

You Gotta Fight for Your Land: A Farmer's Guide to Solar Leases

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This presentation is intended to provide general information over legal issues and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Maryland. For advice about how these issues might apply to your individual situation, consult an attorney.

Thank you to USDA-NIFA

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Thank you for assistance putting this together

- Holiday Hull, J.D., University of Arkansas
- Elizabeth Thilmany, Ph.D. Candidate, Cornell University
- Probably also Shannon Ferrell, Professor, Oklahoma State

Introduction

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Introduction

- Our research is focused on utility-scale solar development.
- Issue is in the past 2 years, most of the projects built have been community solar



Introduction

- Utility-scale solar, in MD, is anything over 2MW and requires approval by PSC.
- Community solar typically requires subscriptions to be sold and if under 2MW then approved by the county. Projects can now be over 2MW and that requires PSC approval.

Introduction

- First going to look at what attorneys in our focus groups said on what landowners should pay attention too.
- In the second part, we will talk about what you should pay attention to in a lease.

What Our Research Found?

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Attorney Focus Groups – Recruitment

- We recruited attorneys with experience negotiating renewable energy contracts.
 - In NY, we recruited through Cornell researchers' networks.
 - In MD, we recruited through the Maryland State Bar Association, a professional non-profit organization home to Maryland's legal profession.
 - Additional recruitment offers were made through the American Ag Law Association
- Interested attorneys were asked to complete a Google Survey Form for scheduling the focus groups (FGs).

Attorney Focus Group (FG) Findings – insights on clientele

- 5 attorneys across 2 FGs described *many of the landowners as current or previous producers/farmers*
- 5 attorneys across 2 FGs explained that a *low percentage of landowners involved in solar negotiations do not seek legal counsel*
 - 3 attorneys across 2 FGs speculated that many clientele do not seek legal counsel due to a fear of losing out on the deal and/or landowners feeling time pressure from developers
 - And those who do seek legal counsel tend to seek an attorney *at the last minute*, usually after certain agreements have been made, according to 3 attorneys from 2 FGs

Attorney Focus Group Findings – Advice for Landowners

- Landowners should view these contracts as offers and negotiate option terms and prices, not as a fixed windfall of extra funds because ***solar lease rental rates vary widely, from \$500 to \$4,000 per acre per year.***
- Landowners should pay attention to the details and ***understand how the language used in the contracts can impact their land.***
- Attorneys stressed the ***importance of hiring competent legal counsel to support negotiating solar development agreements*** because non-disclosure agreements limit access to critical information
- Advocate for the inclusion of restoration/decommissioning bonds and indemnification clauses in solar lease agreements.

Landowner Reported Rental Rates and Location

Rental Rate Estimates and Ranges (\$ per acre, per year)	Location of Participant and Additional Context
>\$1000	Maryland, solar offers more than renting out agriculturally productive land to a farmer
\$1000	Maryland, the general range for
\$1000 - \$2000	New York, the general range for New York
\$1120	New York
\$1250 - \$1300	New York, distributed power companies' lease rates
\$1333	New York, offer for agriculturally unproductive land
\$800 - \$2000	New York, utility-scale projects

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What's Starting to Come from Landowner Focus Groups

“They (the commissioners) are going to be making laws you don't like if you're not there to voice your opinion.”

“I just don't have a frame of reference for what a good deal would be considered. I know that they're offering more than I get from traditional farming. Is it the most that I could get? I don't know.”

Thoughts collected from FG held via Zoom in 2021
and 2022

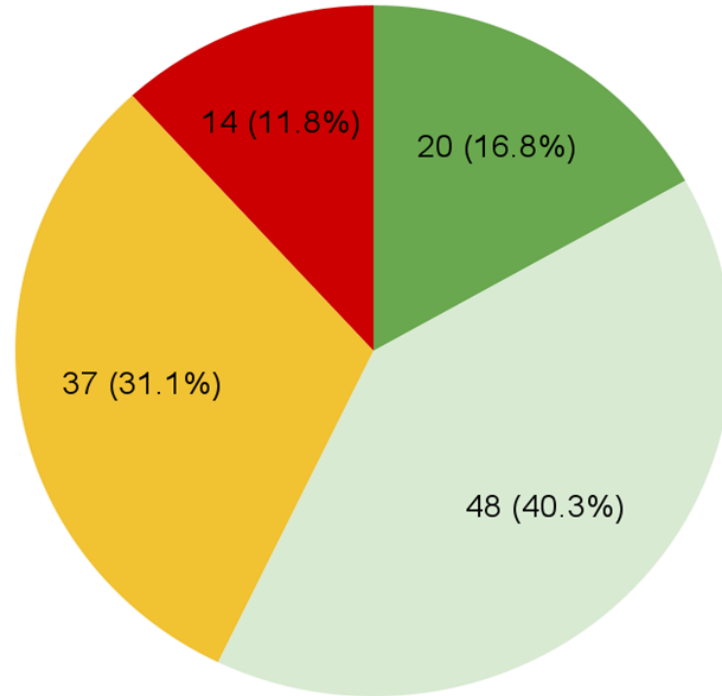
Solar Development

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Status of MD's Utility Scale Solar Projects



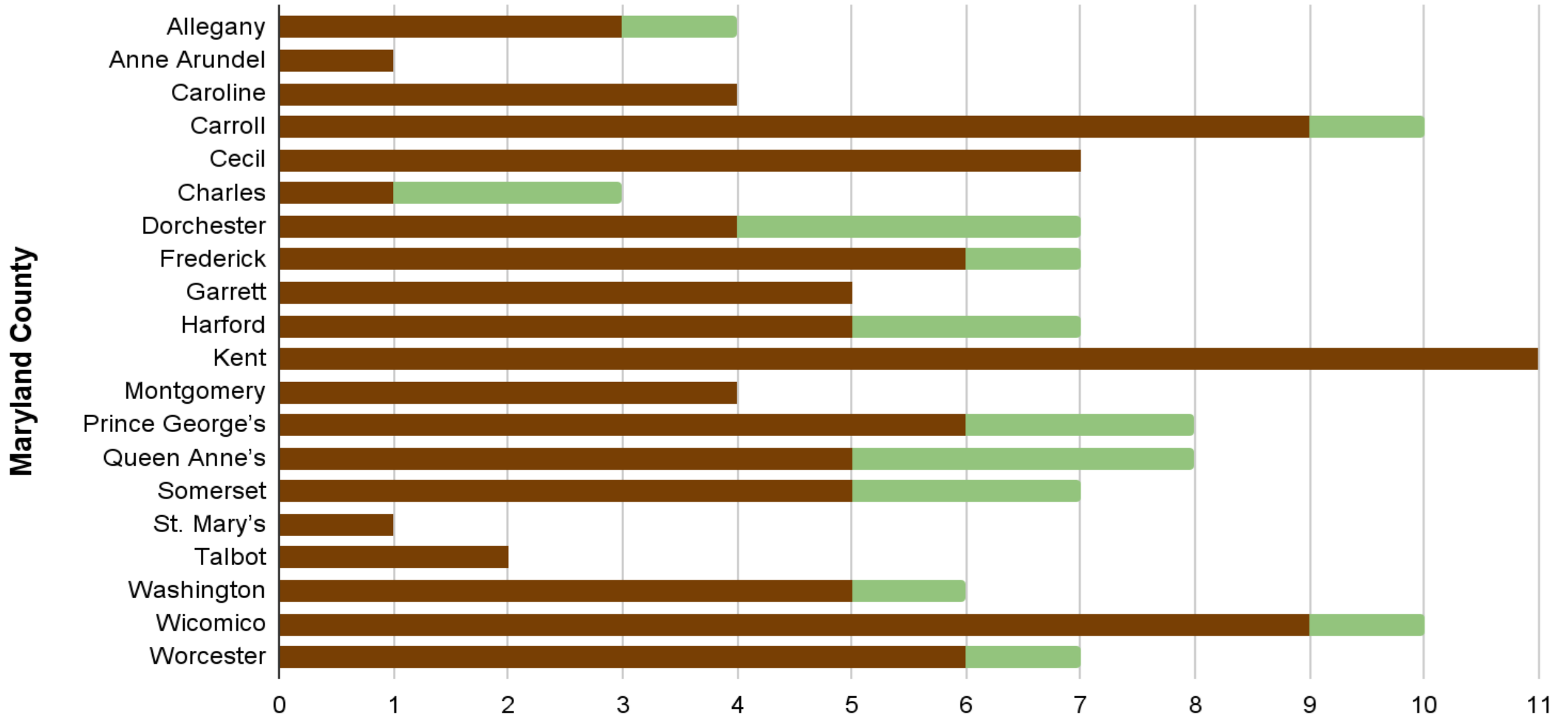
● Operational ● Application Approved - Not Built ● Application Under State Review
● Inactive/Withdrawn

Compiled from MD Public Service Commission (PSC) case filings/CPCN queue data.

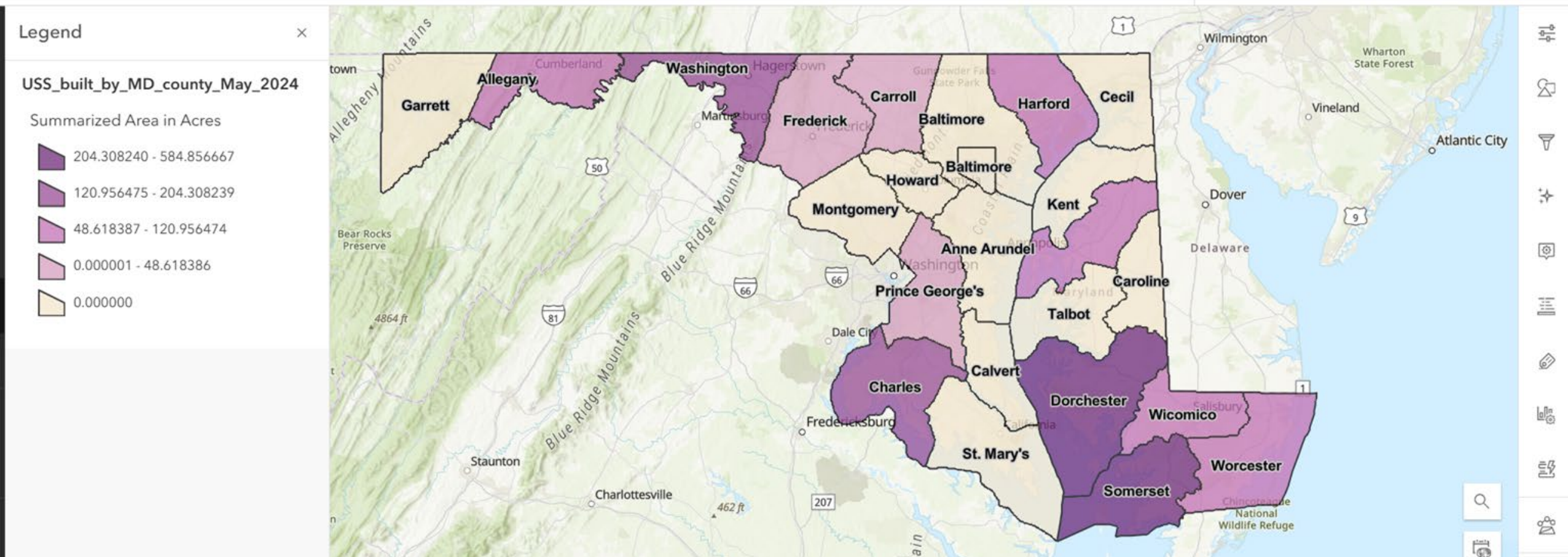
Analysis updated September 2025 by Elizabeth Thilmany.

Maryland Utility-Scale Solar: Project Status by County (through Sept 2025)

Proposed - Not Operational Operational



Current Footprint of Operating Utility-Scale Solar in Maryland by County

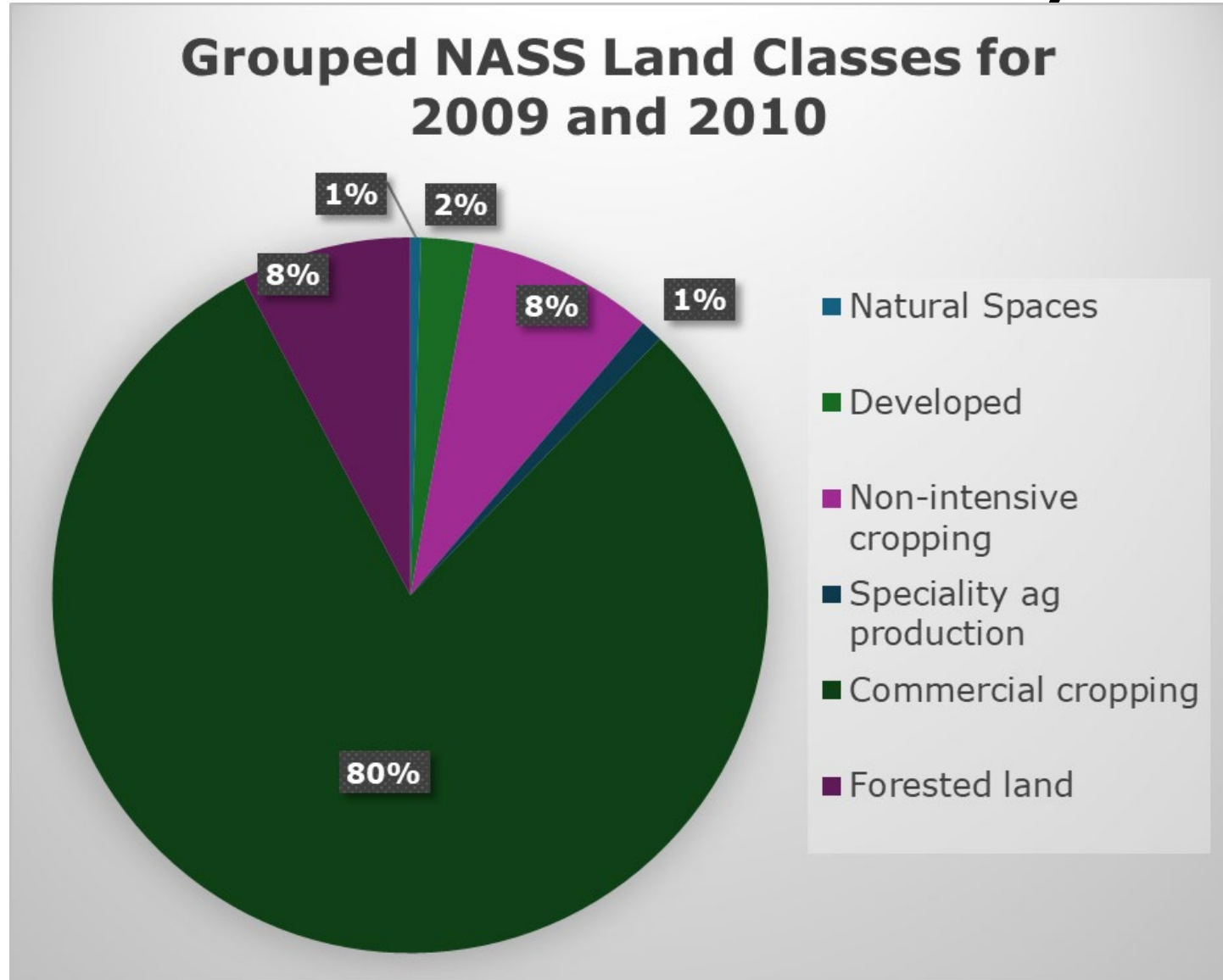


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Composition of Maryland Land Converted to Utility-Scale Solar (Pre-Construction Status)

Analysis last updated Summer 2024. Project footprints (LOD) overlaid on USDA NASS CropScape imagery from 2009/2010 to capture land use status before utility-scale solar expansion in Maryland.

Created by Elizabeth Thilmany



Solar Leasing

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Develop a team

- When presented with a lease, make sure landowner develops a team.
- Possible team members:
 - Attorney
 - Accountant
 - Insurance carrier
 - Family
 - Lender
 - Others?

Form of Agreement

- With solar, the vast majority will have three agreements consolidated into one.
- Better to negotiate one agreement at one time than three separate agreements.

Form of Agreement

- Three agreements:
 - Easement
 - Option
 - Lease



Image by Gerry Machen. Source Flickr.



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Form of Agreement

- Easement period: This period allows the developer to begin surveying the project. The period may run from 1 to 2 years, but the developer can choose to include extensions.
- The landowner will typically continue operations on the land during this period.

Form of Agreement

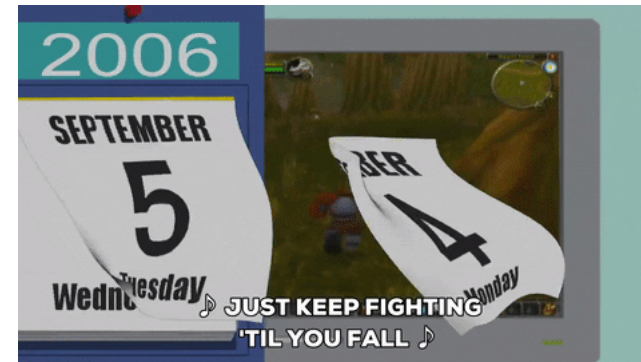
- Option period: If the developer exercises the option period, then the developer will begin to secure necessary financing and permits for the project (state, county, or both, depending on the state).
- The landowner can continue to utilize the land.

Form of Agreement

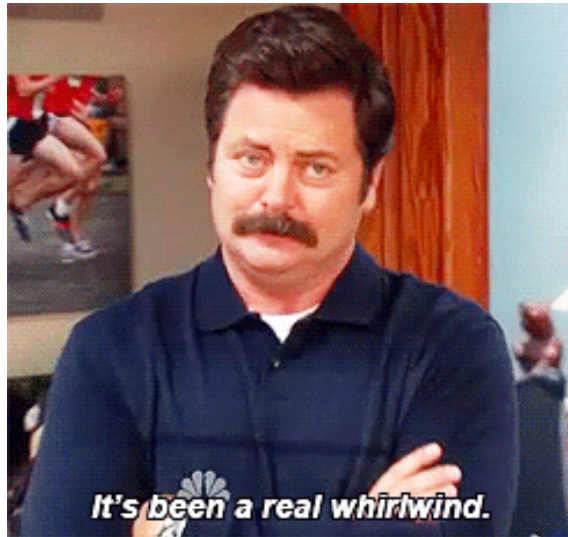
- Lease Period: Once this is exercised, the developer starts to put panels or turbines on the property.
- The lease may contain the construction, operations, and decommissioning phases.
- The landowner will be limited in land uses during this period to not interfere with the project (depending on the language in the lease).

Term of lease

- Pay attention to how long the term will run.
- This could include all the stages listed in a lease
- Typically going to run for potentially 20 or longer



Term of lease



- Included in this might be renewals.
- Pay attention to the renewal language to understand how this can be triggered.



Confidentiality Clause



Many leases may contain a confidentiality clause that may limit your ability to discuss the terms with others



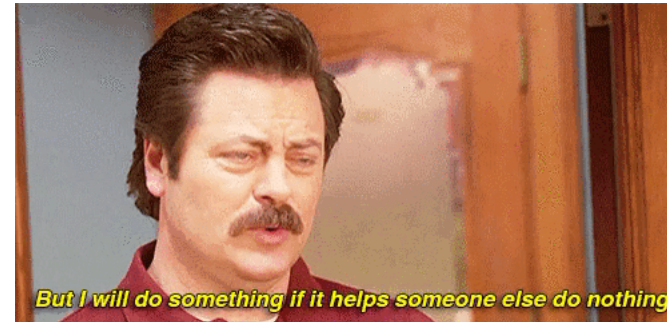
Could be narrow or broad

Pay attention to the language in the contracts

If you have concerns show the language to an attorney to have them explain

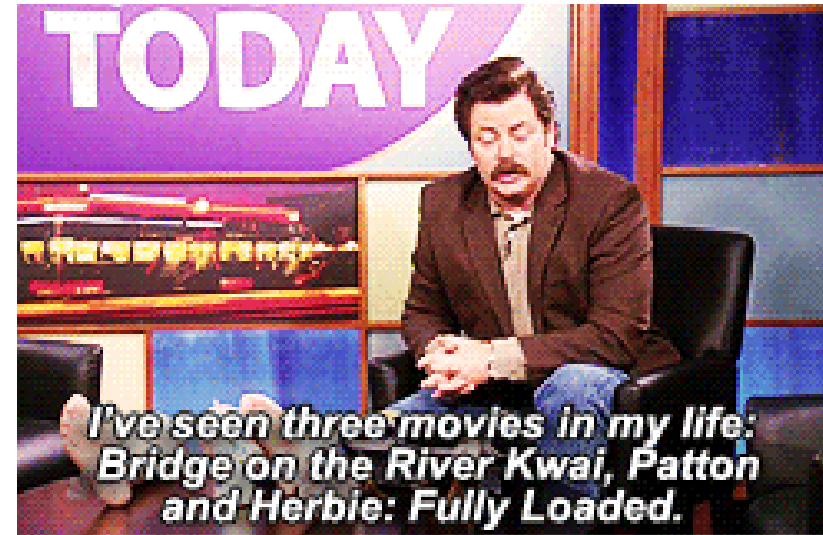
Rent and Royalty Clauses

- Usually set as dollar per acre, **not in royalties**
 - Amount per acre may depend on stage lease is in
- Potential for royalty based on production but is less common depending on the region.



Remediation Period

- Once lease ends, company will need to remediate the site.
- Currently MD requires as a part of the CPCN process for company to get bond/letter of credit to cover costs.
- Still good practice for landowner to include language for how farmland will be remediated.



Remediation Period

- PSC requires a letter of credit or bond within 30 days of construction, beginning with a decommissioning plan.
- Counties and the public can comment on the decommissioning plans.
- These plans and the costs associated with decommissioning the site will be reviewed every 5 years.

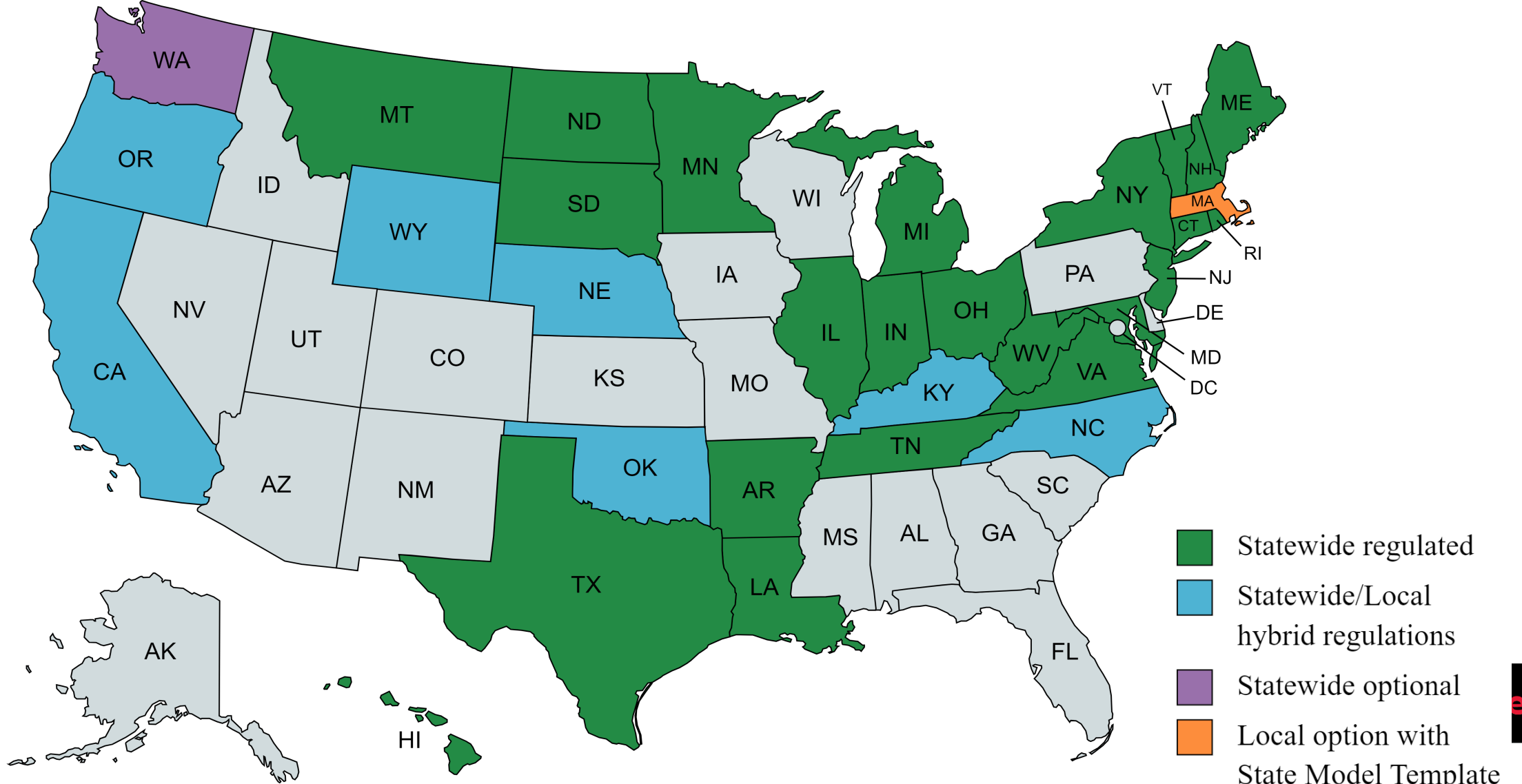
Decommissioning Costs





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Developed by Holiday
Hull



-  Statewide regulated
-  Statewide/Local hybrid regulations
-  Statewide optional
-  Local option with State Model Template



MD Decommissioning Plans

- First, plans are limited on PSC's site, and in a few cases, the actual costs are redacted as non-public information (head in hand emoji here).
- A couple of things to keep in mind:
 - Nationally, we have seen very few sites reach stages of decommissioning, so what happens is limited. We only have a few wind sites decommissioned, which is a very different footprint.
 - As the business model matures, this may facilitate changes in practices, such as not leasing the land but buying it to keep in solar.

Tasks	Estimated Cost (\$)
Remove Rack Wiring	\$2,459
Remove Panels	\$2,450
Dismantle Racks	\$12,350
Remove Electrical Equipment	\$1,850
Breakup and Remove Concrete Pads or Ballasts	\$1,500
Remove Racks	\$7,800
Remove Cable	\$6,500
Remove Ground Screws and Power Poles	\$13,850
Remove Fence	\$4,950
Grading	\$4,000
Seed Disturbed Areas	\$250
Truck to Recycling Center	\$2,250
Current Total	\$60,200
Total After 20 Years (2.5% inflation rate)	\$98,900

It is important to add in a provision in your contract to review inflation rates at varies time intervals and adjust the payment to reflect this change.

If we extend that period:

30 years: \$126,273

35 years: \$142,867

40 years: \$161,641

*Based on a 2MW ground mounter solar panel system in Massachusetts



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MD Decommissioning Costs

- Somerset County with two sites totaling 150MW. Estimated decommission costs were \$17,850,000. The net estimated salvage value is \$16,763,000. The total bond/letter of credit (left to the county to decide what form they wanted) was \$1,087,000.
- A Harford County site takes up 120 acres and totals 30MW. The estimated cost of removal is \$2,257,106. The estimated salvage value is \$2,948,292. Total bond/letter of credit put up: \$264,000.

MD Decommissioning Costs

- Concerns are current financial commitments may not actually cover costs to clean up. Potentially over value salvage value.
- These plans are reviewed and updated every 5 years to take into account cost changes, will be interesting to see how these plans change over time.
- Keep in mind we may see few sites decommissioned over time.

MD Decommissioning Costs

- Please note: if the project is community and under 2MW then PSC is not involved.
- In many cases, companies I have talked to still do a decommissioning plan that is revised every 5 years, but not always.
- Understand the kind of project you are signing up for.



Wrap Up

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Wrap Up

- Get an attorney to negotiate this, don't do it on your own.
- For the most part, utility scale may be slowing down for the next few years due to recent tax changes. Community does not seem to be and a lot of that appears to be related to how those are financed.

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Any Questions??
Thank you!



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