



Commercial Solar Facilities on PA 116 Enrolled Land 6/3/2019

Utility scale solar facilities may be permitted on land enrolled in a Farmland Development Rights Agreement (PA 116 Agreement) under certain circumstances:

1. The land proposed for the facility is necessary to complete a larger, in-scale, solar facility;
2. The placement of the solar panels has been approved by the local government having zoning authority for the land in question;
3. The Michigan Department of Agriculture and Rural Development (MDARD) has approved the placement of the solar panels;
4. The PA 116 landowner agrees to the following conditions and has signed an Amended PA 116 Agreement agreeing to the following additional provisions;
 - a. The owner agrees not to claim PA 116 tax credits during the time the land is being used for the production of solar power as provided in the solar panel lease;
 - b. The owner is responsible for the removal of the solar panels from the property and for the restoration of the formerly occupied land to agricultural use;
 - c. The owner is to provide a surety in the form of a bond or irrevocable letter of credit to assure that the land is restored to agricultural use and that the solar panels, and all related equipment above and below ground are removed;
 - d. The owner is required to notify the Michigan Department of Agriculture and Rural Development and the local governing body, having zoning authority, within 90 days if the ownership of the solar panels changes;
 - e. The owner is required to notify the Michigan Department of Agriculture and Rural Development and the local governing body, having zoning authority, within 90 days if the ownership of the property changes;
 - f. The owner agrees to plant a cover crop including pollinator habitat under the solar panels to reduce erosion and to maintain soil fertility;
 - g. The owner agrees to maintain the existing drainage on the property during the life of the project;
 - h. The owner agrees to notify any new landowner within 90 days of the requirements listed in the Amended Agreement;
 - i. The owner must obtain approval from the local governing body, having zoning authority, and the Michigan Department of Agriculture and Rural Development for extension of the time period the solar panels are located on the property.

Questions and Answers

1. **Question:** Why does the drainage need to be maintained on the property where the solar panels are located?

Answer: It is important to maintain the drainage so the land may be restored to agricultural use. Also if the drainage is not maintained, the land may revert into a wetland area which may come under State of Michigan regulation. If the land becomes a wetland regulated by the State of Michigan, the land may not be used for farming.
2. **Question:** While the solar panels are in place will my land remain designated as Qualified Agricultural Land? This designation provides an exemption for up to 18 mills of school operation millage and makes the land eligible for a Qualified Agricultural Land Affidavit which would keep the taxable value of the property capped in the event of a sale of the land to another landowner.

Answer: It is not clear whether the land would lose the Qualified Agricultural Land designation once the solar panels are installed. It is important to check with your local assessor to determine how the land will be classified for purposes of taxation.
3. **Question:** As a landowner I am signing an Amended Agreement with the State of Michigan which commits me to be responsible for the removal of the solar panels, restoration of the site to agricultural use, maintaining the drainage, planting a cover crop beneath the solar panels, and to provide financial assurance that these commitments will be accomplished. Why am I required to do this when the Solar Energy Developer is installing the solar panels?

Answer: As the landowner and Amended Agreement holder you are required to assure these requirements are met. As part of your negotiations with the Solar Energy Developer, you may wish to designate all or some of these commitments to the Solar Energy Developer as part of your lease or contract.
4. **Question:** Will my land continue to be enrolled under the Farmland and Open Space Preservation Program (PA 116) while I am under contract/lease with the Solar Energy Developer?

Answer: Yes. Your land will continue to be enrolled in the PA 116 Program, however you may not claim tax credits while the solar panels are located on your property.
5. **Question:** Is it possible to request an early release from the PA 116 Amended Agreement while the land is under contract/lease with the Solar Energy Developer?

Answer: Yes. If the land is under contract/lease with the Solar Energy Developer or if the land or landowner qualifies for early release from the Amended Agreement, an application may be made to MDARD for removal of the land from the Amended Agreement. As with all releases from Agreements under the PA 116 Program, if tax credits have been claimed, there is a required repayment of a portion of the tax credits claimed under the Agreement. Since you are not able to claim tax credits under the Amended Agreement, the Michigan Department of Agriculture and Rural Development will be asking for a determination of the tax credits claimed

for the seven years preceeding the execution and recording of the Amended Agreement. Those tax credits will be the basis for the calculation of the repayment amount for requests for early termination of the Amended Agreement.

6. **Question:** What happens when my Amended Agreement expires and I wish to extend for a minimum of seven years?
Answer: When the Amended Agreement is no longer active and it reverts back to a PA 116 Agreement (Solar Energy Developer no longer involved), send a written request for the extension indicating the number of years and the Agreement number.
7. **Question:** What happens when my Amended Agreement expires?
Answer: When the Amended Agreement expires or the Farmland Agreement expires, there may be a payback for the amount of tax credits claimed during the last seven years of the term of the Agreement. If a lien has been filed, no future lien will be less than a previous lien.
8. **Question:** May I place solar panels on my PA 116 property for personal use?
Answer: Yes. Solar panels for personal use may be placed on property enrolled in PA 116, as long as the solar panels are consistent with the farming operation.
9. **Question:** What happens to the Amended Agreement when the solar panel lease/contract has expired?
Answer: The landowner will be issued a PA 116 Agreement, with the portions referencing the solar facility removed from the wording. The term of the Agreement will be the same as the Amended Agreement or it may be extended by the landowner as long as the term does not exceed 90 years.

SOURCE:

Michigan Department of Agriculture and Rural Development
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