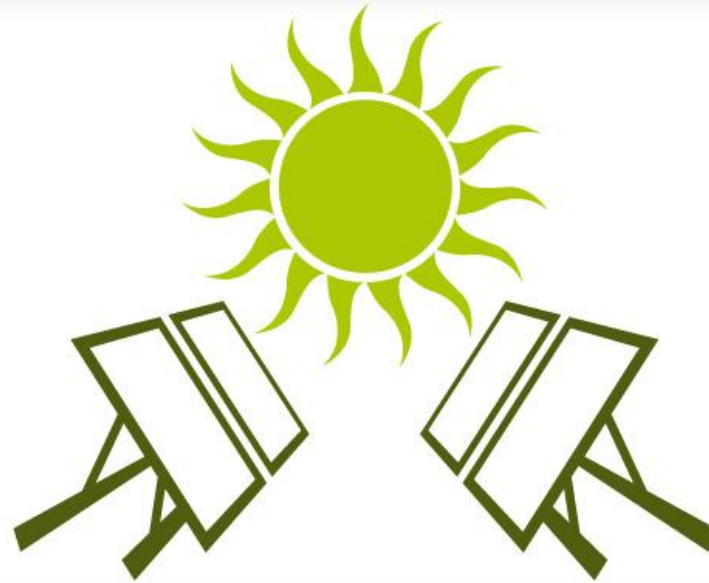


# Here Comes The Sun...



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# ST. JOHN'S SOLAR PROJECT



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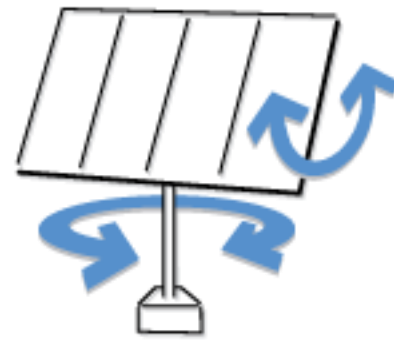
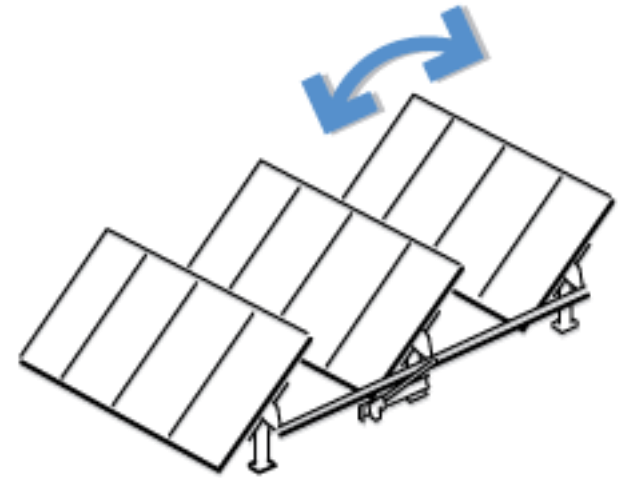


# Ground-Mounted System

# Ballasted System



# Tracking System



## 2023 SOLAR LEGISLATION (M.S. 216B.1691).

- Minnesota utilities to produce 100% carbon-free power by 2040.
- By 2035, at least 55% of an electric utility's total retail electric sales must be generated carbon free technologies.
- Encourages utilities to locate new energy generating facilities in communities where fossil-fuel-generating plants have been retired or are scheduled for retirement.
- PUC is to consider job creation and affordable electric service, particularly to low-income consumers, when evaluating projects.



# SOLAR ENERGY'S FUTURE IN MINNESOTA

- Currently, Minnesota gets only around 3% of its power from the sun.
- Many more solar plants are likely needed to meet both state and utility goals.
- **Minnesota's best solar resources are in farm country.**





- A few years ago the PUC indicated that it would no longer accept applications for solar farms in excess of 1 megawatt.
- Applications already in the pipeline will be processed.
- Likely means few if any solar farms in excess of 1 megawatt will be built unless they are owned by Xcel rather than privately developed.



# LARGE SOLAR FARMS THE NEW NORM

- Xcel's solar farm in Becker is currently the largest in Minnesota at 460 megawatt. Xcel has even larger solar farms planned.
- PUC recently approved a new project, Byron Solar, in Dodge County which would be the state's second largest:
  - \$256 million dollar project
  - 1,553 acres
  - Produce up to 200 megawatts of electricity – equivalent to a small natural gas plant.



# STATE REGULATION OF SOLAR FARMS

Solar farms are typically subject to state permitting process:

Minnesota Public Utilities Commission (PUC) has authority over site & route selection and issues permits for large electric facilities. (M.S. 216I.02, subd. 2)

“Large electric facilities” are designed for or capable of operation at a capacity of 50 megawatts or more. (M.S. 216I.03, subd. 10 & 18)



- PUC can combine separate solar energy generating systems to meet the definition of large electric facilities. (M.S. 216I.03, subd. 18)
- PUC siting and routing authority preempts local land use ordinances. (M.S. 216I.18, subd. 1)
- Applicant has option of applying to local governments that have jurisdiction over site or route for approval to build project rather than PUC. (M.S. 216I.08, subd. 1(a))
- An applicant who applies to the PUC waives their ability to apply to their local government. *Id.*



# PRIME FARMLAND RULE

- Minn. R. 7850.4400, limits use of prime farm land for solar projects **unless there is no feasible and prudent alternative**. This last phrase is important since the State has mandated to both advance solar energy production and protect prime farmland.
- In the recent case *In the Matter of the Applications of Byron Solar, LLC*, the ALJ held that although farmland would be taken out of agricultural production for the operating life of the Solar Facility it “**would not be permanently removed**” and that the loss of the farmland “**would result in a negligible loss of farmland**” in the Dodge County.



# LOCAL REGULATION OF SOLAR FARMS

- Relatively few local governments address large-scale solar installations (i.e., solar farms) in their development regulations.
- Solar farms are typically permitted as interim (IUP) or conditional (CUP) uses and subject to specific use standards to address aesthetics or minimize environmental impacts.
- Model Solar Ordinance Examples: Stearns County *Land Use and Zoning Ordinance #439*. Section 6, Performance Standards; Part 6.51, Solar Energy Systems



# HOW DOES THE TOWNSHIP BENEFIT FROM A SOLAR POWER FARM?

- Ag land where solar panels are located is usually taxed at commercial rates.
- Substations and other electrical infrastructure upgrades add to tax value.
- Power generated is taxed at \$1.20 per megawatt hour generated with County getting 80% and Township 20% of the tax revenue. **BUT ONLY FOR PROJECTS GREATER THAN 1MW.**
- Each megawatt takes up about 5 acres of land.



# IMPACTS TO CONSIDER

- During construction (roads)
- Siting infrastructure (glare, noise, security)
- Cumulative (drainage, maintenance)
- Decommissioning plans
- Impacts to neighboring residents (aesthetics)
- **NOT IN MY BACK YARD!**





# ROAD IMPACTS

- Limit roads the contractors can use during construction and decommissioning as part of CUP/IUP
- Require operator to repair any damage to roads during construction or decommissioning through a road permit agreement with each individual or company. This allows the Township to tailor the agreement to the particular use
- Any such agreement should contain provisions to protect the Township roads that operator is required to follow as a condition of the IUP/CUP





# **ROAD PERMIT AGREEMENT CONSIDERATIONS**



# Require Applicant to Pay Town's Costs and Expenses

- All administrative, legal, engineering, inspection and other costs
- Pay within 30 days of invoicing by the Township
- Provision for attorney's fees, costs of enforcement and interest if not timely paid
- Backed by a letter of credit or other security from the Applicant



# How A Bond Works

- Bond requires Township to file a claim with the bonding company
- Bonding company investigates the claim and determines if it is going to recognize or dispute the claim
- Usually requires a meeting between the parties and the bonding company to try to settle the dispute
- Bonding company may deny the claim and require the Township to litigate the matter in court
- Many bonds are “performance” bonds requiring the bonding company to complete the Applicant’s obligations under the permit. Bonding company may use their own contractors, not the Township’s choice
- **Have your attorney review the bond!**



# Require Inspections of the Roads

- Identify roads to be used for solar farm activities
- Jointly inspect, assess and determine the existing condition of roads
- Document the condition of roads through reports, pictures and video
- Township Engineer inspects roads
- Periodically inspect the road during construction/decommissioning



# Require Applicant to Repair any Damage to Roads

- Applicant may only utilize roads designated in the agreement
- Unless otherwise agreed, Applicant shall repair damaged roads within 30 days of being notified by the Town
- Applicant must repair roads immediately if emergency or Town will do so and bill applicant
- One year warranty from date Township accepts in writing finished repairs



# Other Agreement Considerations:

- Require Applicant to repair all functioning drain tile lines, culverts and waterways that may be disturbed during transportation activities
- Require Applicant to maintain all public property and drainage and utility easements damaged as a result of solar farm activities
- Require Applicant to provide the Township a bond or letter of credit to ensure that funds will be available for road repairs



# GLARE

- Panels shall not reflect sunlight so as to create glare on streets and highways. If safety hazard – give Applicant specific time frame to eliminate the hazard
- If Applicant contests the hazard, require Applicant to commission and pay for a glare study to be performed by third-party consultant mutually acceptable to the parties, which study shall determine whether such glare presents a hazard. Consultant's decision shall be binding on the parties





- The solar panels shall not reflect sunlight so as to create glare on neighboring residences. If glare, Applicant shall install screening on its or the neighbor's property in a manner that will substantially eliminate or block the glare
- Limit total height of panels above grade when oriented at the maximum tilt



# RECLAMATION IMPACTS

- Require decommissioning/reclamation when lease terminates or solar farm is no longer in use
- Limit roads the contractors can use during decommissioning
- Require Applicant to enter into a road permit agreement to repair any damage to roads during reclamation
- Require Applicant to provide the Township a long-term bond to ensure that funds will be available for decommissioning/reclamation
- Require that owner maintain the bond at all times



# AESTHETICS

- Limit height of panels above grade when oriented at the maximum tilt
- Security fences
- Landscaping/buffering (escrow for warranty to insure survival)
- Weed control
- Limit lighting



# AESTHETICS

- Maintain site at all times
- Require applicant to provide detail of interconnection to main power lines—this can add six or more power poles in an industrial-type arrangement that the neighbors will complain about. (Xcel Energy's standard design calls for 3 poles for each MW and the possibility of additional poles for upstream protection of the system)
- Consider requiring this connection to be made underground.



# OTHER CONSIDERATIONS

- Identify the type of panels to be installed
- Attached exhibits to illustrate configuration of panels
- Comply with all Local, County, State and Federal laws
- Comply with all wetland and drainage requirements
- Comply with all DNR requirements
- Obtain all necessary utility and access permits
- Require submittal of an Interconnection Agreement between the Applicant and electrical utility prior to construction of the project



# ENFORCEMENT AGREEMENT

- Be wary of developer's request to have Township forego its right to enforce the terms of the IUP/CUP
- Availability of tax credits make it likely that the entire solar farm project will be split up into many smaller "units" and will be leased to different investors
- Banks don't want to finance a project where one bad tenant can cause the revocation of the IUP/CUP for all tenants, including those who are complying with IUP/CUP terms



- Developer may request that Township give up the right to revoke the IUP/CUP, and that Developer will use internal enforcement against tenants if they violate the IUP/CUP
- **DO NOT AGREE TO WAIVE YOUR RIGHT TO REVOKE THE IUP/CUP!**
- At least one Town has agreed to revoke the IUP/CUP only over the bad tenant's area, leaving the other tenant areas alone, provided the developer pays the Township's enforcement costs, including attorney's fees



- MS 394.303, subd. 4 and 462.3957, subd. 2 both provide that any interim use permit may be terminated by a change in zoning regulations. As such many applicants will request that the Township include in the IUP approving the solar farm the following language:

*To the extent any future zoning regulation change affects the Project, the Township will deem the Project a legal non-conforming use for the term of the Permit consistent with Minnesota law.*





# QUESTIONS?

