



UGA EXTENSION - SOLAR ENERGY IN  
RURAL GEORGIA: OPPORTUNITIES AND  
CONSIDERATIONS FOR LANDOWNERS –  
JUNE 8<sup>TH</sup> 2021

# *Concurrent Track B:* **SESSION AGENDA**

- Real Property & Leasing Issues During the Lifecycle of Solar Projects (Buford Pollett, **University of Tulsa**)
- Rural Energy for America Program and the Renewable Energy Systems & Energy Efficiency Improvement Guaranteed Loans & Grants (Joe Anderson, **USDA Rural Development**)

# *Real Property & Leasing Issues*

## Agenda

- Solar Energy Project Lifecycle
- Solar Lease Considerations for Landowners
- Power Purchase Agreements
- Takeaways

# *Real Property & Leasing Issues*

## Solar Energy Project Lifecycle

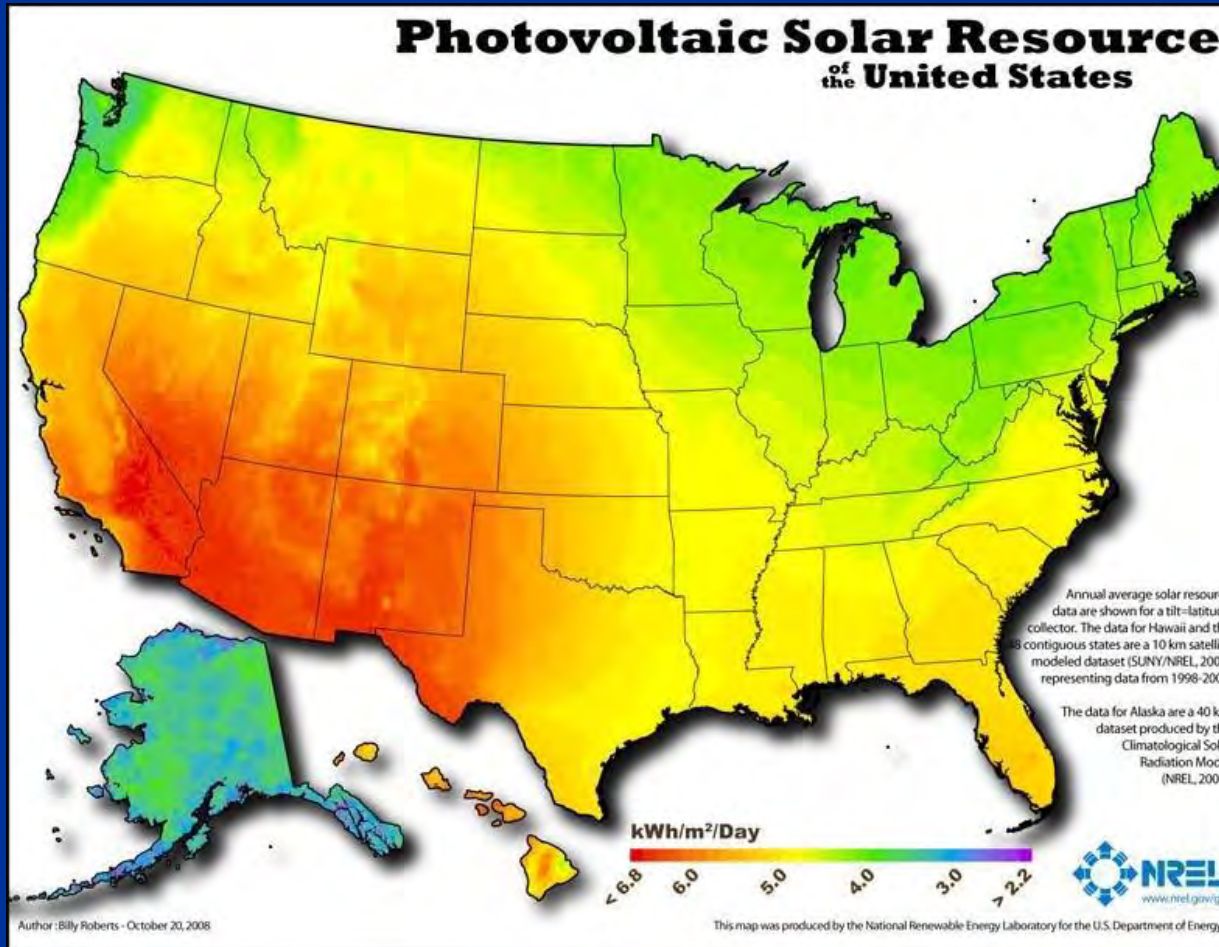
# *Real Property & Leasing Issues*

## Solar Farm in Johnson County, Georgia



# Real Property & Leasing Issues

## US Solar Resource Map



# *Real Property & Leasing Issues*

## Solar Energy Project Lifecycle



# *Real Property & Leasing Issues*

## Solar Energy Project Lifecycle

- Negotiations and acquisition
- Evaluation and bid period during the term of the Option Agreement
- Execution of Lease
- Construction and Installation
- Operation and Maintenance
- Decommissioning and Reclamation



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## Solar Lease Considerations

- Guarantees of title
- Long-term commitments
  - Option agreements – to cover site evaluation & bids
  - Solar Lease – generally basic rent payment with no royalty payment or benefit of renewable energy credits

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## Solar Lease Considerations

- Impacts on other uses on the land
  - Farming practices
  - Hunting
  - Timber
  - Minerals
- Impacts on adjacent land (e.g. crop dusting)
- Impacts on special tax valuations (e.g., agricultural or open land)

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## **Solar Lease Considerations**

- Lease drafted to burden the land going forward
- Easements (affirmative and negative) – nonpossessory right of use in land for a specific purpose
- Developers want the ability to grant a mortgage with the ability of financial institutions to takeover in case of default of solar farm developer/operator

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## Solar Lease Considerations

- Confidentiality provisions
- Liability Provisions
  - People
  - Property
  - Pollution
  - Consequential damages
- Dispute resolution and fees
  - Forum selection
  - Attorney and litigation fees

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## Solar Lease Considerations

- Mitigation tools:
  - Financial security - from the developer in case of insolvency, bankruptcy during the full lifecycle of the solar energy project
  - Insurance – from the developer covering the risk during the during the full lifecycle of the solar energy project

*Real Property & Leasing Issues*  
Power Purchase Agreements (PPAs)

# *Real Property & Leasing Issues*

## Power Purchase Agreements (PPAs)

- Parties to the Agreement
- General nature of PPAs
- Marketing concerns
- Price under the PPA
- Delivery point
- Guarantees
- Term/extension
- Default/damages/limitation of liability



# *Real Property & Leasing Issues*

## Power Purchase Agreements (PPAs)

- Change in law
- Financial security
- Dispute Resolution
- Governing Law
- Applicable Law

# *Real Property & Leasing Issues*

## PPAs – Parties to the Agreement

- Seller - Single-purpose entity owning the solar farm assets
- Buyer:
  - Energy trading subsidiary
  - Industry
  - Local government
- Financial health of the parties
- Financial security

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## PPAs – General Nature

- Output agreements
- Scope of purchase
  - Energy purchased as measured by a meter at the delivery point
  - Renewable Energy Credits (RECs)
  - Future environmental credits (*e.g.* carbon credits)

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## PPAs – Marketing Concerns

- Advertising – Fair Trade Commission concerns
- All power capable of producing – (take or pay contract)
- Purchase output actually delivered to the delivery point
- Impact of party's responsibility for transmission

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## PPAs – Price

- Price regulated
- Delivery *peak* or *off peak*
- Changes in market conditions are generally not force majeure
- Force majeure in common law – extra time to perform but not additional compensation

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## **PPAs – Delivery Point**

- Metered location
- Interconnect between wind farm and electrical grid
- Transmission service may be needed to get energy to delivery point

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## PPAs – Guarantees

- Amount of energy to be produced
- Startup challenges
- Desire for certainty
- *Banking* overproduction – mitigate periods (*e.g.* years) of underproduction



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## PPAs – Guarantees

- Required *bandwidth* (i.e. high and low)
- Implications if outside bandwidth,
  - Overproduction – buy at discounted price
  - Underproduction:
    - Purchase and transfer energy and RECs to buyer
    - Pay liquidated damages

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## PPAs – Term/Extension

- Seller – longer term sufficient to secure financing and satisfy investors
- Buyer – short to adjust to have flexibility and adjust to market conditions
- Early termination
- Option to extend

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## **PPAs – Default/Damages/Limitation of Liability**

- Events triggering default
- Calculation of damages
- Limitation of liabilities and remedies

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## Power Purchase Agreements (PPAs)

- Change in law
- Financial security
- Dispute Resolution
- Governing Law
- Applicable Law

# *Real Property & Leasing Issues*

## Hedge Arrangements (*i.e.* Financial PPA)

- Financial institution enters into an agreement to purchase the energy from an energy producer for a period of time
- Financial institution's trading desk to this energy under contract to a corresponding energy purchaser
- Price correlated to published market conditions (*e.g.* current and future energy market such as natural gas prices)

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## Hedge Arrangements (*i.e.* Financial PPA)

- Financial institution's due diligence
- Posting security by developer to lock in price
- Lien position with regard to collateral

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## *Takeaways*

- Parties to solar energy leases and power purchase agreements need to understand the complexity of these agreements, especially concerning the impacts on the land.
- Landowners considering solar energy projects on their land should:
  - Consult an appropriate tax, accounting, finance, and legal professionals, and
  - Think about anticipated changes in land use



# *Real Property & Leasing Issues*

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# Concurrent Track B: NEXT

- Thank you for your time, and please reach out to me if have and questions following our session
- Next – Mr. Joe Anderson, USDA Rural Development - *Rural Energy for America Program and the Renewable Energy Systems & Energy Efficiency Improvement Guaranteed Loans & Grants*