



Farmland and Open Space Preservation Program

Amending a Development Rights Agreement for a Solar Facility Site

Pursuant to MCL 324.36104e effective February 13, 2024

STEP 1

Local government approval/review

- 1.1 Landowner/Solar Developer contacts the local unit of government having zoning authority to determine if solar development is permitted on the land under local zoning. The following are possible responses that may be received:
 - a. Solar panel development is not permitted on the land.
 - b. Solar panel development may be permitted via either a rezoning, a special use permit or a use variance.
 - c. Solar panel development is permitted under local zoning.
 - d. If the land is not zoned the solar panel development would likely be permitted via a building permit.
- 1.2 If the project has been approved by the local government or you have documentation (i.e. meeting minutes, approval letter) from the local government that the project will be approved proceed to STEP 2.

STEP 2

Solar Developer submits solar development plan to Michigan Department of Agriculture & Rural Development (MDARD)

The earlier MDARD is notified of the areas that are proposed for commercial solar development, the earlier that MDARD can provide a list of active farmland development rights agreements (P.A. 116) that can be filtered and sorted by the requesting party.

- 2.1 Solar Developer sends documents to MDARD showing the extent of the solar development. The documents will include:
 - a. Site plan showing all proposed solar panels, access roads, substations, and any other structures and improvements related to the solar development.
 - b. List of tax parcels within the proposed solar development that includes county name, township and range, and section number for the properties impacted by the solar development project. Include any title search information and copies of recorded agreements from title searched if available.
- 2.1 MDARD will provide a spreadsheet of P.A. 116 active development rights agreements that can be filtered and sorted by the requesting party. This list of active agreements includes the legal descriptions in the recorded agreements that the solar developer can use to compare to title search information obtained by the solar developer.

STEP 3

Landowner submits an application to amend their development rights agreement(s) to MDARD

The application may be submitted if the request has been approved by the local government or if the local government intends to approve the application and confirms the same with MDARD.

3.1 Landowner completes and submits the application to amend a development rights agreement to allow the development of a commercial solar facility on the property.

3.2 The application will contain:

- a. Landowner's name, address, phone number and email.
- b. A copy of the Development Rights Agreement (P.A. 116) upon which the project is proposed.
- c. The name of the Solar Developer, their address, phone number and email and the person designated to represent the company.
- d. A copy of the site plan showing where the commercial solar facility is to be located.
 - i. The plan should indicate the land enrolled in P.A. 116 that will be occupied by the solar panels.
- e. The legal description for the parcel upon which the solar facility is to be located.
- f. If the land to be occupied is less than all the land enrolled in the P.A. 116 Agreement, additional information will be needed to split the P.A. 116 agreement. This is required to be completed by the program to ensure the proposed commercial solar facility is contained in a separate, stand-alone P.A. 116 agreement.
 - i. If the Agreement needs to be split, submit two Split Request forms, one for the property proposed for a commercial solar facility and one for the property that will remain in the P.A. 116 program. This information will accompany the Solar Panel Application.
- g. A copy of the local government approval or confirmation that the project can be approved by the local zoning authority.
 - i. The approval and confirmation should be on local government letterhead or may be official minutes from a meeting of the governing body (township board, county commission, etc.)
- h. A copy of the portion of the commercial solar agreement with the landowner that indicates: The Solar Developer may provide the following information in the form of a memorandum of lease, easement or option, rather than providing the entire document.
 - i. The term of the commercial solar agreement with the landowner in years.
 - ii. Solar Developer provides written assurance that the solar panels and appurtenant structures will be removed from the property, unless the term of the commercial solar agreement is extended by the landowner, the local unit of government and MDARD.
 - iii. Solar Developer submits written assurance that a bond or irrevocable letter of credit payable to the state will be provided to the State, no less than 90 days prior to commencement of construction to cover the cost of decommissioning, including the removal of the solar panels and appurtenant structures located on the property under

- the P.A. 116 Agreement(s).
- iv. Solar Developer provides written assurance that they will plant and maintain ground cover in compliance with NRCS Cover Standard 327 or pollinator habitat.
 - v. Solar Developer provides written assurance to maintain existing farm drainage volume as part of the project.

STEP 4

MDARD review and approval/denial

- 4.1 Upon receiving the Solar Panel Application, MDARD will review the application. If the application is incomplete, MDARD will work with the landowner and solar developer to obtain any missing information.
- 4.2 If local government approval has been received, and MDARD approves the request, an approval letter will be sent to the landowner with a copy to the solar developer and to the local governing body indicating the project has been approved.
- 4.3 If the local government has not taken formal action but is reviewing the request, MDARD may approve the request subject to approval by the local government.
- 4.4 MDARD may not move to STEP 5 until approval from the local government has been received.

STEP 5

Landowner contacts MDARD at least 90 days prior to commencement of construction of the solar development

- 5.1 The landowner will provide:
 - a. Solar Decommissioning Plan from a licensed engineer including an estimate of the decommissioning cost.
 - b. A bond or irrevocable letter of credit payable to this state is maintained during the deferment period as financial assurance for the decommissioning of the solar facility and the return of the land to agricultural use. The amount of the financial surety shall be calculated by a licensed professional engineer. Every 3 years, the amount of the bond or irrevocable letter of credit shall be adjusted as necessary to ensure that the financial assurance is sufficient for the purposes of decommissioning the solar facility site.
 - c. A breakdown of the taxable value for the split parcel intended for the solar facility for the past 7 years, signed by the local tax assessor.
 - d. Anticipated construction start date and decommissioning date.
 - e. MDARD will provide an amended Farmland Development Rights Agreement (Solar Panel Amendment) to the landowner for execution (signing). The term (number of years) of the commercial solar agreement of the land while occupied by the solar facility will be added to the existing term of the Agreement when the Amended Agreement is created. When the Amended Agreement expires, the number of years remaining on the P.A. 116 Agreement will be equivalent to the term in agricultural use prior to execution of the Amended Agreement.
- 5.2 The landowner will return the executed Amended Agreement to MDARD for execution by the State of Michigan and recording at the appropriate county Register of Deeds office.
- 5.3 The Amended Agreement will contain the following provisions:

- a. The landowner agrees to provide notification to MDARD within at least 90 days of an ownership change on the property.
- b. The landowner agrees not to claim Farmland Preservation tax credits on the subject property beginning in the year of construction of the solar facility and until the solar facility has been removed from the property and the land restored to agricultural use. A subsequent Amended Agreement will be required if the sum of the deferment period and remaining term of the Farmland Development Rights Agreement exceeds 90 years.
- c. The term (number of years) of the commercial solar agreement will be added to the existing term of the Agreement when the Amended Agreement is created.
- d. The landowner agrees to remove the solar panels and appurtenant structures and to restore the land to agricultural use.
- e. A surety bond or irrevocable letter of credit is to be provided, naming the State of Michigan as beneficiary, to cover the cost of the removal of the solar facility and the restoration of the land to agricultural use for that property under the P.A. 116 Agreement(s). The solar decommissioning cost is to be reviewed and confirmed or updated by a licensed engineer every five years and the amount of the surety is to be updated accordingly. The landowner is responsible for all costs associated with the removal of the solar facility and restoration of the land to agricultural use which are not reimbursed by the surety.
- f. The landowner agrees to provide notice to MDARD and the local government within at least 90 days of a change in ownership of the solar facility.
- g. The landowner agrees to plant and maintain ground cover in compliance with NRCS Cover Standard 327 or pollinator habitat.
- h. The landowner agrees to maintain existing drainage volume of the parcel throughout the life of the project. It is understood that existing drainage structures may be altered to accommodate solar panel placement however those adjustment may not reduce the volume of subsurface drainage from the parcel.
- i. The landowner agrees to inform any new owners about this Amended Agreement.
- j. The landowner agrees to obtain approval from the local governing body for any period of time that the property is used as a commercial solar facility.

STEP 6

MDARD will provide copies of the recorded Amended Agreement to the landowner and solar developer

- 6.1 After MDARD receives the original Amended Agreement as recorded back from the county register of deeds, a copy will be provided to the Landowner and the Solar Developer.
- 6.2 Construction may only commence after the execution of the Amended Agreement by the landowner and the State of Michigan, and after the executed agreement has been recorded by the county register of deeds.