

GUIDE TO NEGOTIATING LEASE AGREEMENTS



OVERVIEW

Before negotiating a fair and reasonable compensation package for an oil and gas company to enter your land, we suggest you take the following steps:



The following pages provide an outline of questions you should consider presenting to the company about the impact of the project on your agricultural activities and information you should gather about the value your land is currently bringing to your agricultural business before arriving at compensation amounts with a company.

The questions and suggestions included in this worksheet are based on the following four values generally reflected in offers for compensation:

- ▶ Compulsory aspect
- ▶ Value of the land
- ▶ Loss of use or profit (severance)
- ▶ General nuisance and disturbance including tangible and intangible disturbances.

BE CREATIVE

When landowners and companies are negotiating an agreement, there is flexibility to come up with creative options that bring value to both parties. A landowner might have projects on the land that the company can support in place of, or in addition to, the compensation package. The parties can be innovative in formulating agreements that meet those needs.

As you answer the questions in this worksheet, consider other ways the company's work on your land can bring benefit to you. These are a few examples of work a company might agree to: build an access that adds efficiency to the landowner's work; install fencing or gates for livestock security; construct a borrow pit the landowner can use later for their own water supply. A landowner might also be able to negotiate an additional agreement for their own company to do some of the work for the project. The options can be as adaptable as the needs of both the company and the landowner.

SURFACE RIGHTS BOARD INVOLVEMENT

The Surface Rights Board (SRB) is a provincial agency with jurisdiction to determine compensation when landowners and companies cannot come to an agreement. Be mindful that once the SRB is involved, what can all be considered in a compensation package is limited to what is outlined in regulation.

THE FOUR VALUES OF A COMPENSATION PACKAGE

1. COMPULSORY ASPECT

Description:

Compulsory aspect refers to the fact that you are not able to say 'no' to a company needing access to your land for an oil or gas activity and the fact that your land will be used for something other than what you intended. Sometimes, compulsory aspect is accounted for in the value of the land and sometimes it is a separate amount.

QUESTIONS to ask the company about values they attach to the compulsory aspect:

1. Can the company provide comparisons for compulsory amounts paid on similar projects in the area?

2. VALUE OF LAND

Description:

Market value of land is determined by having an appraisal completed.

Since the surface is not purchased outright from the landowner and the landowner maintains 'residual rights', a company will often discount the value of the land to account for these residual rights. Compensation at 100 per cent of the per acre value of the land is sometimes intended to include compensation for the compulsory aspect of the entry as well as accounting for the landowner's residual rights.

When compensating for land value for temporary workspace, the per acre value of land may be substantially reduced to account for the short duration of use by a company.

Note: Comparisons to land used for similar agricultural purposes are also essential.

QUESTIONS to ask the company about their determination on the value of your land:

1. How many property comparisons with current similar land use (cultivated land, forested land, etc.) has the company used to arrive at the value being presented?
2. How current are those values and do they align with the changes in property sales within the past year or two?

RESEARCH completed by landowner about the value of their land:

1. What have other landowners accepted for lease agreements on comparable leases? Provide a range or average. The FIS can help provide some comparable information.
2. What have other landowners accepted for a sale price on land used for similar agricultural purposes? You may want to contact a real estate agent for current sale prices.
3. Have BC Assessment land valuations for your land increased or decreased in previous years?

3. LOSS OF USE OR PROFIT

Description:

Compensation for crop loss is generally based on evidence of probable gross revenue from the growing of crops or forage for livestock. Consider whether the company's activity will impact any other sources of income you gain from the land.

Compensation for loss of profit on a pipeline right of way is generally calculated on a descending scale from 100 per cent loss for the first year, decreasing over a period of a few years.

Note: Compensation for loss of use or profit does not need to be limited to a dollar value per acre. Consider ways the company could accommodate the work on your land to alleviate loss of use or profit.

QUESTIONS to ask the company about the impact the project will have on your use of the land:

1. Would the proposed site sever the land, making it more costly to access other portions of land with farm equipment or leaving it permanently incapable to access with farm equipment?
2. Will the project make it more difficult or no longer possible for the landowner to use a portion of land for crops or livestock?
3. Will the proposed activity interfere with the landowner's access to a source of water?

RESEARCH completed by landowner about the loss of use or profit from their land:

1. Calculate the income you would lose per year if you were not able to grow and produce a crop on the portion of land the company will be using.
2. Calculate the costs you would incur if the proposed activity would limit your ability to access parts of your property for care of livestock or to raise crops.
3. Will the proposed activity limit your ability to access a source of water? If so, what are the costs to replace that source of water or create other ways to access it?
4. Will the activity impact your plans to log the land? What monetary value does this hold?
5. For a pipeline right of way, calculate your expected income loss for the number of years it will possibly take before the right of way is back to the same level of production as the rest of the field. Most companies would allow two to three years. Consider negotiating no less than three years.

4. NUISANCE AND DISTURBANCE

Description:

Nuisance and disturbance considerations include both tangible and intangible impacts and should be considered for the life of the activity. Tangible nuisance is generally any nuisance or disruption that can be monetized. Lost time is an example of a tangible nuisance.

Intangible nuisance is any nuisance or disturbance that cannot be monetized. Noise, odour and impacts of lights are examples of intangible nuisances.

Note: Compensation for nuisance or disturbance does not need to be limited to a dollar value per acre. Consider ways the company could accommodate the work on your land to alleviate the impacts of these disturbances.

QUESTIONS to ask the company about TANGIBLE nuisance and disturbance:

1. How will the company ensure weeds will not be an issue and address the problem if I experience an increase in weeds in my crop?

RESEARCH completed by landowner about TANGIBLE nuisance and disturbance:

1. How much of your own time do you anticipate having to spend in dealing with the oil and gas company or monitoring concerns arising from the oil and gas activity?
2. How much additional time and machinery wear and tear do you anticipate having to spend working around an oil and gas installation?

QUESTIONS to ask the company about INTANGIBLE nuisance and disturbance:

1. Where is the lease or activity placed relative to my home or activities on my land?
2. Will there be an increase in traffic past my home or on roads I use to access my land?
3. Will there be an increase in industrial lights near my home? What will the company do to be sure lights are not shining into my home or impacting my livestock?
4. What are the highest noise levels you are anticipating with this site? How will the company address the problem if noise levels exceed regulatory requirements?
5. Will there be dust as a result of the activity and what measures are you putting in place to reduce the impact of dust to my home, livestock or crops?
6. What are potential visual impacts of your equipment from my home? How will the company reduce these impacts (additional trees, etc)?
7. How often will the site be accessed after construction is complete and during production?
8. What is the anticipated lifecycle of the project?

RESEARCH completed by landowner about INTANGIBLE nuisance and disturbance:

1. Consider potential impacts of increased traffic past your home and on your property.
2. Resource companies often share the use of access roads associated with their projects with other oil and gas companies. Consider adding a requirement to the agreement with the company proposing the new project, requiring your approval for any further uses as well as additional compensation for each new user.
3. What would be the impact from an increase in industrial lights near your home (affecting sleeping patterns; impact to livestock)?
4. How will the noise from the project impact your daily activities or sleep patterns?
5. Will the activity have visual impacts or cause a loss of privacy?
6. After construction is complete, how will ongoing activity at the site impact you and your family?

Contact the Farmers Information Service for additional support

This guide is intended to help you start effective conversations with oil and gas companies when negotiating surface lease agreements. Having a better understanding of the details of projects proposed on your land will help you plan for longer term impacts to your agricultural business.

You are not limited to the questions and considerations outlined in the guide. We encourage you to explore all options in formulating your agreements with companies to be sure the impacts of oil or gas activity on your agricultural business are reduced.

Orders issued by the SRB are available on their [website](#) and can provide insights to the criteria mapped out in this guide. The Farmers Information Service is available to discuss the Orders and which ones might be relevant to your concerns.

