



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.

Renewable energy projects typically involve multiple land agreements, and an MFN in one agreement may affect payments under others. Developers need to consider how later leases, amendments, acquisitions, and project sales could trigger additional obligations. Across a portfolio, that review can involve many agreements negotiated by different teams over several years. A buyer or lender may also need to confirm which payments have already been adjusted and whether future activity could require further increases. The wording of the MFN therefore matters well beyond the tract covered by the original agreement.

The long term effect of an MFN may depend on agreements and transactions that do not yet exist when it is negotiated. A payment increase that appears modest on one tract can have a larger effect if it must also be offered to other landowners. The developer needs to consider that possibility before agreeing to the provision.

Renewable energy projects change during development. Layouts are revised, interconnection plans



change, and different tracts may be needed for different facilities. Land agreements are negotiated over long periods, often under changing market conditions. Terms that made sense for one tract or at one stage may be less appropriate for another.

MFNs can make those differences harder to accommodate because they seek to provide consistent economic treatment across agreements negotiated under different circumstances. A higher payment needed to secure one tract may require increases under earlier agreements, even if those tracts serve different purposes or were negotiated at a different stage. The developer may then need to account for those increases when negotiating later agreements, seeking financing, or selling the project.

The difficulty often comes from the interaction of several MFNs, rather than one provision in isolation. Different landowners may have different comparison rights, payment categories, and triggers. Phasing, amendments, changes in project economics, and acquisitions can add further agreements to the analysis.

Those obligations may continue through financing, a change in ownership, and operations. Some MFNs require additional payments only if specified future events occur, so the amount ultimately payable may be unknown when the lease is signed. Buyers and financing parties need to understand those potential payments when assessing project costs.

Development Flexibility and Comparison Challenges

MFN provisions are frequently negotiated to provide comparable treatment among landowners within a project. That objective can appear straightforward, but the agreements being compared are rarely identical. Different facilities, tract sizes, access needs, and stages of development may justify different terms, even within the same project.

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.

The provisions can become longer and harder to apply as the parties add exceptions for particular tracts, project changes, and future transactions. Payment categories may also differ across agreements. A higher payment may compensate for a particular facility impact, a timing difference, or a landowner concession needed to resolve a development issue. Another agreement may have no corresponding payment category. The drafting needs to make clear whether those payments are compared and, if so, how. Otherwise, an MFN may require increases based on payments that serve different purposes.



Common approaches include treating leases and easements separately, excluding terminated agreements or payments removed by amendment, excluding short easement corridors or small tracts, and distinguishing development, construction, and operations payments. Some provisions apply only after a financing or construction milestone is reached.

Each exception may address a legitimate concern, but someone must later determine how it applies. That may require reviewing the comparison agreements, checking when payments took effect, and confirming whether any exclusions apply. Buyers and lenders may need to repeat that review before closing, particularly if the developer's records are incomplete.

An MFN negotiated for one landowner can therefore require ongoing review by the people administering the agreements and those handling later sales or financings.

For a developer with many projects, the cost of that review and the restrictions on later negotiations may become as significant as the initial payment terms.

MFNs and Terminated Agreements

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

Agreements negotiated during development may never reach construction, may be amended, or may terminate before operations. If those agreements still trigger MFNs, other landowners may receive payment increases based on terms that no longer apply anywhere in the completed project. Some developers therefore exclude terminated agreements, tie triggers to construction or financing milestones, or compare only agreements or payment terms that remain in effect through construction or operations.

These limits seek to base MFN payments on the project that is actually built. They can be particularly important where an early agreement assumed a different layout, project size, or use of the property. Without an exclusion, changing or abandoning that agreement may not eliminate the payment increases it triggered elsewhere.

We have seen this happen as projects go through repeated design changes driven by permitting, interconnection, development, and commercial considerations. An early agreement may no longer fit the final project, even though its payment terms remain relevant under another landowner's MFN. Developers often seek to address that result expressly, rather than assume that terminating or amending the comparison agreement will also end the related MFN obligation.

Tracking MFN Obligations

As projects advance and portfolios grow, developers and asset owners may need to revisit MFNs whenever they sign or amend land agreements.

That review may need to determine whether a later agreement triggers an increase, whether the increase applies retroactively, and which payment categories are affected. Depending on the wording, an acquisition or activity on another project may also need to be reviewed.

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 developers with many projects, this work may require coordination among legal, development, land administration, finance, and transaction teams. The people negotiating a new agreement need to know which existing MFNs it could trigger. The people administering payments need to know when an increase takes effect and which landowners are entitled to it. Counsel handling a lease negotiation or a project sale or financing also needs access to those records. Without that coordination, obligations can be missed or interpreted differently by different teams.

Acquisitions can make this work harder by adding projects with different MFN terms, payment histories, and administrative records.

A developer trying to use consistent payment and reporting practices across projects may find that each MFN requires a separate analysis. The work can increase as agreements are amended and projects change hands. Before a sale or financing, the team may need to reconstruct prior comparisons, confirm that required increases were paid, and explain how later activity could affect payments. Keeping those records current is easier than recreating them under a closing deadline.

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

Portfolio acquisitions can require review in both directions. The acquired agreements may trigger MFNs in the buyer's existing portfolio, while agreements already held by the buyer may trigger MFNs in the acquired projects. The parties need to check the provisions against the proposed acquisition and determine whether additional payments would follow. Reviewing only the leases within the project being acquired may not answer that question.

Buyers and financing parties may prefer a structure that limits future payment obligations and makes the agreements easier to administer. If the scope of an MFN is unclear, they may need amendments, waivers, or payment adjustments before closing. The review then involves both amounts already owed and amounts that could become payable after the transaction. Depending on the result, the parties may need to change the acquisition structure, resolve the issue with landowners, or reconsider whether the transaction remains viable.

Policies Against Offering MFNs

Some developers have adopted policies against offering MFNs after dealing with the payment questions, administrative work, and closing delays they can create. Without an MFN, later negotiations do not require a separate comparison under that provision, and buyers and lenders have fewer contingent payment obligations to assess. A developer may decide that those benefits outweigh the value of using an MFN to secure an individual land agreement. That decision may be particularly relevant where the developer expects to negotiate many agreements, sell projects, or acquire additional projects over time.

The tradeoff is that some landowners or their counsel may insist on an MFN, and the developer may be unable to reach agreement without one. A developer following such a policy may decide to pursue another tract rather than accept obligations that could affect future payments and transactions.

These policies often follow difficult experiences such as the following:

- The developer concluded that later agreements did not trigger an MFN, but financing parties disagreed. Resolving the disagreement required an unexpected payment adjustment process that delayed financing and changed project costs.
- A buyer was unwilling to accept an MFN because the potential payments were unclear or its existing portfolio would trigger increases it could not accept. The developer could not obtain an amendment, and the sale could not proceed.
- A terminated agreement triggered an MFN. Obtaining a limited waiver required reopening other lease terms, and the negotiations delayed financing.

In each case, the consequences reached beyond the original lease negotiation. The developer had to address additional payments, negotiate changes with landowners, or resolve an issue that prevented a sale or financing from closing.

Keeping MFNs Manageable Over Time

MFNs can become harder to administer as agreements are amended, projects are financed or sold, and new projects are added to a portfolio.

Where developers agree to an MFN, they often seek to compare only similar agreements, specify the payment categories covered, define when an increase is triggered, and exclude terminated, atypical, or preliminary development agreements. Those limits need to be clear enough for someone who was not involved in the original negotiation to apply them later.

Clear limits help the developer determine what it can offer in later negotiations and what additional payments may follow. They also help a buyer or financing party evaluate the obligations without relying on assumptions about what the original parties intended.

A renewable energy project may be developed, financed, and sold over many years. The people reviewing an MFN later may have different information and priorities from those who negotiated it. The provision needs to remain workable through those changes, and the records need to show which comparisons were made, which increases were required, and whether those increases were paid.

Before accepting an MFN, a developer should consider the agreements it may need to negotiate, the projects it may acquire or sell, and how the provision will be administered. A payment concession that helps secure one tract may carry obligations that are much broader and last much longer than the original negotiation suggests.



If you are structuring, reviewing, or conducting diligence on most favored nation provisions in connection with renewable energy project development, financing, or M&A transactions, we would be happy to discuss.

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