

Michigan Department of Agriculture and Rural Development

Policy to Allow Commercial Solar Panel Development on P.A. 116 Lands

On June 3, 2019, Governor Whitmer issued a [policy statement](#) to allow land currently enrolled in P.A. 116 to be used for commercial solar array purposes. MDARD's overall goal is to positively address competing good land use issues. To achieve this, below are conditions under which MDARD may allow for solar panel operations on lands enrolled in the Farmland Development Rights Program. There are two major goals in this approach:

- To allow solar energy facilities to be placed on lands enrolled in the Farmland Development Rights Program.
- To preserve agricultural land for future use as intended by the Farmland and Open Space Preservation Act, MCL 324.36101 *et seq.*

MDARD may permit solar energy development on lands enrolled in the Farmland Development Rights Program as provided below.

Definitions

Amended Farmland Development Rights Agreement (Amended Agreement) - A signed agreement between a Landowner and MDARD for the State of Michigan. Contains the conditions required to allow a commercial solar power array.

Commercial Solar Agreement - This is the agreement entered into by the Landowner and the Solar Energy Developer. It must contain all conditions specifically identified here as the responsibility of the Solar Project Company.

Farmland Development Rights Agreement - The agreement between the Landowner and the State of Michigan that define conditions for participating in the Farmland Development Rights Program as required by MCL 324.36101 *et seq.*

Landowner - The property owner who has a signed and recorded Farmland Development Rights Agreement with MDARD for the State of Michigan.

Local Governing Body - The local unit of government with zoning responsibility. This would be a township unless the township does not zone and then the zoning authority would lie with the county.

Solar Project Company - The owner and/or operator of the solar project entity.

This policy establishes the expectations for responsibilities in carrying out the development, maintenance and decommissioning of a solar energy array on property enrolled in the Farmland Development Rights Program. The document will refer to the Solar Project Company as well as the Landowner. However, under MCL 324.36101 *et seq.*, the Landowner is responsible for complying with a Farmland Development Rights Agreement. As a result, the Amended Agreement between the Landowner and the State of Michigan will ascribe all responsibilities to the Landowner. Therefore, those responsibilities herein identified as the responsibility of the Solar Project Company should be addressed in the agreement between the Solar Project Company and the Landowner.

Administrative Approach

- Pursuant to the Farmland and Open Space Preservation Act, MCL 324.36101 *et seq.* (the Act) and Paragraph 2 of the Farmland Development Rights Agreement with the Landowner, MDARD, subject to appropriate permitting by the local governing body, may permit structures to be built on property enrolled in the program if the structures are consistent with farm operations. MDARD will work with the local governing body to determine appropriate bonding requirements.
- MDARD has determined that the placement of structures for commercial solar energy generation on property enrolled in the Farmland Development Rights Program is consistent with farming operations and is consistent with the purposes of the statute (MCL 324.36101; 324.36104 and 324.36104(a)) if the following conditions are met:
 - An Amended Agreement is entered into by the Landowner for the land where the solar facility is to be located. The Amended Agreement shall extend the existing Farmland Development Rights Agreement for a period of time that is equivalent to the amount of time the land is used to generate solar power combined with the remaining term of the Farmland Development Rights Agreement. This will result in no net change in the length of the Farmland Development Rights Agreement.
 - Tax credits are not claimed during the deferment period. The deferment period begins at the time of solar facility's construction and extends until all commercial solar panels and appurtenant structures are removed. The past seven years of tax credits are calculated at the time the Amended Farmland Development Rights Agreement is recorded and held until the land is returned to agricultural production at the end of the Commercial Solar Agreement. If a landowner chooses to leave the Farmland Development Rights Program at any time during the Commercial Solar Agreement, the calculated seven years tax credits would be payable.

- Within the fenced area and where it is suitable, the site should be designed and planted to achieve a score of at least 76 on the [Michigan Pollinator Habitat Planning Scorecard for Solar Sites](#). The pollinator habitat area must allow for replanting when the usable life of the pollinator habitat expires. The ground cover is to be established and maintained. MDARD expects this will be the Solar Project Company's responsibility under the Commercial Solar Agreement.
- Any portion of the site not included in pollinator plantings must maintain United States Department of Agriculture - Natural Resource Conservation Service Conservation Cover Standard 327. Planting standards can be found at: <https://efotg.sc.egov.usda.gov/references/public/mi/sow327.pdf> and https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1263169.pdf
- A bond or irrevocable letter of credit as a surety tool is obtained and maintained in an amount sufficient enough to decommission the solar array and return the property to agricultural purposes. The financial surety must be in place for the entire deferment period. The amount of the financial surety shall be calculated by a licensed engineer and approved by MDARD. The surety must be payable to the State of Michigan as the sole beneficiary. MDARD expects this will be the Solar Project Company's responsibility under the Commercial Solar Agreement.
- Both the establishment and maintenance of the site assures the land can be returned to agricultural uses at the end of the deferment period. Consistent with NRCS policy, an NRCS Certified Prior Converted (PC) exemption for agricultural land will not change if, for some reason, the land under a long-term Commercial Solar Agreement begins to exhibit wetland characteristics. But for those fields that are currently exempt under Parts 60 and 301 of the Michigan Natural Resources and Environmental Protection Act, the drainage infrastructure must be maintained during the deferment period. MDARD expects drainage infrastructure maintenance will be the Solar Project Company's responsibility under the Commercial Solar Agreement.
- The land is returned to agricultural use at the end of the deferment period and continues to be subject to the requirements of the Farmland Development Rights Agreement. Decommissioning of the site must be completed in time for normal agricultural operations for the following growing season.

In all cases, conditions for exiting Farmland and Open Space Preservation Act, MCL 324.36111(a)) shall apply throughout the solar agreement and deferment period.

Contract Amendment

Amending the Farmland Development Rights Agreement will be a two-step process. The first step will result in a split of the original Farmland Development Rights Agreement, pursuant to MCL 324.36110(4). The split should divide the land into the portion that will be subject to development under a Commercial Solar Agreement and the portion that will continue to operate under the original Farmland Development Rights Agreement. The second step is that the Landowner shall enter into an Amended Farmland Development Rights Agreement for the portion of the land that will be in a Commercial Solar Agreement. The Amended Agreement will be filed with the register of deeds. The Amended Agreement will reflect all the conditions required to ensure the placement of structures on the property 'is consistent with farming operations and is consistent with the purposes of the statute.' This Amended Agreement must be executed by the Landowner and MDARD 60 days prior to any construction.

In no event can the deferment period plus the remaining period in the original Farmland Development Rights Agreement exceed 90 years. Regardless of the length of any lease with a Solar Project Company, the deferment period is limited to 90 years minus the remaining term of the Farmland Development Rights Agreement. The Landowner may enter into a subsequent Amended Farmland Development Rights Agreement to provide for an additional deferment period.