

Navigate the development of solar projects, also known as photovoltaic or PV, in accordance with local and New York State agricultural policies.

Many local governments are implementing strategies to review solar installations within their community by updating their comprehensive plan and adopting zoning requirements for the siting, installation, and decommissioning of large-scale solar arrays. To protect productive farmland, municipalities should consider siting the non-farm solar energy projects on less productive land. There is a distinction between farm-related solar systems, and solar systems built on agricultural land that primarily serve off-site uses.

What is an agricultural district?

New York State's Agriculture and Markets Law provides a bottoms-up approach for the protection of viable farmland by including land within an Agricultural District. Landowners petition the County Legislature to include their land into an Agricultural District, affected municipalities are notified, a public hearing is held, and the County Legislature creates or modifies an Agricultural District by adding or removing land from the District. Farm operations located within an Agricultural District are provided certain protections, such as limited protection from eminent domain and condemnation; unreasonably restrictive local rules, regulations, laws, and ordinances; agricultural assessment; protection from private nuisance lawsuits; and other benefits.

What is an agricultural assessment?

An agricultural assessment is an assessed value placed on eligible land that is used for agricultural production, based on the land's ability to produce a crop. The taxes paid on the property by the owner are based on the agricultural assessment.

Land inside and outside of an agricultural district is eligible for an agricultural assessment. To qualify, farmers must produce crops, livestock, or livestock products on seven plus acres of land and have an average gross sales of \$10,000 in the prior two years. Land that is used in agricultural production that has less than seven acres in production must have an average gross sales of \$50,000 in the prior two years.

Additionally, a land owner receiving an agricultural assessment inside an agricultural district annually commits the land to an agricultural use for the next five years, or eight years if located outside of an agricultural district. Farmland outside agricultural districts are generally not eligible for other agricultural district benefits and protections.

What protections do agricultural districts offer farm-related solar?

The Department of Agriculture and Markets considers solar panel systems to be "on-farm" equipment when they are designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed the anticipated annual total electrical needs of the farm by more than 110 percent. If a local government classifies solar equipment as structures or buildings, they are deemed on-farm buildings. As on-farm equipment or buildings, the installation of solar panel systems are protected under the Agricultural Districts Law.

To ensure that the electrical output of solar equipment does not exceed the 110-percent threshold, an initial energy assessment may be required to separate farm-related energy consumption from other uses.

Further, if the solar equipment is connected by remote net metering, multiple meters must be combined to determine the electrical needs of on-farm equipment.

What laws are generally considered reasonable for on-farm solar?

Reasonable regulations for solar development include:

- A streamlined site plan review process that involves a shorter review period and fewer submission requirements.
- A building/zoning permit and compliance with the State's Fire Prevention and Building Code requirements.

What laws are generally considered "overly restrictive" for on-farm solar?

"Overly restrictive" regulations for solar development include:

- Extensive site plan regulations.
- Special use permit regulations.
- Nonconforming use requirements.
- Height restrictions and excessive setbacks from buildings and property lines.
- A Full Environmental Assessment Form (on-farm solar development is considered a Type II action in the State Environmental Quality Review (SEQR) process, which does not require EAF preparation).
- Visual impact assessments.
- Prohibiting the construction of on-farm, solar generated electricity to offset the energy demands of the farm.

Are there penalties for converting farmland to solar if that development primarily serves off-site uses?

A conversion penalty is imposed if farmland that is subject to an agricultural assessment is located in an agricultural district and is converted to a nonagricultural use within five years of the last agricultural assessment (or eight years if the farmland is located outside an agricultural district). No conversion penalty is imposed if agricultural land is converted for oil, gas, or wind energy development that does not support agricultural production. Because solar energy is not included in this exemption, the conversion penalty could apply if electrical output of solar equipment substantially exceeds (e.g., is more than 110 percent of) a farm's anticipated electrical needs.

The assessor determines whether a conversion has occurred on the basis of the facts of each case:

- Conversion is defined as “an outward or affirmative act changing the use of agricultural land” to a nonagricultural use, in New York State’s Agriculture and Markets Law.
- A conversion penalty involves a payment to capture the tax savings a property owner received while the land was under an agricultural assessment. This is limited to a five year roll-back as specified in New York State’s Agriculture and Markets Law.
- Conversion payments are equal to five times the taxes saved in the most recent year that the land received an agricultural assessment, plus interest.

When only a portion of a parcel is converted, the assessor apportions the real property tax assessment and the agricultural assessment, determines the tax savings attributable to the converted portion, and computes the conversion payment based on that portion. If the remaining land within a parcel is used for agricultural purposes and the eligibility criteria are met, that land may still receive an agricultural assessment.

Payments for the conversion of agricultural land to nonagricultural use are added to the taxes of the converted land. Properties may be subject to a tax sale if conversion penalty payments are not made. These payments generally become the landowner’s responsibility at the time of conversion. Failure to notify may result in a penalty of two times the payments owed, to a maximum of \$1,000.

Questions?

Email info@training.ny-sun.ny.gov for more information about your municipality’s individual situation.

Resources

NYS Department of Agriculture and Markets
Agricultural Districts

www.agriculture.ny.gov/ap/agsservices/agdistricts.html

NYS Department of Agriculture and Markets
Guidelines for Review of Local Zoning and Planning Laws

www.agriculture.ny.gov/ap/agsservices/guidancedocuments/305-aZoningGuidelines.pdf

NYS Department of Agriculture and Markets
Guidelines for Review of Local Laws Affecting Small Wind Energy Production Facilities and Solar Devices

www.agriculture.ny.gov/ap/agsservices/guidancedocuments/Guidelines_for_Solar_and_Small_Wind_Energy_Facilities.pdf

NYS Department of Taxation and Finance
Agricultural Assessment Information

www.tax.ny.gov/research/property/assess/valuation/agindex.htm

NYS Department of Taxation and Finance
Agricultural Assessment Overview and Conversion Penalties

www.tax.ny.gov/research/property/assess/valuation/ag_overview.htm

NY-Sun, a dynamic public-private partnership, will drive growth in the solar industry and make solar technology more affordable for all New Yorkers. NY-Sun brings together and expands existing programs administered by the New York State Energy Research and Development Authority (NYSERDA), Long Island Power Authority (LIPA), PSEG Long Island, and the New York Power Authority (NYPA), to ensure a coordinated, well-supported solar energy expansion plan and a transition to a sustainable, self-sufficient solar industry.