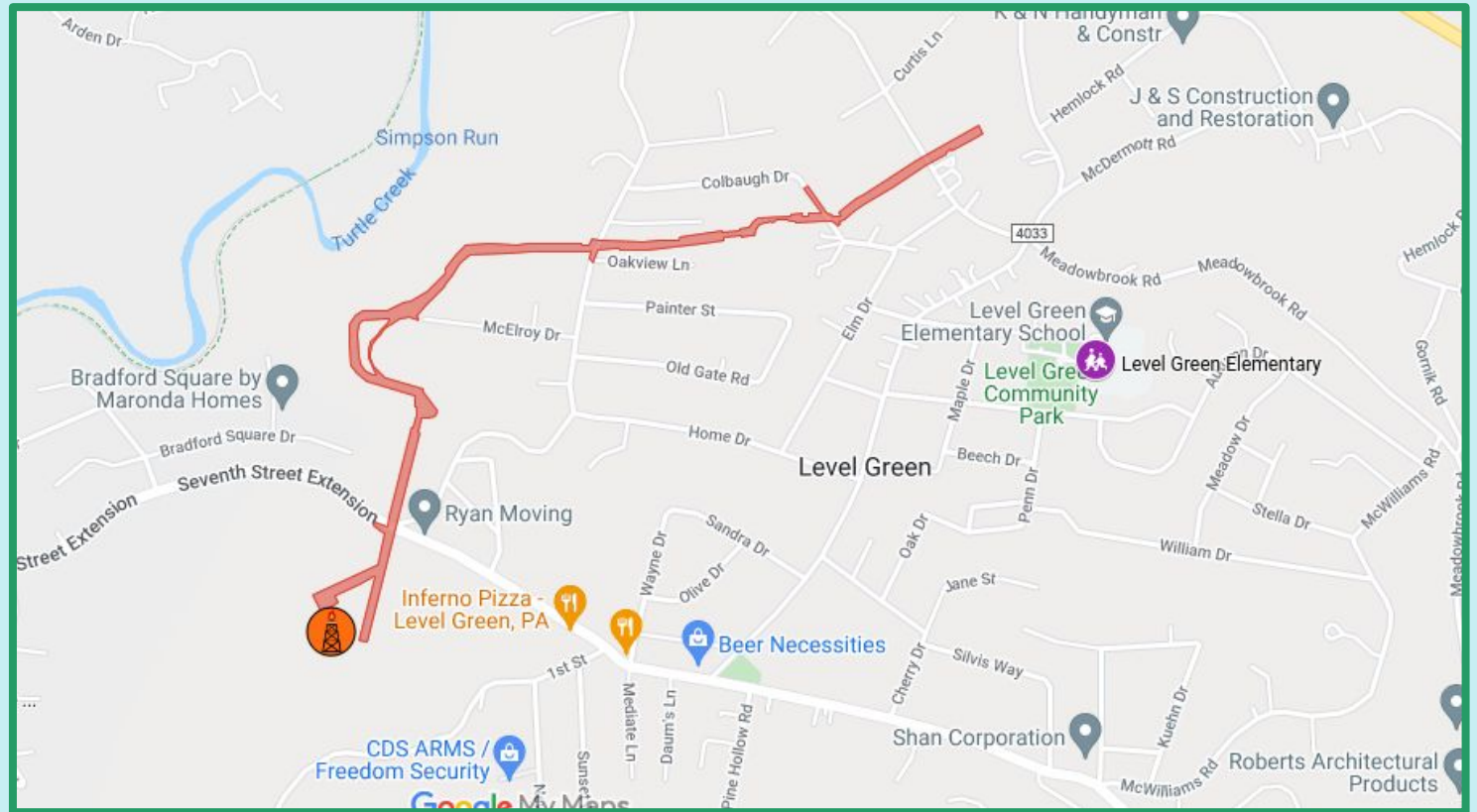


Level Green Pipeline

Thursday, May 26, 2022
6:30 pm

Tim Fitchett, Esq. Fair Shake
Gillian Graber, Protect PT
Ann LeCuyer, Protect PT



Fair Shake
Environmental Legal Services

Protect PT



Who is Protect PT?

Protect PT (Penn-Trafford) is a nonprofit organization dedicated to ensuring residents' safety, security, and quality of life by engaging in education and advocacy to protect the economic, environmental, and legal rights of the people in Westmoreland and Allegheny counties.

Since starting as a group of neighbors working together to protect their neighborhood from fracking in late 2014, Protect PT has grown to a community-based organization with staff, volunteers, and members.

Learn more at protectpt.org.



OUR GOALS



Educate residents and local lawmakers with factual and important information so they may better protect themselves.



Empower residents to get involved in the local government process.



Engage our lawmakers directly at local meetings and hearings to ensure our rights are protected.

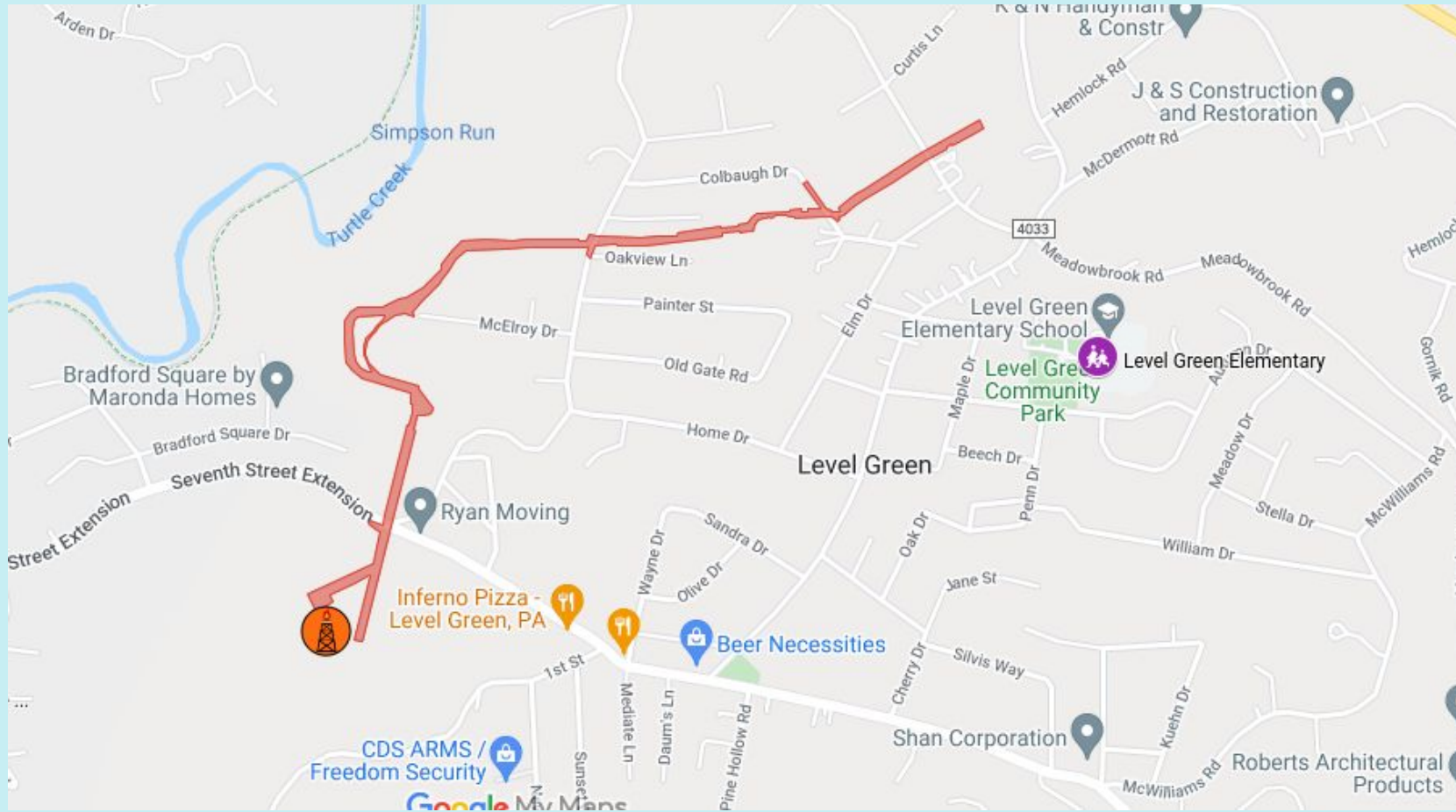
Level Green Pipeline

Who, What...

- Apex WML Midstream LLC. (Apex)
- The Pipeline starts at the Drakulic Well Pad and travels through Level Green connecting to another portion of the pipeline that will run through Murrysville called Lyons Run Pipeline.
- 8" diameter pipeline carrying unprocessed fracked methane gas.

Level Green Pipeline

Where...



HDD installation is proposed under SR 4033, I-76, as well as Trib 37357 to Lyons Run.

Level Green Pipeline

When...

- The PA DEP website shows an erosion and sedimentation application that was submitted on April 21, 2022
- A DEP supervisor told us the application was accidentally submitted to the Westmoreland County Conservation District and not to DEP so the permit review was delayed until this week.
- A new application was submitted May 23, 2022, expected to be reviewed by July 27, 2022.
- Residents have been told that they are planning to start in the summer
- Protect PT is still in litigation with Apex over the wellpad

Level Green Pipeline

How...

- The Pipeline will be drilled using Horizontal Directional Drilling (HDD).
 - This is method for installing underground pipelines that uses a drill on the surface (entry point drilling pit) to bore a hole into the subsurface using thousands of gallons of water and bentonite clay for lubricant.
- An issue associated with HDD is an *inadvertent return* which is when the drilling fluid discharges to the surface.
- The release of drilling fluid can impact aquatic life and impair aquifers and drinking wells

Level Green Pipeline



Image: Eric Friedman

“During an HDD, varying geology along the project footprint can cause drilling mud to find its way to the surface through natural crevices in the geology and soil — commonly referred to as an inadvertent return. This is well known by state and federal environmental regulators and is accounted for within environmental permits.”

source: Energy Transfer

Level Green Pipeline



Level Green Pipeline

What oversight is in place?

- PA DEP reviews and permits erosion and sediment control, water and wetlands, as well as temporary road crossings for construction.
- Public Utility Commission (PUC) requires registration of natural gas gathering pipelines and performs inspections after the pipeline is in operation
- It is unclear what safety requirements are in place so we have submitted a Freedom of Information Act request to learn more about the safety requirements of these pipelines.
- We are planning to hire a pipeline expert to review the documents.

Level Green Pipeline

From DEP Records for Apex's Pipeline:

The project area is currently forestland, roadway, unmanaged natural habitat, residential, grassland, existing right-of-way.

The pipeline installation includes:

- Total installation of approximately 7,943 feet of 8-inch pipeline
- Approximately 5,053 feet of the existing pipeline infrastructure upgraded during installation (original line installed in 1938)
- The initial 2,890 feet of the project is new pipeline connecting the Drakulic Well Pad to the existing pipeline infrastructure
- A total of 1,260 linear feet of the new pipeline is planned through horizontal directional drilling [HDD] methods
- The remaining 1,645 feet of pipeline will be installed through trenching methods.

Level Green Pipeline

From DEP Records for Apex's Pipeline:

“Proper erosion and sediment controls will be installed along the length of the pipeline to adequately protect the environment.

[6] water courses and [1] wetland have been identified within the replacement study area.

[2] of these water courses are proposed to be crossed by trenching methods.

Both of the water courses have a drainage area of less than 100 acres. The wetland identified on-site will be restored to original conditions upon site restoration.”

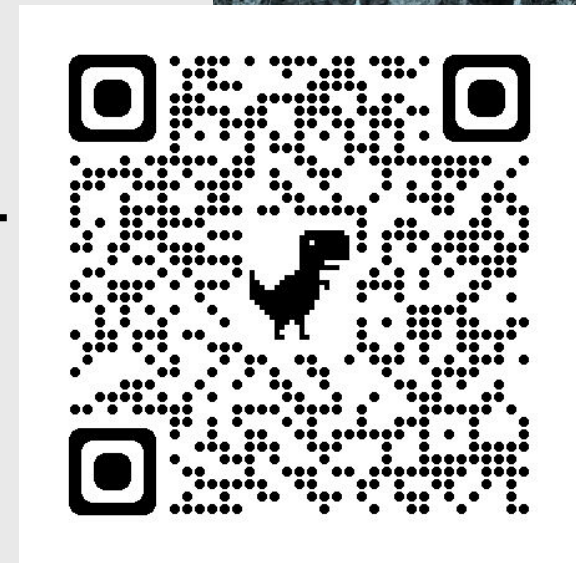
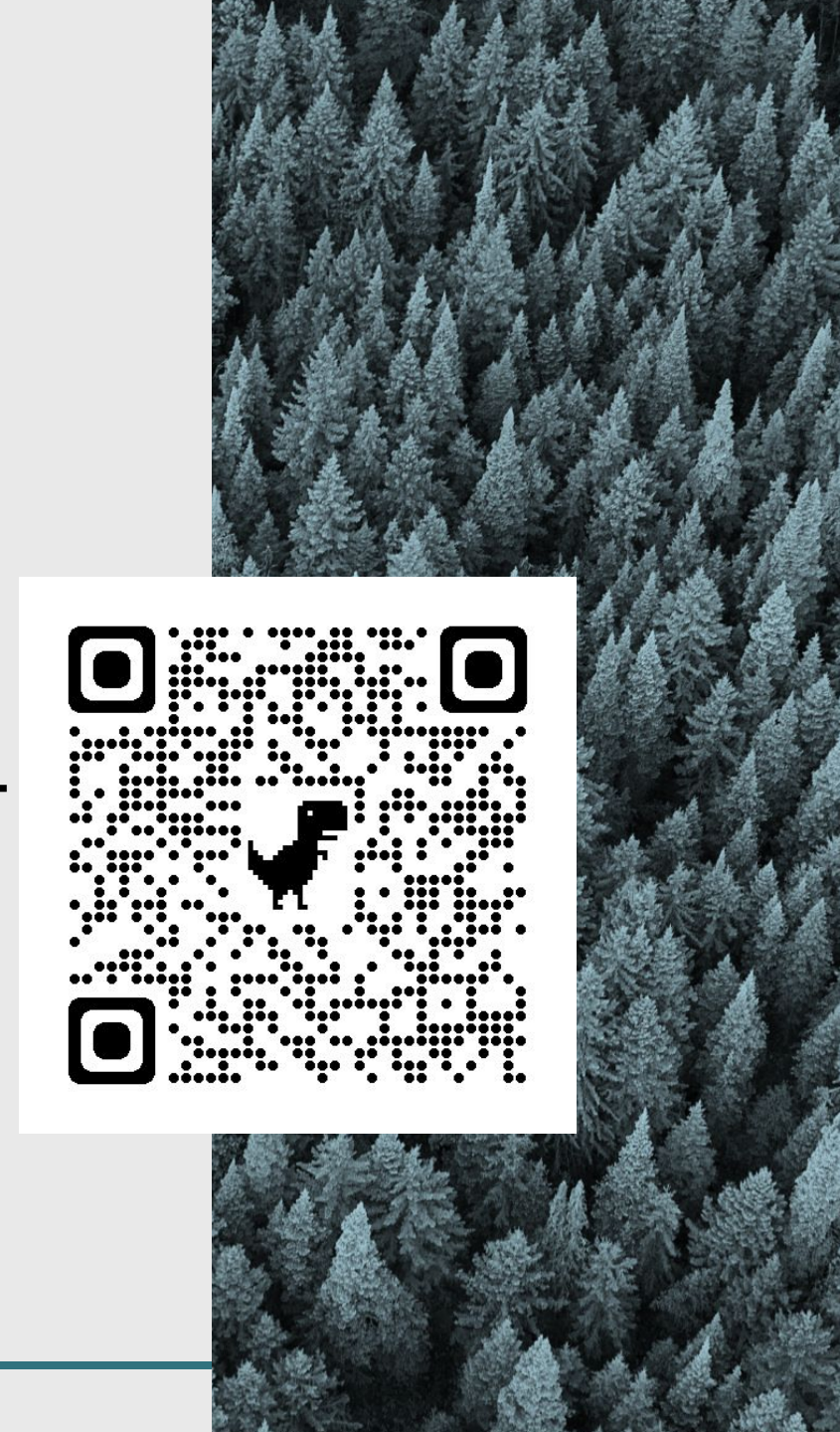
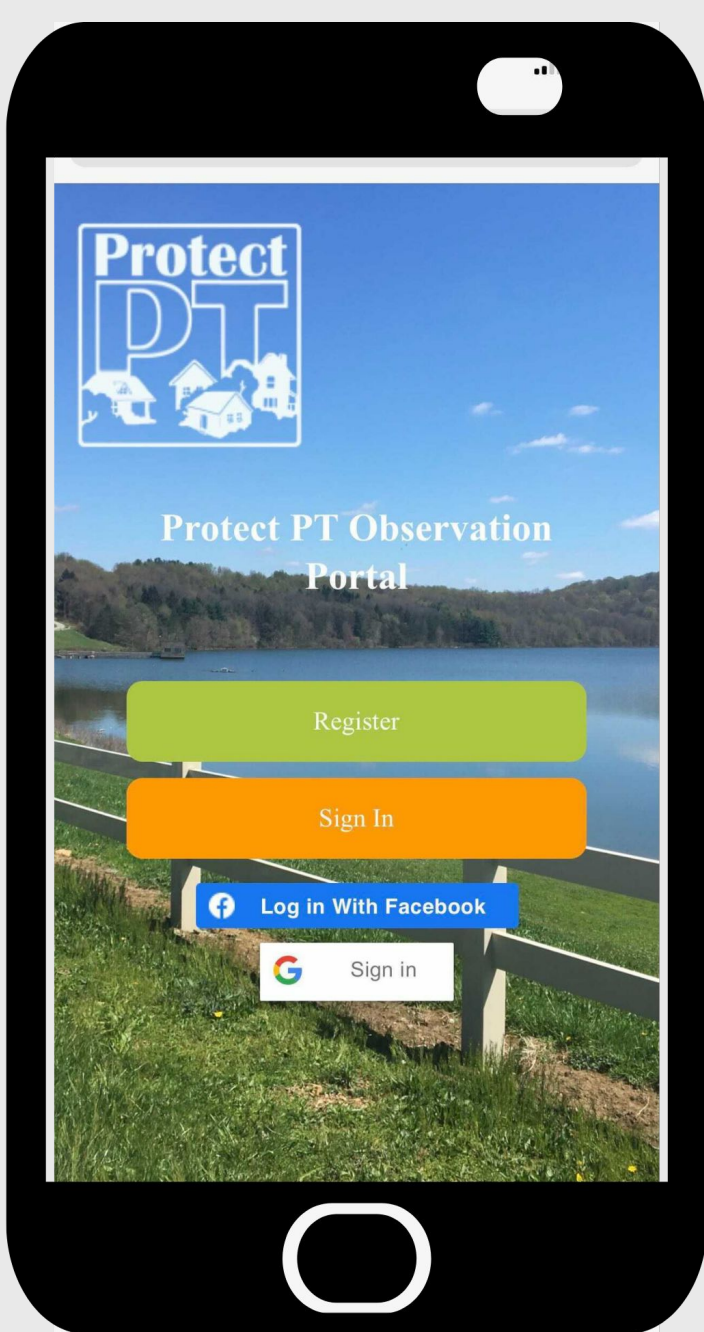
Review the [full record here](#)

Mobile Reporting Tool!

[Report.protectpt.org](https://report.protectpt.org)

- Report violations to agencies and Protect PT
- Keep a record of your reports

[Watch the webinar](#)



May 26th, 2022

UNDERSTANDING AND NEGOTIATING RIGHT OF WAY CONTRACTS

Tim Fitchett, Esq. Fair Shake



Fair Shake
Environmental Legal Services

Protect PT 

DISCLAIMER

This presentation is designed for general informational purposes only.

The information contained in this presentation should not be construed to be legal advice or to signify the formation of a lawyer-client relationship.

GOALS

- Understand the motivations of the pipeline/gas companies
- Understand basics of contract law
- Recognize your power and leverage
- Point out potential concerns and remedies

PIPELINE COMPANY MOTIVATION?

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MOTIVATION = MONEY

- Look at everything through this lens
 - How are they trying to make money off of me?
- **Landmen are not your friends**
 - They are salespeople
 - Will tell you anything to make the sale
 - Will low-ball you
 - **They do not have to tell you the truth**
- Will attempt to limit their future liability

CONTRACT LAW

- Right-of-Way agreements and Leases are CONTRACTS
 - Often very long-term contracts that may bind you for decades
- Governed by contract law
- Four Corners doctrine
 - If not in the doc, not to be considered
 - “Entire Agreement” clauses codify doctrine in contracts
- Ability to talk with a lawyer
- Generally, limits you to the contract
 - No parol evidence (verbal agreements)
- Some affirmative defenses (mistake, duress)
 - Hard to prove, must be done in court

FOUR CORNERS

- Because you are limited to what is *actually* in the contract, important that the language is acceptable.
- Don't trust that they will keep their word
 - Once the contract is signed, land man can completely disappear
 - No record of the oral agreements
 - And they don't have to.
- Consult a lawyer
- We'll go over lots of examples shortly.

RIGHTS OF WAY

- Usually an easement agreement granting permanent access to some portion of your property
- Generally, two types of pipeline ROWs: interstate and those between gas wells (convenience lines).
- Generally, there is eminent domain for interstate gas lines
 - Changes the calculus for negotiations.
- Not always eminent domain for those between gas wells.
 - They cannot go to court to force you to give them your property.
- Operator must obtain a “Certificate of Public Convenience”
 - Apex has not received a CPC

PAYMENTS (CONVENIENCE LINES)

- You have FAR more power than you may recognize
- If they don't have eminent domain, they *must* get everyone on their proposed path to agree.
 - They cannot force the issue.
 - Every home that doesn't agree requires a reroute
 - More time for them negotiating (added cost)
 - Potential that the next home would also not agree
- Use this leverage!
- They stand to make millions of dollars by installing convenience lines. Get your share!

PAYMENT

- Talk to each other, talk to your neighbors
 - Like wages at work, they do not want people knowing how much others are getting
 - They try not to have it included in the recorded easement
- \$5-\$25 per linear foot has been seen
 - They will likely offer far less (commonly \$1)
 - Often people sign
 - Also have seen Requests for repairs to property (fencing, grading, graveling)
- Be wary of asking for too much
 - They don't want to set precedent too high
 - They may try to go around you and you might lose out on everything

EMINENT DOMAIN

- Gives public utilities the right of eminent domain
- Organization gets granted a “Certificate of Public Convenience”
- Interstate utility lines considered “public” even if all for foreign markets.
- Can use eminent to get a court to force you to allow an easement.
- Costs money (lawyers are expensive)
 - They would often rather avoid the hassle and expense and just give the money to you.
- Less leverage than a convenience pipeline.

PAYMENTS AND TAXES

- Payments for ROWs are treated as capital gains
 - Can potentially offset by reducing basis of property
 - Talk to an accountant
- Payments for damages treated as ordinary income

DAMAGE RELEASE

- New tactic by pipeline operators
- Separate payment for the ROW on a Damage Release Form
- Limits all damages now or in the future to the amount paid for the ROW
 - May lie to say its in your best interest
- Bad idea to sign
 - Damages from pipeline installation could potentially reach into the \$100,000s

OTHER POTENTIAL CONCERNS

- These may or may not be important to your particular situation
- Everyone's property and situation is unique.
- Everyone's concerns are unique

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- Everyone's property and situation is unique.
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OTHER POTENTIAL CONCERNS: CONSTRUCTION

- Width of construction easement
 - They will likely severely impact the entire area you permit them to
- Time limitations on construction and repair
 - Limit when they must complete construction after beginning
 - Don't want to have partial construction for a year+
- Double-ditch trench digging
 - Better method for reseeding disturbed areas
 - Otherwise poor soil may inhibit reseeding (look terrible forever)
- Requirement for minimum depth of pipeline

OTHER POTENTIAL CONCERNS: LIABILITY

- Make them indemnify you if they mess anything else up
 - Don't want your neighbor coming after you because you allowed the pipeline operator on your property and it damages theirs.
- Payments/replacements for trees, crops, fences, buildings, etc that get damaged
 - Don't sign Damage Release Agreement
 - Wait to see what damage is caused and negotiate from there
 - Damages could be enormous if damage to house
- Include liability for contractors and subcontractors
 - Form language may only make pipeline operator liable
 - Likely would be liable in court, but best practice to include it.

OTHER POTENTIAL CONCERNS: REPAIRS

- Identification of stream crossings, if any
 - Require stream protection and restoration
- Reseeding specifications
 - Some people have particular types of grass seed or want a particular mix
 - Put it in the contract.
- Replacement or installation of fences and gates
 - Gravel drives, fencing, gates, road repairs, all can be negotiated into the contract.

OTHER POTENTIAL CONCERNS: PIPELINE

- Limiting diameter of pipeline
 - Limiting right to install additional or larger pipelines
- Defining substances that will be transported
- Confirmation of scented vs. unscented gas in the lines
- Any surface uses that will be prohibited

OTHER POTENTIAL CONCERNS: POST-CONSTRUCTION

- Require as-built official survey of pipeline and ROW
 - Gives you better information for future sales
- Same post-construction restoration for any repairs
- Definition of access post-construction to the easement
- Identification of point person at company

OTHER POTENTIAL CONCERNS: CONTRACT

- Automatic termination of lease
- Definition of “abandonment”
 - Removal of abandoned pipelines
- Requirement of landowner consent before assigning lease to another party
- Alternative dispute resolution

CONCLUSION

- You, as a property owner, have a lot of power in negotiations.
- You do not have to accept the first contract offered.
- Signing up for long-term liabilities
 - Important decision
- Many terms and conditions can be negotiated.

QUESTIONS?

- Cannot answer specific questions about your specific case.
- Happy to set up a phone call to discuss your specific situation.

Don't Forget Your Survey!

<https://protectpt.info/ESS>

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