Allows a non-owner limited use or enjoyment of land. Can be exclusive or not, and most rights stay with the landowners. Can also be optioned.

A Disclaimer

This memorandum is not a legal document, nor does it represent a complete review of all the legal issues and provisions encompassed in a well-negotiated legal agreement between landowners and developers.

Nothing in this document should be construed as legal advice. Please consult an attorney for specific legal advice concerning any prospective lease or easement.

Resources

Compensation: <http://www.windustry.org/sites/windustry.org/files/LandECompPackages.pdf>
Negotiating Wind and Land Agreements: <http://www.flaginc.org/topics/pubs/wind/fgwe03.pdf>
Leasing Considerations: <http://www.windustry.org/leases>
Kansas Energy Office: www.kcc.ks.gov
Kansas Rural Center: www.kansasruralcenter.org
Climate & Energy Project: www.climateandenergy.org/