

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

Note: The local governing body must have a compatible land use ordinance consistent with Public Act 233 of 2023. If a compatible land use ordinance is not available and the local governing body denies the application, then the applicant must consult with the Michigan Public Service Commission (MPSC) prior to submitting to the local governing body an application to amend the development rights agreement.

STEP 1

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.

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 solar development, and a 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 search if available.
2. 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 2

Landowner submits an application to amend their development rights agreement(s) to the Local Governing Body

The application may be submitted if the local governing body has a compatible land use ordinance consistent with Public Act 233 of 2023 **or** a Certificate from the Michigan Public Service Commission (MPSC) has been obtained.

1. The landowner completes and submits the application to amend a development rights agreement to allow the development of a commercial solar facility to the local governing body.
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, 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. The plan should indicate the land enrolled in P.A. 116 that will be occupied by solar panels.
- e. The legal description for the parcel upon which the solar facility is to be located.
 - i. If the area of 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.
 - ii. 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 application.
- f. Confirmation that the local governing body has a compatible land use ordinance consistent with Public Act 233 of 2023 **or** the application contains a Certificate from MPSC.
- g. 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 will design and plant pollinator habitat that achieves a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.
 - v. Solar Developer provides written assurance to maintain existing farm drainage volume as part of the project.
- 3. The local governing body will complete the section reserved for local government use in the application, indicating the date of approval or denial.
- 4. If the local governing body denies the application, siting approval from MPSC may be required. [Contact the MPSC and follow their procedures.](#)

STEP 3

MDARD review and approval/denial

1. Upon receiving the application to amend a development rights agreement, MDARD will review the application. If the application is incomplete, MDARD will work with the Landowner and Solar Developer to obtain any missing information.

2. If local governing body 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.
3. If the local governing body has denied the application or chosen not to take action, MDARD will review the request and confirm if MPSC siting approval will be required. Local government approval and/or completed MPSC Consultation Form will be required prior to MDARD approval. [Contact the MPSC and follow their procedures](#). MDARD will provide a pre-approval letter or letter of denial to the Landowner with a copy to the solar developer and to the local governing body.

STEP 4

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

The landowner will provide:

1. Solar Decommissioning Plan from a licensed engineer including an estimate of the decommissioning cost.
2. 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 three 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 purpose of decommissioning the solar facility site.
3. A breakdown of the taxable value for the split parcel intended for the solar facility for the past seven years, signed by the local tax assessor.
4. MPSC Consultation Form (if MPSC siting approval is required). [Contact the MPSC and follow their procedures](#).
5. Anticipated construction start date and decommissioning date.
6. 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.
7. 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.
8. 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 three 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 will design and plant pollinator habitat that achieves a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.
- 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 adjustments 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, and/or provide evidence of siting approval from the Michigan Public Service Commission for any period of time that the property is used as a commercial solar facility.

STEP 5

MDARD will provide copies of the recorded Amended Agreement to the Landowner and Solar Developer.

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.
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.