Gas Leasing Considerations
For Farm and Forest Owners

Brett Chedzoy
bjc226@cornell.edu
Cornell Cooperative Extension

Cornell University Cooperative Extension
South Central
New York
Agriculture Team
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New technologies and markets have created new opportunities for forest owners to lease natural gas formations deep below the surface of their properties, such as the Marcellus Shale in the southern tier.
However…

The development of gas plays through:

- seismic testing
- drilling operations
- access roads
- pipeline construction and right-of-ways

can also have enduring negative impacts on your property if not carefully contemplated and executed.
It’s Not Just About Gas Wells…

- Wind Farm Development
- Powerline and Pipeline Right-of-Ways
So Why Lease?

- Landowners in New York own the rights to the natural gas beneath their properties unless they have transferred these rights to another party through a lease or conveyance.
- Most landowners don’t have the necessary capital or expertise to successfully extract their gas, so leasing their rights to an energy company in exchange for rent and royalty payments allows them to take advantage of this valuable resource.
- A well-executed lease serves as an operating agreement between two parties to achieve the goals of each and minimize risks to both.
- As with any important business transaction, you should fully understand the terms of the agreement and research the market before signing.
What Happens if I Don’t Sign a Lease?

- Probably nothing – but...

- If a company has leased at least 60% of the acreage in a proposed drilling unit, portions of your property could be included – a process known as “Compulsory Integration”

- In the case that your property has been integrated, the company will have no surface rights, and can only extract gas from the target formation

- You will be entitled to one of three compensation options (active, passive and delayed partnership)
1 - Be patient and learn more

... Numerous factors may cause short-term swings in lease values, but neither the natural gas nor the companies interested in developing this multi-billion dollar resource are going to disappear. Leasing your gas rights or right-of-way is an important decision that will have lasting consequences on both your forest land and finances, so avoid hasty decisions.
Leasing Recommendations

2 – Use a Consulting Forester (or Ag Consultant)

... For a relatively small fee, a Forester will represent your interests throughout the gas development process, overseeing numerous technical tasks that most forest owners lack expertise in. Contact your local DEC office or CCE Association for a list of local Foresters.
3- Consider Joining a Local Gas Leasing Coalition

- Many counties now have landowner coalitions that facilitate the pooling of properties into units that can be competitively bid out to legitimate companies.

- Most coalitions do not have a fee to join, and the coalition’s consultant is normally compensated only if you choose to sign the lease agreement that he or she has negotiated with a suitable bidder. The collective bargaining power of coalitions often allows landowners to obtain compensations and lease terms that would not otherwise be made available to individuals.

- If no coalition exists in your county, you can form your own by organizing neighbors into a contiguous block of at least 500 acres.

- Contact your county Farm Bureau (www.nyfb.org) or CCE Association for more information on local coalitions.
4 - Start with a sound lease

... Protecting your interests will be much easier if the lease terms are crafted to avoid potential negative impacts. Terms specific to forest land are usually placed in the lease addendum.
Addendums - Access

- You can exclude surface rights (no activity) on your property while still leasing your subsurface (gas) rights, but this may decrease the value of the lease. **This may not be an option for coalition leases**

- Do not allow access on your property for any activities without first receiving a copy of an **executed** lease. Even seemingly harmless activities like seismic work can become a nuisance and liability if not controlled through a sound lease.

- You should require the lease holder to construct at least one permanent crossing in a designated location if you expect to cross the pipeline with heavy equipment, such as a future timber sale or pond excavation.

- How will trespass, especially on right-of-ways be controlled?
Addendums - Taxes

- If currently enrolled in the NYS 480-A Forest Tax Law or Ag Assessment Program, conversion penalties should be paid by lease holder.

- If you are contemplating enrollment in 480-A, will you still qualify if additional forest land is cleared? (> 50 contiguous acres)

- Would loss of productive acreage affect your eligibility for the Ag Assessment Program?

- Ad valorem assessment to be 100% assigned to lease holder?
Addendums - Appraisals

- Permanent and temporary right-of-ways should be clearly marked before executing lease agreement so that the exact extent of impact is known.

- Loss of existing timber or crops should be appraised exclusively by your Consultant, and not left open to contention by the lease holder.

- Cleared timber should be harvested by conventional logging methods (not pushed out by heavy equipment) and left neatly piled in designated areas if to be later sold or utilized by the owner. Otherwise, the timber should be chipped or hauled away. Burying the debris will cause unnecessary soil disturbance.
What penalties and provisions are there for non-compliance, such as:

- failure to revegetate temporary worksites
- damage to unmarked trees or infrastructure like drain tile
- delays in completion
- erosion damage
- spills (etc)

You should require a performance bond and your Consultant should be the final authority on compliance.
Addendums - Other

- Will you be allowed to use new access roads created on your property?

- Where will the water come from for the drilling, and will you be compensated for it?

- How will the drilling fluids be stored and disposed of?

- Location of all drilling sites, roads, pipelines and temporary structures should be approved by you or your Consultant to minimize surface, visual and noise impacts.

- Can measures be taken to minimize the establishment of invasive species along cleared areas, such as planting conifer screens?
Where to Learn More…

http://gasleasing.cce.cornell.edu

www.dec.ny.gov/energy/1532.html