

Wind Energy

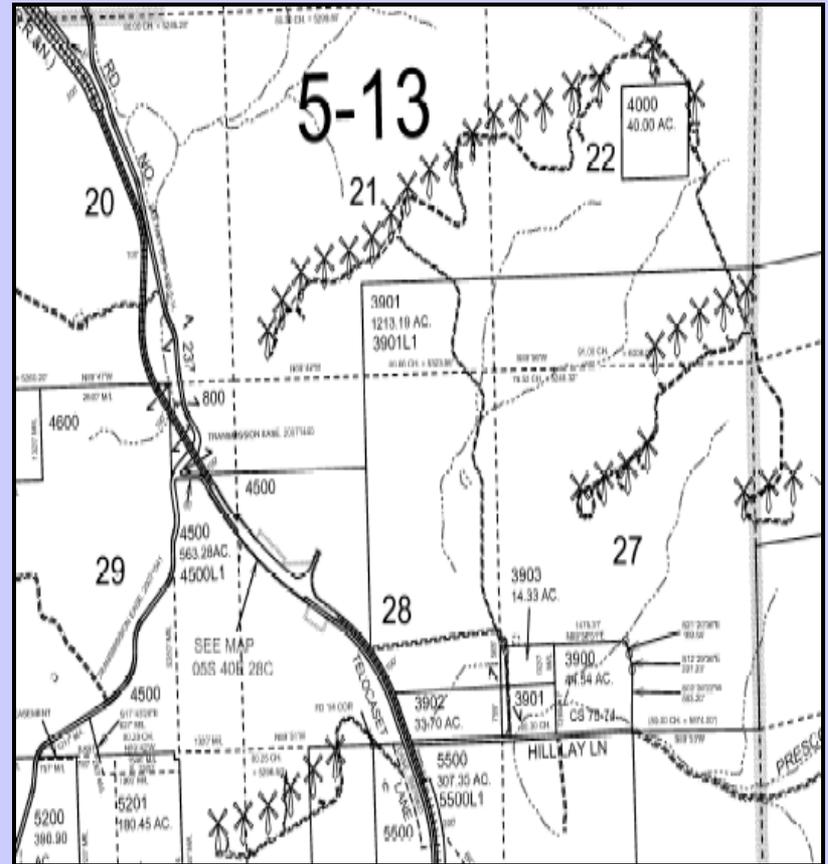
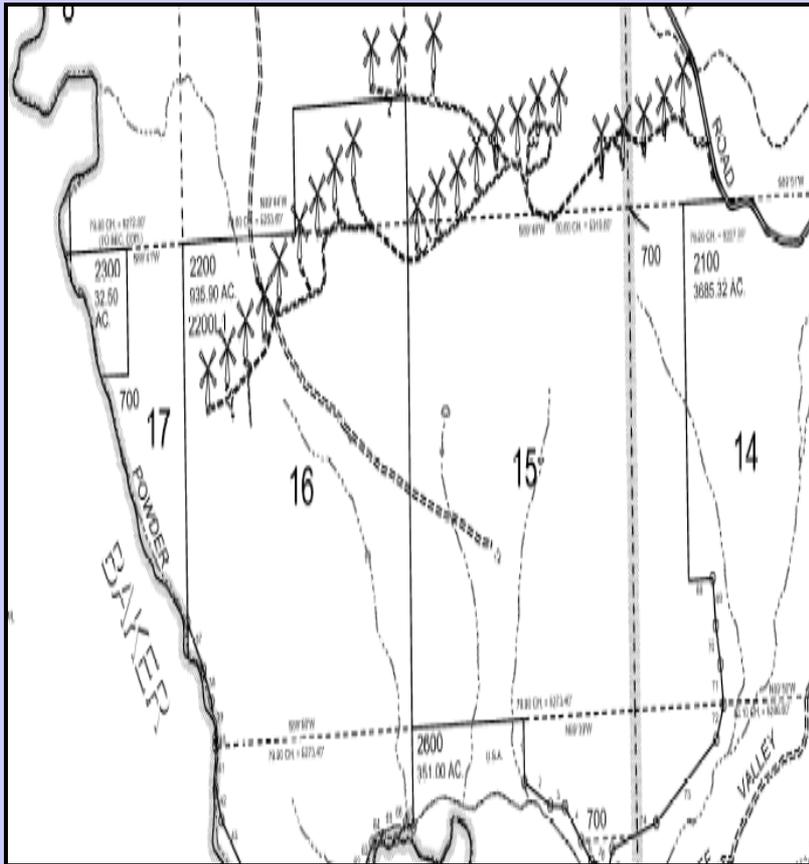
- The next few slides will provide a brief description of the Elkhorn Wind project in Union County



Elkhorn Valley Wind Farm spreads across the ridges of Pyles Canyon that run through Union County, Oregon. The site was chosen for its plentiful, steady winds and high-voltage transmission access. **The wind farm consists of 61 Vestas V82 1.65 MW turbines and has an installed capacity of 101 MW** - enough to power more than 30,000 Oregon homes with clean energy each year. Commercial operation began in the winter of 2007, and Idaho Power buys the wind farm's green energy.

Source: <http://www.horizonwind.com>

Elkhorn Valley Wind Project
 Union County
 Map- 06S40E and 05S40E



Elkhorn Wind Project

Located in: Union Co.

Values established by
DOR Utility Section

- Real Market Value of project
207,000,000
- Assessed Value of SIP project =
23,409,500
- Exempt value calculation of project
- Project value = 207,000,000
- Less SIP value = 23,409,500
- Value of Exempt portion =
183,590,500
- Taxes on exempt value =
\$1,705,342.05

- CSF based on 25% of exempt taxes
= \$426,335.51
- Land Assessed value = 1,590,500
(63.62 acres)
- Taxes of 63.62 acres with farm use
values = \$7.68
- Taxes of 63.62 acres based on
1,590,500 = \$15,507.02
- Farm disqualification for 63.62
acres = \$736.58

- Source: Union County Assessor's Office

Wind Energy in Baker County

- What if the wind project that was located in Union County was built in Baker County?
- The next few slides will estimate the taxes of a wind project in Baker County
- Estimate the amount of additional tax due to disqualification of farm land
- Estimate the community service fund(CSF)

WHAT IF ?

Wind Project was Located in
BAKER COUNTY



WHAT IF ?

Wind Project was Located in BAKER COUNTY

Assumptions used for Estimate

- Site: 63.62 acres of range land
- Real market value of land = \$1,590,500
- Real market value of project improvements = \$207,000,000
- SIP value of project \$25,000,000
- Tax able portion of SIP minus the Land Value \$23,409,500
- Value of Exempt portion not part of SIP \$183,590,500 (no land)

Estimated tax benefits to Baker County

- Estimated Additional Tax due to property being disqualified from farm use values .
- Estimated Tax of land based on new real market value established due to construction of project and change in use from farm land
- Estimated Tax of project based on values of project located in Union County
- Estimated Tax benefit to Baker County

WHAT IF ?

Estimate only

• Total RMV	Total AV(<u>No SIP</u>)	Tax code	2008-09	Total
• Project(less Land)	Project(less land)	used	Tax Rate	Taxes
• \$207,000,000	\$207,000,000	25-4	11.5614	\$2,393,209.80
•				
• Total RMV	Total AV(<u>SIP</u>)	Tax code	2008-09	Total
• Project(less Land)	Project(less land)	used	Tax Rate	Taxes
• \$207,000,000	\$23,409,500	25-4	11.5614	\$270,646.60
•				
• RMV of Exempt	Total AV of <u>Exempt</u>	Tax code	2008-09	Est. Tax on
• portion of Project	<u>portion of Project</u>	used	Tax Rate	Exempt portion
• \$207,000,000	\$183,590,500	25-4	11.5614	\$2,122,563.20
•				
• Land RMV	<u>Land AV</u>	Tax code	2008-09	Est. Tax on
• After DQ		used	Tax Rate	Land
• \$1,590,500.00	\$1,590,500.00	25-4	11.5614	\$18,388.40

WHAT IF ?

CSF

Estimate only

REF # 888888	U-888	CODE 25-04	Total project value	Less Market Land	Taxable value of Improvements
Exempt portion value	183,590,500		\$208,590,500	\$1,590,500	\$207,000,000
Total tax rate	11.5614				
General Government rate	5.2555		SIP Value of Project		
			\$25,000,000	\$1,590,500	\$23,409,500
AMOUNT OF AD VALOREM TAX SAVINGS BY CODE					
Total tax savings	\$1,882,812.37		Total RMV of Exempt portion		
25% of tax savings	\$470,703.10		\$183,590,500	\$0	\$183,590,500
CSF APPORTIONED TO EACH TAXING DISTRICT BY CODE					
Total CSF fee	\$470,703.10				
Taxing Districts	Rate	Ratio	CSF Portion		

WHAT IF ?

Estimate Only

- **TAX SAVINGS WITH SIP**
- Total **Estimated** tax on exempt value \$1,882,812.37
- Total **Estimated** Community Service Fee \$470,703.10
- Total **Estimated** tax savings to company with SIP \$1,412,109.27

- **Estimated** Farm Disqualification Amount = \$875.15
- Disqualification is based on Range Land values

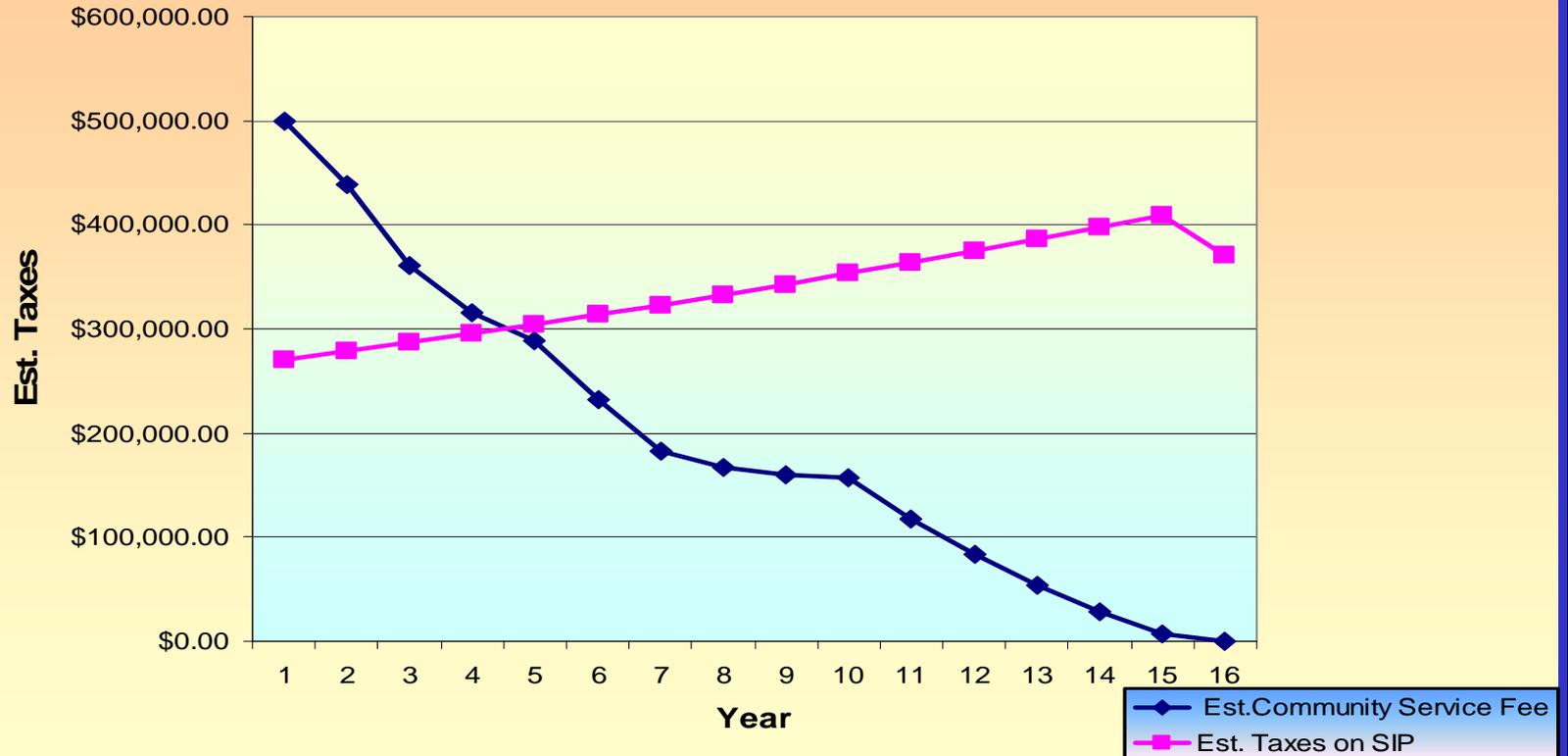
WHAT IF ?

Chart showing Est. Taxes & CSF

Year 1 to 16

Estimate Only

Baker County Wind Project Estimated Taxes

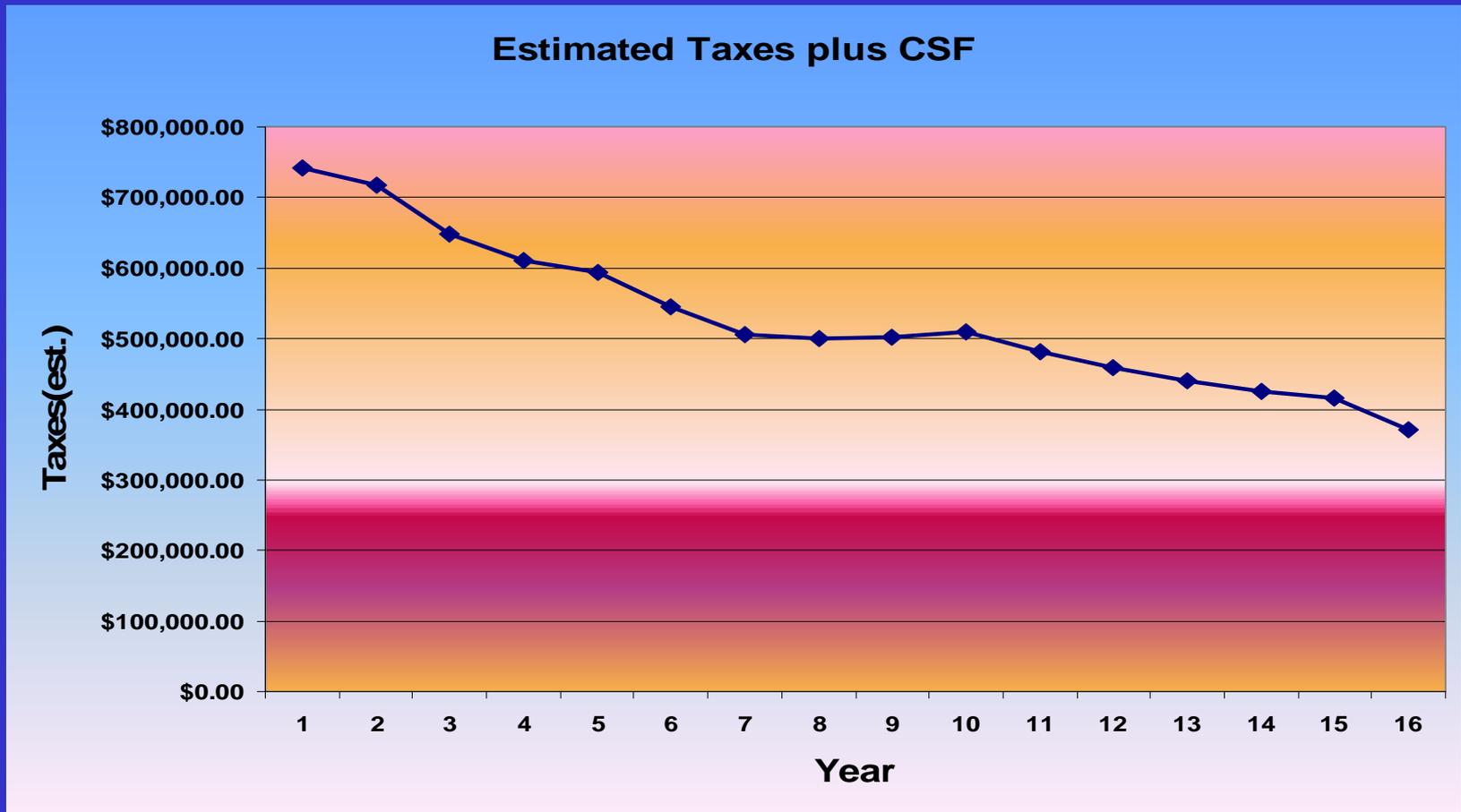


WHAT IF ?

Chart showing Est. Taxes plus CSF

Year 1 to 16

Estimate Only



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- **Before moving on do you have any questions about the WHAT IF ? Scenario had the Elkhorn Valley project been located in Baker County?**

Land Owners

- The next few slides are from an article dealing with issues a land owner should consider
- The article is By Nancy Murphy from an exclusive feature of WindAction.org
- The last slide in this article is internet address to help the land owner gather additional information

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- **Those pesky turbine contracts: Important questions**
- As I prepared for this month's column, my initial thought was to present brief quotations from industrial wind turbine contracts that had crossed my desk. I quickly discovered that approach would be woefully inadequate and insufficient. Just reading quotes and clauses from these contracts would not fully convey the underlying risks to landowners who choose to enter into such legal relationships with wind developers. I researched further and discovered a wealth of information from qualified legal experts experienced in wind contracts.
- The following has been excerpted, with permission, from a document developed by Roger McEowen PhD, Director of the Iowa State University Center for Agricultural Law & Taxation (CALT).
- **Legal Issues for Landowners**
- A wind energy agreement should never be negotiated without first having the agreement reviewed by legal counsel. Wind energy agreements are long-term agreements that will impact the land subject to the agreement for many years, likely beyond the lifetime of the landowner who executes the agreement. The following is a list of questions that landowners should ask when analyzing any wind energy agreement:

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- 1. How much of the land will be subject to the agreement?
- 2. How long will the land subject to the agreement be affected?
- 3. Based on the property rights that are given up, are the proposed payments adequate for the present time and for the life of the agreement? (Note: The answer to this question requires an understanding of the mechanics and economics of wind energy production.)
- 4. If the agreement offers an up-front lump-sum payment, is the payment representative of a fair amount for the rights involved?
- 5. What are the tax consequences of the wind energy payments that will be paid under the agreement? (Note: The answer to this question depends on tax changes at the federal and state levels; the area is in an almost constant state of flux.)
- 6. Does the developer want to develop the land or simply use a portion of the surface for a term of years?
- 7. Does the agreement guarantee that a set number of wind energy turbines will be constructed on the land by a specific date and, if not, is the developer willing to guarantee a minimum amount of payments?
- 8. Are payments under the agreement based on revenues generated by the wind turbines? Can the landowner get information as to how the owner's revenue will be calculated?

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- 9. Is the developer able to sell or transfer without the landowner's consent any of the land use rights obtained under the agreement? If so, will the original developer remain liable if the new developer or holder of the easement right does not pay the landowner or otherwise defaults?
- 10. What events trigger the developer's right to terminate the contract? Can the developer terminate the contract at any time without cause? If so, how are payments due under the agreement to be handled?
- 11. What termination rights does the landowner have? How does the landowner exercise those rights?
- 12. If the agreement is terminated, whether by agreement of the parties or otherwise, what happens to the wind energy structures and located facilities erected on the property? What is the developer required to remove? How soon must structures be removed? Who pays for their removal?
- When a wind energy agreement is being negotiated, certain issues are critical to the creation of an equitable agreement. Unfortunately, a common problem with many wind energy agreements is that once they are proposed and submitted to a landowner, the company wanting to execute an agreement tends to refuse to negotiate changes to the terms of the agreement. The company's ability to refuse to negotiate terms of the proposed agreement will depend largely on whether a landowner has meaningful options and competent legal representation.

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- 1. Is the proposed contract a lease or an easement? If a lease is involved, it should be long enough for the developer to recoup its investment (probably at least 20 years). Does the developer have a right of renewal? If so, does the landowner have the right to renegotiate any of the lease terms? Any lease should not be perpetual — a violation of the rule against perpetuities might be involved (at least in those states that have retained the rule).
- 2. If an easement is involved, does the easement include turbine sites, substations, air space, buffer areas, vegetation restrictions, building restrictions, transmissions, and associated rights of way?
- 3. Is a sale of the land contemplated? If so, how is the selling price computed? Any sale price should consist of the fair market value of the land plus the wind energy value.
- 4. What is the amount of compensation to be paid? Take care to ensure that the definition of “gross revenue” is done properly. Is it defined as the sale of electrons or the sale of green credits, or is it calculated in some other manner?
- 5. Is the revenue to be a flat amount annually, an annual payment per tower, a percentage of gross proceeds, a payment of a certain amount of kilowatt hours generated annually, or an amount based on the selling price of megawatts per year, whichever amount is greater?
- 6. Is an inflationary factor built into the contract payment provisions? To protect the landowner’s interest, there should be.

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- 7. Does the agreement cover land that will not be needed for the wind farm and related structures? From the landowner's perspective, there shouldn't be such coverage.
- 8. An up-front lump-sum payment has tax consequences — make sure they are understood.
- 9. What are the intentions of the developer concerning the use of the land? That makes understanding the use provisions of the agreement of primary importance. The construction clause should limit the construction of wind energy structures to not more than 3 or 4 years with adequate compensation paid to the landowner for restricting the use of the land during that time.
- 10. Can the developer assign the agreement? If so, a clause should be inserted that ensures the original developer's liability if the assignee defaults under the terms of the agreement. (Note: Developers want the ability to assign the agreement and subordination language.)
- 11. Is the landowner willing to consent to a mortgagee of the developer? If so, a clause should be included that limits the landowner's obligations to the mortgagee.
- 12. Consider including an indemnification clause that indemnifies the landowner for any liability incurred as a result of permissive activities (such as crop tenants, custom harvesters, and subsurface tenants) on the property subject to the wind energy agreement.
- 13. What are the landowner's rights concerning usage of the property?

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- 14. Consider the use of a clause that requires the landowner to be treated as favorably as neighbors (consider how to define “neighbor”) executing similar agreements.
- 15. Include a clause requiring the removal of all improvements the developer makes upon termination (whether voluntary or otherwise) of the agreement. Relatedly, for developments in the Flint Hills, include a provision specifying which party gets the rock that gets excavated to build the wind energy structures.
- 16. Require the agreement to be recorded (not just a memorandum of the agreement) to eliminate the necessity of having to locate a copy of the lease in the event of sale or mortgage of the property.
- 17. Never agree to confidentiality clauses concerning the terms and conditions of the agreement.
- 18. Have the contract reviewed by the landowner’s insurance agent for analysis of any additional risks created by the wind energy project.
- 19. Will the agreement violate any USDA land-use restrictions if the subject land is enrolled in a USDA program? If such a possibility exists, consider including in the agreement a clause requiring the developer to indemnify the landowner for any lost government payments or the imposition of any penalties.
- 20. Evaluate the agreement with an eye toward the risk faced by the landowner. That includes environmental concerns, issues that could be raised by neighbors (i.e., nuisance-related concerns), and potential violation of applicable zoning and set-back requirements.

Questions to be Considered

By Land Owners

By Nancy Murphy An exclusive feature of WindAction.org

- Clearly, wind farming has the potential to provide significant economic benefits for rural landowners. However, substantial peril exists that landowners who don't carefully evaluate proposed agreements with developers can be taken advantage of significantly. Landowners should have any proposed agreement evaluated by legal counsel and attempt to negotiate any unfavorable terms. Failure to do so could result in many years of dissatisfaction for landowners.
- *MORAL: NEVER SIGN YOUR NAME ONTO THE PASSENGER LIST OF A ONE WAY PRISON SHIP.*
- PLEASE NOTE: I emphatically reiterate what all of my sources caution their readers, that the information provided is not legal advice and cannot substitute for a knowledgeable attorney who can review the details of particular agreements, and consider the impact of relevant federal, state, and local laws. All of their cautions apply equally to this column.
- **List of Sources for the current column:**
- <http://www.calt.iastate.edu/> <http://www.calt.iastate.edu/rogerbio.htm>
- <http://www.ofa.on.ca/policyissues/issues/Wind%20Power%20Lease%20Suggestions.pdf> (Author Unknown)
- [http://www.kansasenergy.org/KEC/LeasingGuidelines\(KEC\).pdf](http://www.kansasenergy.org/KEC/LeasingGuidelines(KEC).pdf) Kansas Energy Council
- <http://www.house-energy.com/Wind/Wind-Legal.htm> House Energy

- <http://www.flaginc.org> Farmers Legal Action Group

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- **Before moving on do you have any questions?**

Miscellaneous Information

- The final two slides:
- Land disqualified from farm use values
- Definition of SIP and CSF

Procedures for the disqualification of land that is improved with wind turbines

1) Disqualify land or portion of land no longer in farm use from special assessment. (*See ORS 308A.113 or 308A.116.*)

a.) Acres specific to each tax lot.

- ») Turbine site including any gravel surround.
- ») Access road developed for wind turbine sites.
- ») Office and maintenance site if any.
- ») Substation site if any.

SIP & CSF
ORS 307.123, OAR 150-307.123
& ORS 285C to 285C.626

- **SIP = Strategic investment program**
- Real or personal property that the **Oregon Economic and Community Development Commission** has determined is an eligible project.
- That portion of the real market value of the eligible project that equals the minimum cost of the project increased annually for growth at the rate of three percent, shall be taxable at the taxable portion's assessed value. The taxable portion of real market value, as adjusted, shall be allocated as follows until the entire amount is assigned: first to land, second to buildings, third to real property machinery and equipment and last to personal property.
- The remainder of the real market value shall be **exempt from taxation for a period of 15 years** from the beginning of the tax year after the earliest of certified for occupancy or expiration of the exemption for commercial facilities under construction. **The total cost of the project equals or exceeds \$100 million or \$25 million, if the project is located in a rural area.**
- *Continued to next slide*

SIP & CSF

ORS 307.123, OAR 150-307.123 & ORS 285C to 285C.626

- **CSF = Community Services Fee**
- The fee shall be for community service support that relates to the direct impact of the eligible project on public services. The **fee shall be in an amount equal to 25 percent of the property taxes** that would, but for the exemption, be due on the exempt property in each assessment year, **but not exceeding \$500,000** if the eligible project is **located in a rural area** in any year.
- **SIZ = Strategic Investment Zone**
- Strategic investment zones; establishment; fees. (1) A county seeking to ensure that all eligible projects constructed or installed within a particular geographic area within the county receive the tax exemption under ORS 307.123 may request designation of the geographic area as a strategic investment zone. The request must be made by official action of the governing body of the county taken at a regular or duly called special meeting of the governing body by the affirmative vote of a majority of members of the governing body. The request must set forth the proposed boundaries of the zone.
- See statutes ORS 307.123, OAR 150-307.123 & ORS 285C.600 to 285C.626

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- **Before moving on do you have any questions about the material presented by the Baker County Assessor's Office?**
- **Contact Information:**
 - **Kerry Savage---** Assessor or **Shawn Berry**
 - **1995 3rd St. Suite #130** **Assistant Assessor**
 - **Baker City, OR 97814**
 - **541-523-8203** **541-523-8203**
 - **ksavage@bakercounty.org** **sberry@bakercounty.org**

Thank you for your time
Please feel free to contact our
office should you need additional
information

Thank You
Kerry Savage
Baker County Assessor