



Most Favored Nation Provisions Across Development Portfolios

By Eugene Lerman

Most favored nation (“MFN”) provisions generally seek to ensure that a landowner receives economic terms at least as favorable as those granted in certain comparable agreements within a project. Unlike many lease provisions, however, MFNs may continue to affect project economics and future transactions long after the original agreement is executed.

As renewable energy projects typically involve multiple land agreements across a development portfolio, MFNs can affect development flexibility, lease administration, financing, acquisitions, and future transactions across multiple projects. In large development platforms, these issues may also affect scalability, transaction efficiency, and the ability to streamline financing and project sale processes across a portfolio. As a result, MFNs are often evaluated in the context of the broader portfolio and transaction-risk framework surrounding a project, including how the provisions may affect financing, acquisitions, and long-term portfolio administration.

In practice, the long-term effect of an MFN may depend less on the original agreement than on future development activity, negotiations, and transactions that do not yet exist when the provision is initially negotiated. This future uncertainty is one reason MFNs can become disproportionately significant over the life of a development portfolio.



Renewable energy projects are inherently dynamic during development. Project layouts change. Interconnection strategies evolve. Different tracts and the facilities to be located on those tracts present different operational and commercial considerations, and project agreements are negotiated over long periods of time and frequently involve changing market conditions and development assumptions.

MFNs can create tension with that development process because they attempt to impose economic consistency across agreements that may be negotiated under materially different circumstances, including different development phases, commercial assumptions, and project constraints. As projects evolve, this can create economic linkage between negotiations that were originally intended to address different development-stage conditions and business objectives. That linkage may continue affecting future negotiations, financing analyses, and transaction structures long after the original agreement is signed.

In many cases, the complexity associated with MFNs does not arise from any single provision, but from the cumulative interaction of multiple landowners, multiple payment categories, changing project economics, phased development, future amendments, and acquisition activity across development portfolios.

As a result, the practical effect of an MFN often extends well beyond a single lease negotiation and may continue throughout the financing, acquisition, and operational lifecycle of a project. In some cases, MFNs effectively function as contingent economic obligations tied to future project activity that is not known when the original agreement is signed. This dynamic can materially increase uncertainty during financing and acquisition diligence.

Development Flexibility and Comparison Challenges

MFN provisions are frequently negotiated with the goal of ensuring comparable treatment among landowners within a project. At a conceptual level, that objective can appear straightforward. In practice, however, site control agreements within a project are rarely identical, and most projects involve at least some variation driven by operational, commercial, or development-stage considerations.

Projects often require different payment structures for different tracts, accommodations for operational constraints, varied treatment of transmission or access rights, and negotiated resolutions to landowner-specific concerns. As a result, carefully structured MFN provisions frequently attempt to define which agreements qualify as comparison agreements, which payments are included, what geographic limitations apply, what time periods are covered, and which transaction types should be excluded.

Over time, these provisions can become increasingly complex as parties attempt to address a growing range of project-specific scenarios and contingencies and preserve flexibility across evolving development portfolios. One recurring challenge is that payment categories are not always economically comparable



across agreements. A higher payment in one agreement may reflect tract-specific considerations, different facility impacts, timing differences, or a negotiated resolution to a specific development issue. In other cases, the agreements being compared may not include corresponding payment categories at all. Without careful drafting, MFNs may require parties to compare payments that were not intended to serve the same commercial purpose.

Examples commonly include separate treatment for leases versus easements, exclusions for terminated agreements or payments removed by amendment, carveouts for short easement corridors or small tracts, distinctions between development, construction, and operations term economics, and future-trigger structures tied to financing or construction milestones.

While each of these drafting mechanisms may address a particular concern, their cumulative effect can materially increase administrative complexity, transaction friction, and long-term portfolio management burdens. Over time, these issues may affect financing timelines, acquisition diligence, project marketability, and transaction execution.

As a result, MFNs may evolve from isolated economic provisions into broader operational and transaction-management issues affecting the development platform as a whole.

For larger development platforms, the long-term consequences associated with MFNs may ultimately become as significant as the economics originally being negotiated.

MFNs and Terminated Agreements

One recurring issue involves whether terminated or early-stage agreements should trigger MFN obligations.

Development-stage negotiations often include agreements that never reach construction, are superseded by amended structures, or are terminated before operations. If those agreements nevertheless trigger MFNs across a project, they may create economic consequences disconnected from the final developed project. For that reason, some developers increasingly structure MFNs to exclude terminated agreements, tie triggers to construction or financing milestones, or apply only to agreements or payment terms that remain in effect through construction or operations.

This approach attempts to align MFN obligations with actual project economics rather than preliminary development-stage negotiations that may ultimately bear little resemblance to the final developed project. The issue can become particularly important where early-stage agreements contain economics that were negotiated under materially different assumptions or where development strategies later change.



We have seen projects go through these kinds of changes many times, where commercial terms in certain early-stage agreements no longer align with the economics or structure of the final project, which has evolved through numerous site design iterations driven by evolving development, permitting, interconnection, and commercial considerations. As a result, developers often seek to ensure that MFN obligations remain tied to actual project outcomes rather than preliminary negotiations that may no longer reflect the final project structure or economics.

Administrative Complexity and Operational Burden

As projects mature and portfolios expand, MFNs can create operational burdens that extend well beyond the original lease negotiation.

Developers and asset owners may need to evaluate whether subsequent agreements or amendments trigger existing MFNs, whether those agreements or amendments create retroactive obligations, whether multiple payment categories interact, and whether broader portfolio activity creates additional exposure.

MFN structures may also require:

- Tracking comparison agreements
- Maintaining internal payment analyses
- Administering retroactive adjustments
- Evaluating whether future transactions create new obligations
- Pursuing true-up amendments and MFN waivers

For larger development platforms, this analysis often requires more than legal review of a single agreement. It may require coordination among legal, development, land administration, finance, and transaction teams to understand how later agreements, amendments, payments, and project changes interact with existing MFN obligations. Without that coordination, MFN exposure can become difficult to identify consistently across a portfolio.

As development portfolios grow, these issues can compound significantly over time, particularly as projects evolve through M&A activity.

In some cases, the administrative burden associated with these provisions extends beyond routine lease administration and becomes a broader portfolio-management issue affecting scalability, transaction execution, and long-term platform administration, particularly where developers or asset owners are attempting to standardize administration or streamline financing and disposition processes across multiple projects. These considerations can become increasingly important as development platforms

scale and transaction activity increases.

Financing and M&A Considerations

MFNs are also frequently among the more complex provisions to evaluate in financing and M&A diligence. Unlike many lease provisions, MFNs may interact with agreements outside the immediate transaction, future amendments, and future development activity that has not yet occurred.

Accordingly, MFN diligence often requires evaluating:

- How comparison agreements are defined
- Whether trigger agreements already exist
- Whether any true-up obligations remain outstanding
- Whether future activity could create additional obligations
- Whether the transaction itself could trigger MFNs elsewhere in the buyer's existing portfolio

This issue can become particularly significant in portfolio acquisitions involving multiple projects, given that acquisition structures may require analysis of whether acquired lease economics could trigger MFNs in the acquirer's existing portfolio, or vice versa. As a result, financing parties and buyers often evaluate MFNs in the context of broader portfolio management and transaction risk.

In some cases, buyers and financing parties may prefer transaction structures that minimize contingent economic obligations and simplify portfolio-level diligence and administration. Where MFN exposure is unclear, diligence may shift from confirming lease economics to evaluating contingent future obligations and the likelihood that additional amendments, waivers, or true-up payments will be required. As a result, MFNs may affect not only transaction diligence, but also overall transaction structure and execution certainty.

No-MFN Policies and Platform Management

In light of the administrative complexity, transaction uncertainty, and long-term portfolio-management considerations associated with MFNs, certain developers have at times implemented no-MFN policies as a portfolio-management and transaction-risk decision. These policies can streamline development and reduce uncertainty for project buyers and financing parties by avoiding the complex analysis associated with MFN triggers, future true-up obligations, comparison analyses, and contingent portfolio-level economic exposure. These policies often reflect a determination that transaction certainty, operational



simplicity, and long-term scalability outweigh the potential benefits of offering MFNs.

The downside is that certain land agreements may not proceed to execution if a particular landowner or their counsel are especially focused on requiring an MFN. In those cases, developers adopting no-MFN policies may prioritize long-term platform management objectives over accommodating MFN requests in individual negotiations.

In practice, these policies are often a reaction to difficult MFN experiences such as the following:

- The developer originating the MFN did not interpret the MFN to be triggered by later agreements, while financing parties reached the opposite conclusion, resulting in an unexpected true-up process that delays financing and alters project economics
- An MFN prevents a developer from selling a project, because the buyer is unwilling to accept the uncertainty associated with MFN exposure, or the buyer's project portfolio would trigger the MFN and affect the overall project's economics in a way the buyer finds unacceptable, and amending the agreement containing the MFN is not achievable
- An MFN is triggered by a terminated agreement, leading to negotiation of a limited MFN waiver and broader renegotiation of terms, resulting in transaction friction and financing delays

These experiences illustrate how MFNs can create unanticipated economic exposure, transaction friction, financing delays, and broader portfolio-management challenges extending well beyond the original lease negotiation.

Simplicity and Long-Term Administration

In practice, MFNs can become increasingly difficult to administer consistently across evolving development portfolios, financing cycles, and ownership structures.

Accordingly, when MFNs are included, developers often seek to limit comparison agreements to appropriately similar agreements, narrow applicable payment categories, define objective triggering parameters, and include carveouts for terminated, atypical, or development-stage agreements.

The objective is often not only to simplify lease administration, but to reduce long-term transaction uncertainty and preserve operational flexibility as projects evolve through financing, acquisitions, amendments, and future development activity.

Because renewable energy projects frequently evolve over many years, financing cycles, and ownership transitions, the long-term operational effect of an MFN may ultimately become as significant as the original negotiation in which it was drafted. Unlike many lease provisions, MFNs may continue affecting project



economics, financing analyses, transaction structures, and portfolio administration long after the original agreement is executed.

For that reason, MFNs are often best evaluated not solely as economic provisions within individual leases, but as long-term portfolio and transaction-management considerations affecting scalability, transaction certainty, financing execution, and overall development platform administration.

If you are structuring, reviewing, or conducting diligence on most favored nation provisions in connection with renewable energy project development, financing, acquisitions, or portfolio transactions, [we would be happy to discuss.](#)

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