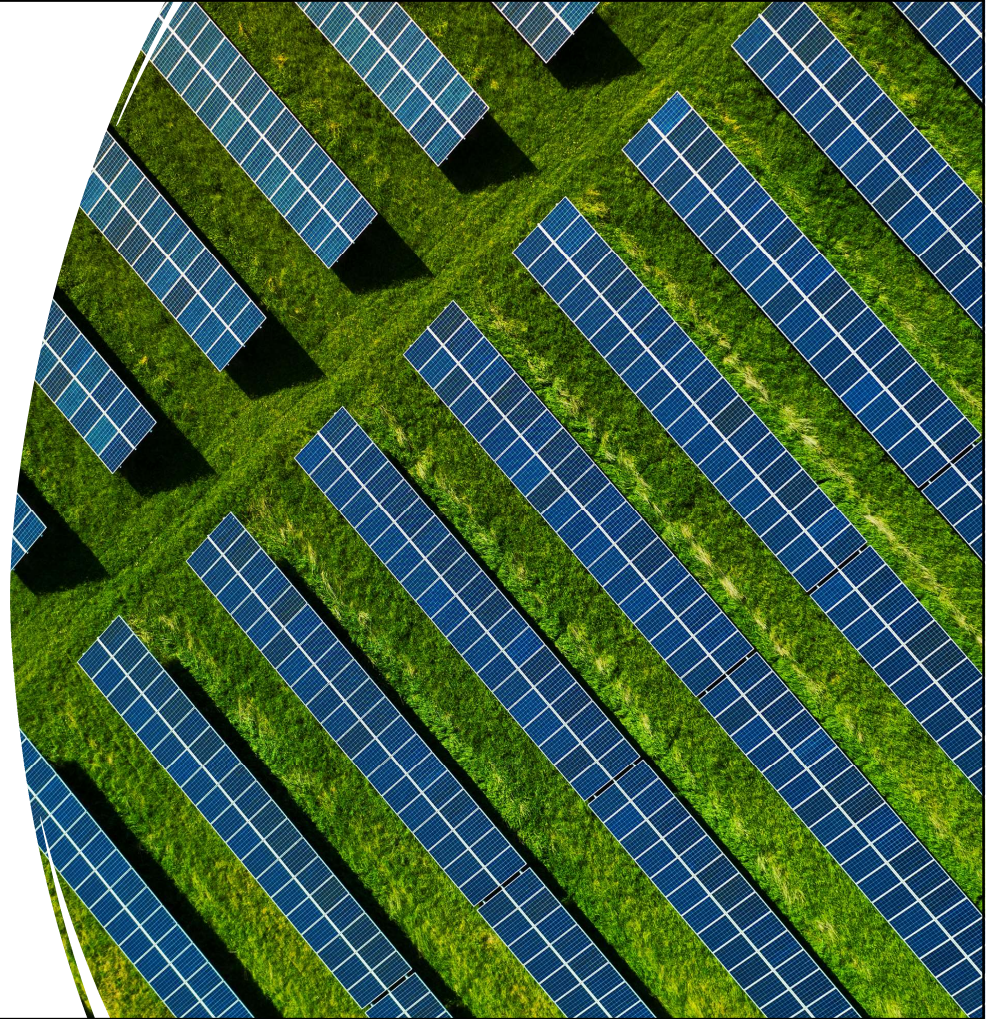


# Changes Ahead: Renewable Energy Permitting in Michigan

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Leelanau County  
October 9, 2024

**MICHIGAN STATE**  
UNIVERSITY | Extension



## Author/Presenters

MICHIGAN STATE UNIVERSITY | Extension



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### Acknowledgement:

- **Madeleine Krol**, U of M, Center for EmPowering Communities
- **Sarah Mills**, U of M, Center for Empowering Communities
- **Zona Martin**, MI-REDI team, EGLE
- **Ian O’Leary**, MI-REDI team, EGLE
- **Yingxin Wang**, MI-REDI team, EGLE



# Today's Program

- 1. Public Acts 233, 234, 235**
- 2. Options and Considerations**

## **Disclaimer**

The information presented in this program is for educational purposes only and should not be interpreted as legal advice.

Local officials are strongly encouraged to consult with a municipal attorney.

## Public Acts/Effective Dates

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<p><b>Act 233 of 2023:</b> authorizes Michigan Public Service Commission (MPSC) siting authority for utility scale wind, solar, battery storage</p>	<p><b>Effective:</b> <b>November 29, 2024</b></p>
<p><b>Act 234 of 2023:</b> amends MZEA (MCL 125.3205)- zoning ordinances subject to the new Part 8, nonconforming status approved projects after January 1, 2021</p>	<p><b>Effective:</b> <b>February 13, 2024</b></p>
<p><b>Act 235 of 2023:</b> sets new state targets for renewable and clean energy (+)</p>	<p><b>Effective:</b> <b>February 27, 2024</b></p>



## Act 235 of 2023

### Clean And Renewable Energy And Energy Waste Reduction Act

#### Renewable Energy Credit Portfolio

- 15% through 2029
- **50%** in 2030 through 2034
- **60%** in 2035 and beyond
- **Renewable energy includes**  
(MCL 460.1011.g)
  - solar, wind, water power (from moving water)
  - Others, as described in the Act including geothermal, methane digester, landfill gas (Sec. 11.g)

(MCL 460.1028)

#### Clean Energy Portfolio

- 80% in 2035 through 2039
- 100% in 2040 and each year after
- **Generates electricity or steam without emitting greenhouse gas**  
(Sec 3.h)
  - Including nuclear generation
  - Natural gas, with carbon capture that is at least 90% effective

(MCL 460.1051)

## Policy documents: pre-date Act 233

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- MI Healthy Climate Plan (April 2022)
- 2022 DTE Integrated Resource Plan
- 2021 Clean Energy Plan (Consumers Energy)

### MI HEALTHY CLIMATE PLAN

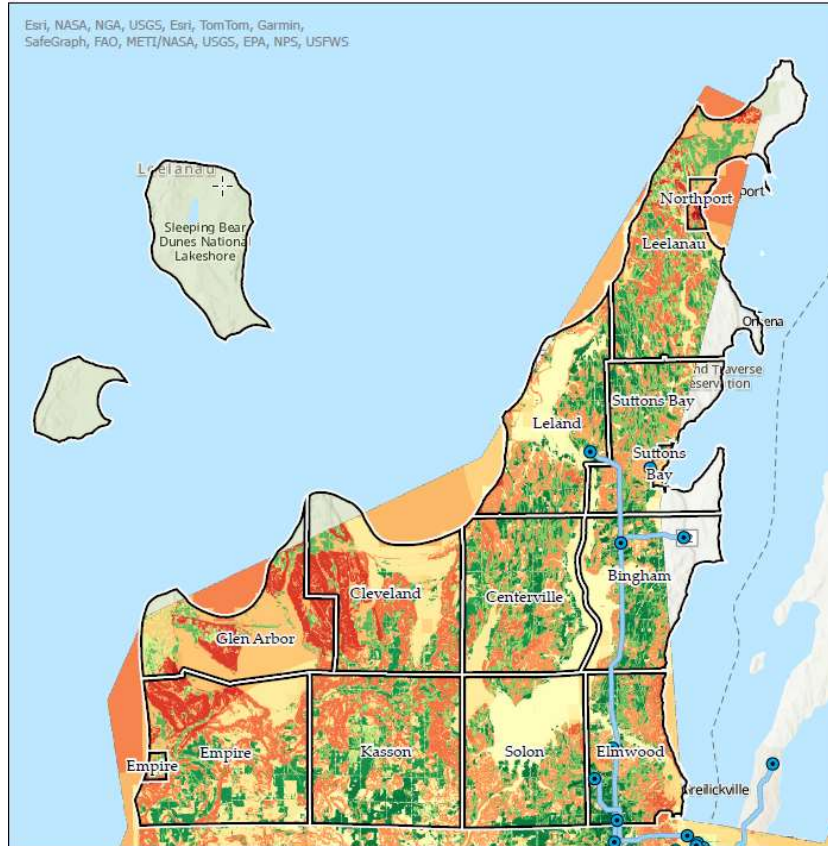


## Act 233 and Master Plans?

- Act 233 does not require applicants to refer to local master plan or zoning districts
  - The specific role of planning for utility-scale systems-? (silent)
  - Planning's role for systems below Act 233 thresholds – **yes**
- Engagement to determine community priorities
- Opportunity to review current plans to inform how *energy generating land uses* (at multiple scales) may support or conflict with community goals.



# Leelanau County Suitability Mapping (EGLE)



## Solar Suitability Map

### Leelanau County

- Substations
- Transmission Lines



Source: EGLE, Yingxin Wang, wangY3@michigan.gov

## Other Planning Considerations

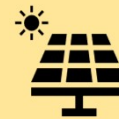
**Act 233/MPSC process contains these discretionary standards (more to come):**

- *The proposed energy facility will not unreasonably diminish farmland, including but not limited to prime farmland...farmland dedicated to the cultivation of specialty crops (460.12267 (f))*
- *If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why they were not chosen. (460.1225 (n))*

## Act 233 of 2023: Part 8- Act 295 of 2008

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- Grants MPSC new siting authority for project certification at designated thresholds (Sec. 222 (1))
- Gives developers an option to go directly to the MPSC for certificate, rather than through local zoning
- Covers expansion and repowering of existing facilities—not just new construction (Sec. 221 (g))
- Provides option for local unit of government to adopt a compatible renewable energy ordinance (CREO)



50 MW nameplate capacity  
solar energy facility



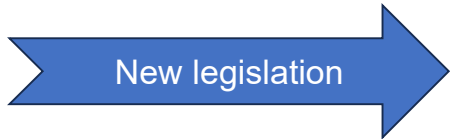
100 MW nameplate capacity  
wind energy facility



50MW nameplate capacity  
energy storage facility and  
an energy discharge capability of  
200 MW hours or more

# Solar scale

Local authority remains



Solar Energy System Type	Natural	Rural	Urban	General Urban
Accessory Roof Mounted				
Accessory Ground Mounted				
Principal Use (Small)				
Principal Use (Large)				

Fig 2. Examples of Solar Energy System Types across the Transect

## Solar- footprint in acres

Megawatts (DC)	Acres
1 MW*	5-8
2 MW	10-20
20 MW	100-200
<b>50 MW</b>	<b>250-500</b>
<b>100 MW</b>	<b>500-1,000</b>
<b>200 MW</b>	<b>1,000-2,000</b>

\* Current national average (through 2018) 1 MW provides enough power to serve about 190 homes annually. Past averages range from 150-210 homes/MW.

## Project sizes vary– cities and villages not exempt

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- **50MW solar = 250-500 acres**

- City of Lapeer solar

- **100MW wind = 38 turbines**

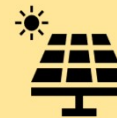
- Portions of larger project

- City of St. Louis

- **50MW storage = 5 acres**

- Literally, anywhere

**!** Exception for cities/villages that own the land, are the developer, or own the electric utility that will take service from the energy facility (Sec. 222 (4)),



50 MW nameplate capacity  
solar energy facility



100 MW nameplate capacity  
wind energy facility



50MW nameplate capacity  
energy storage facility and  
an energy discharge capability of  
200 MW hours or more

## OPTIONS- Act 233

The law gives developers a **new option** to go through the MPSC process and local options.

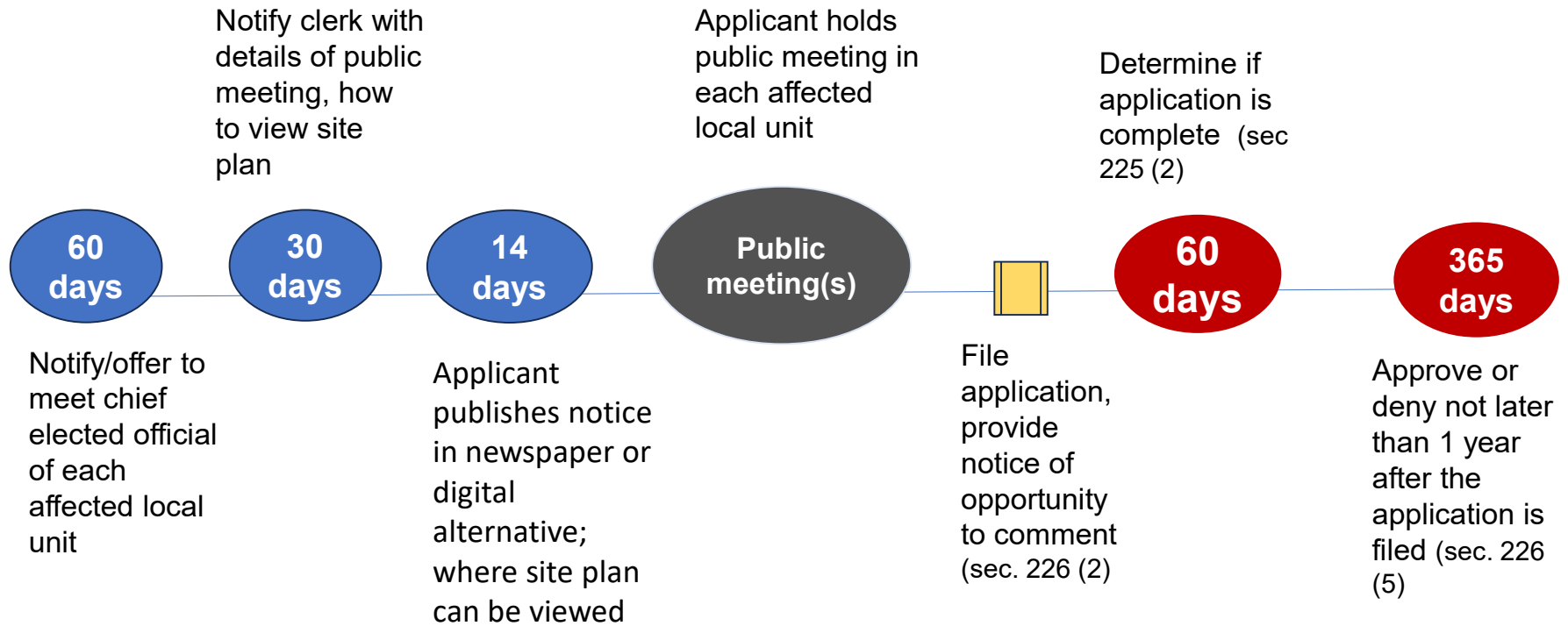
**1. MPSC:** A local unit of government with zoning may request the MPSC process (222 (2)).

**2. CREO:** Compatible Renewable Energy Ordinance (CREO)  
Guarantee the developer first goes through the local process.

**3. Workable Ordinance:**  
Go through local zoning... with a *workable ordinance*

**4. Unworkable Ordinance:**  
Start with local zoning... likely to end up at MPSC

# MPSC Process (MCL 460.1223)





## MPSC Process (MCL 460.1224, 225, 226)

### MPSC (STATE) Submittal Requirements (Pg. 5, 6, 7, 8)

#### **(Sec. 224)**

- Site plan

#### **(Sec. 225- sample)**

- EGLE consultation Impacts on television, microwave signals, GPS, etc
- Stormwater
- Fire response
- Decommissioning Plan

#### **(Sec. 226- sample)**

- Reasonable feasible alternative locations
- Pollinator habitat
- Not “unreasonably diminish farmland”

## OPTIONS- Act 233

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# CREO Process (MCL 460.1223 (3))

Chief elected officer of each affected local unit, **notifies applicant that they have a CREO, then applicant shall file with *each* affected local unit.**

A local unit, **shall approve or deny within 120 days** after receiving the application (Sec. 223 (3)(b)).

Time advantage over state process

60 days

30 days



120 days

240 days

Applicant shall offer in writing to **meet with *each* chief elected officer.**

**File application with each affected local unit.**

Applicant and LUG may jointly agree to **extend the process by up to 120 days** (Sec 223 (3)(b)).

Must commence construction within **5 years** from the date the permit is granted and any challenges to the permit are concluded (such as an appeal) (Sec. 223 (4))

## A CREO can be no more restrictive than...

### Solar Energy Facilities and Battery Energy Storage Facilities (Section 226 (8))

- 300 feet setback- occupied buildings on nonparticipating properties
- 50 feet setback- nearest edge of road right of way
- 50 feet setback- edge of nonparticipating properties shared property line
- 55 dBA average, measured at dwelling
- Dark-sky friendly lighting solutions



## A CREO can be no more restrictive than...

### Wind Energy Facilities (partial list- Section 226 (8)) (page 8)

#### SETBACK Distances

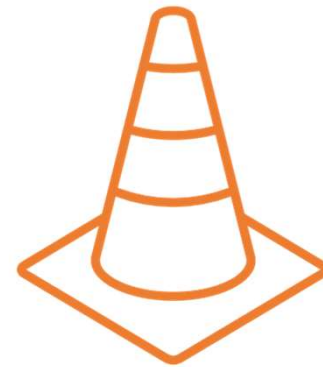
- 2.1 X height (max blade tip height) to nearest outside wall of occupied building of **nonparticipating** property
- 1.1 X height (max blade tip height) to nearest point of outside wall of occupied building of **participating** property
- 1.1 X height to nonparticipating property lines
- 1.1X height to centerline of road ROW
  
- 55 dBA average, hourly measured to nearest dwelling of nonparticipating
- 30 hours per year shadow flicker limit
- Light mitigating technology (aircraft detection lighting system)



## CREO Process (MCL 460.1223 (3))

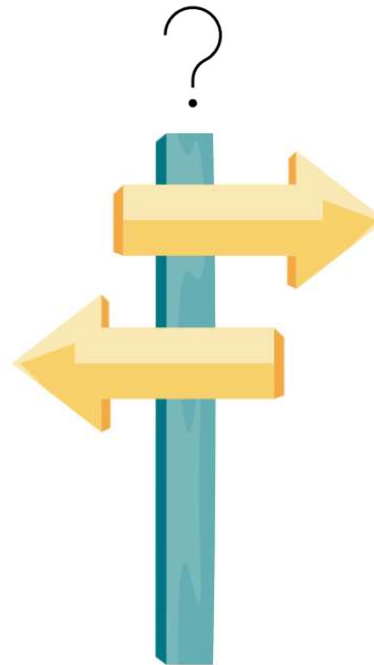
Applicant may apply to MPSC even if there is a CREO, if... (223.3.c)

- a. LUG fails to timely approve or deny application
- a. Application meets requirements in 226(8) but was denied by affected LUG
- a. LUG amends ordinance after notifying chief elected official and it is more restrictive than Section 226 (8)



## CREO– basics and cautions

- **Cannot be more restrictive than provisions included in Section 226(8) (CREO (221 (f)) pg. 2)**
- A moratorium is considered non-compatible (p. 2)
- May be an ordinance for a single technology (wind, solar, or energy storage)
- Only ALU *with zoning* will be required to have CREO to use local siting process



### FROM MPSC Draft Application Instructions (June 1, 2024)

“Any provision in PA 233 is an acceptable provision in a CREO, as long as the requirement utilized by the affected local unit (ALU) is not more restrictive than the requirement for the Commission outlined in the statute.”

## Nothing else can be in a CREO?

### This is nuanced and evolving.... Applying under a CREO



#### [MCL 460.1223](#)

3(a) “An application submitted under this subsection shall comply with the requirements of **section 225(1)**, except for section 225(1)(j) and (s). *An affected local unit may require other information necessary to determine compliance with the compatible renewable energy ordinance.*”

Note: Some of the application requirements in Sect. 225 do not relate to a standard in **226(8)**!



## Nothing else can be in a CREO?

**This is nuanced and evolving....**

**TBD by MPSC/Application Instructions or litigated**

- Compatibility with land use/master plans ?
- Sound monitoring standards (working on now)

**• Penalty for a “false” CREO (denying project that complies with Section 226(8) standards)**

- Loss of intervenor funds (75K/150K)
- May no longer be able to claim CREO status



## CREO Formatting

- ✓ **Likely in General Provisions**
  - No zoning district designation in Act 233/may not be seen as workable
  
- ✓ **Likely a Permitted Use (not a Special Land Use)**
  - Act 233 seeks to remove discretionary decision making
  - Done with Planning Commission review and decision
  - Can hire legal, planning support- escrow
  - No public hearing/would be an open meeting w/public comment
  
- ✓ **Want something different?**
  - Workable ordinance
  - MPSC

## OPTIONS- Act 233

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## Why workable ordinance can work

- PA233 gives developers a *backstop* of certainty for difficult cases, but it won't be the first choice.
  - MPSC siting is more expensive and time intensive.
  - Many developers have expressed preference on local process.

MPSC Staff encourages local-level permitting first, including promoting the RRCA in its public engagement process.

“the local process should be utilized [if] the ALU has workable ordinances or special land use approval processes [...] that allow the facilities to be sited.” \*

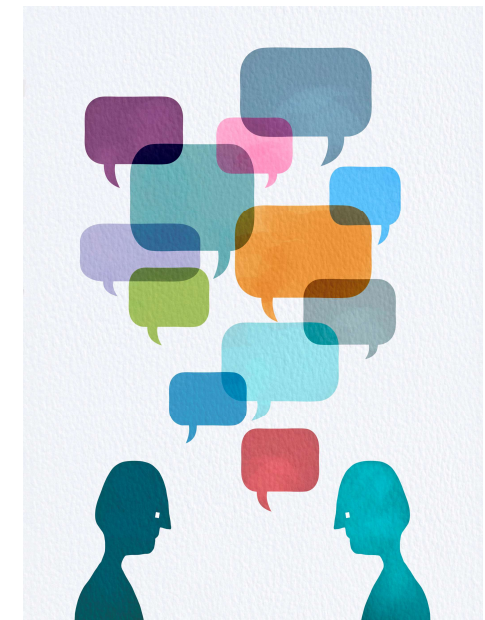
## What is a Workable Ordinance?

### Something the developer can live with

- Could mirror MPSC standards and review process. (And beyond)

### How can you tell if its workable?

- Talk to the developer
- Look at what's worked in Michigan (solar, wind)
- Will not include the most restrictive standards, or numerous restrictive standards
- May have to prioritize on high value items
- Developer will decide – what works for one may not work for another



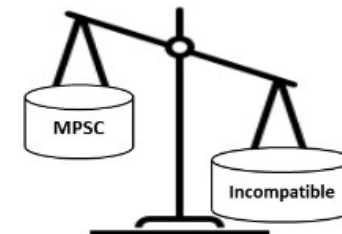
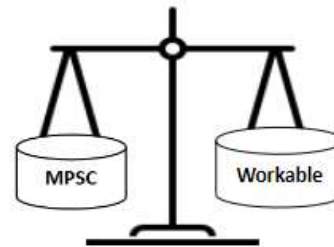
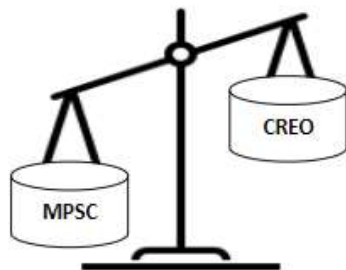
**Work with a municipal attorney.**

## Workable Ordinance = trade-offs

### Starting from the MPSC's Standards, Conditions, and Process:

1. Rank the standards and conditions in order of importance to your community
2. Identify the zoning item(s) you would change to reflect more of your community's preferences
  - Consult with municipal attorney, planning professionals, and available data
3. Identify the standards and conditions you'd be willing to give up or soften

SEE U of M sampling of "workable" ordinances from MI sampling ordinances where development occurred 2018-2023.



## Solar Screening- Workability Example

CREO

MPSC

**Condition of Approval:**  
Agreement to implement screening, approved case-by-case by Commission

Workable

**Types of screening:**  
Landscaping or Privacy Fencing

*Examples:*  
*Standards of underlying zoning district, if inadequate then PC may require along NP residential uses; or MSU-E/UM sample zoning guidebook*

Unworkable

**Types of screening:**  
Landscaping and Privacy Fencing, or Berming

*Example:*  
*Multiple rows of trees at mature height all around project*

Credit: Renewable Energy Academy, EGLE

## Screening

- Screening as an example:
  - Could be a condition of approval by the MPSC, but is **not** required in a Sec.226(8) CREO
- Imagine you have a base CREO and add *just* screening
  - If developer finds ordinance unworkable due to this item, they go to the MPSC . . . which subjects them to this same screening standard and more

Screening *alone* should be “workable,” but it’s still part of the overall balance



## Location Control- Workability Example

### CREO

All districts

### MPSC

All districts +

#### Evaluation Criteria:

- 1) Will not unreasonably diminish prime farmland
- 2) Shall consider feasible alternative development locations
- 3) Shall consider impact on local land use, including % of land dedicated to energy generation

### Workable

**! Districting !**  
**! Lot minimums !**

Implemented in a way that still provides ample and suitable land for renewable development + large patch size + access to transmission/substation is considered

### Unworkable

**! Overlays !**  
**! Districting !**  
**! Lot Maximums !**

Implemented in a way that does not provide ample and suitable land for renewable development

Credit: Renewable Energy Academy, EGLE

## Location Control

### Location control as an example:

- Adding an item to your ordinance that is not considered in a CREO or the state's process invites a higher risk of triggering unworkability

**Districting:** Specify the zoning district that large renewables can/can't go in

• **Overlays:** Your ordinance says that projects are permitted in an Overlay District, which itself can be placed to exclude certain priority areas

### • Our interpretation of a CREO: *"By right in all districts"*

- This might break workability outright, unlike fine-tuning of sound/setbacks
- Especially problematic when a developer already identified project location

Credit: Renewable Energy Academy, EGLE

# Community revenue

## MPSC Process

- **1 time- \$2000/MW** host community agreement for police, fire, public safety, other infrastructure, or other projects as agreed to (227.1). \*\*
- **1-time \$75K/\$150K** grant to local units to intervene in MSPC process (226.1)

## Local Process (CREO/Workable)

- **Renewables Ready Communities Award (RRCA)**
  - **1 time- \$5,000/MW**
    - \$2500/MW if more than one host or local permitting entity.
  - At Act 233 threshold
  - Permitted after October 1, 2023,
  - \$100 million+ in funding...

**SOLAR Payment in Lieu of Taxes (PILT) – \$7,000/MW annually** PA 108 and 109 of 2023 provide an *OPTION* to enter into a PILT agreement for 20-years for qualified solar energy facility.

## Anticipated benefits of each path

### MPSC

- Easier/cheaper
- Push controversy to state
- Minimal workload for community
- Host community agreement, intervener funds

### CREO

- Attract developers
- Ensure proposals stay local
- RRCA
- Minimal municipal workload

### Workable

- Prioritize a few key community preferences
- Maintains local process
- RRCA
- If called “incompatible” still maintains intervenor funds

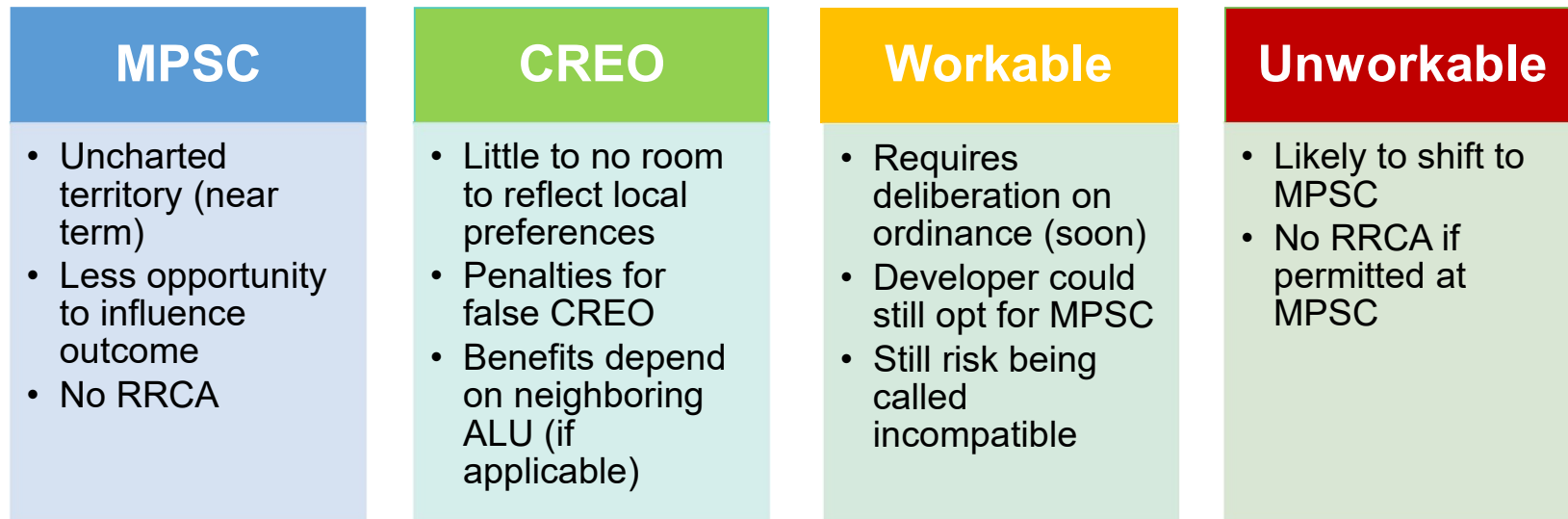
### Unworkable

- Express all community preferences
- No municipal workload
- Responsibility shifts to MPSC
- Host Community Agreement and intervenor funds, if goes to MPSC

Source: EGLE, Renewable Energy Academy

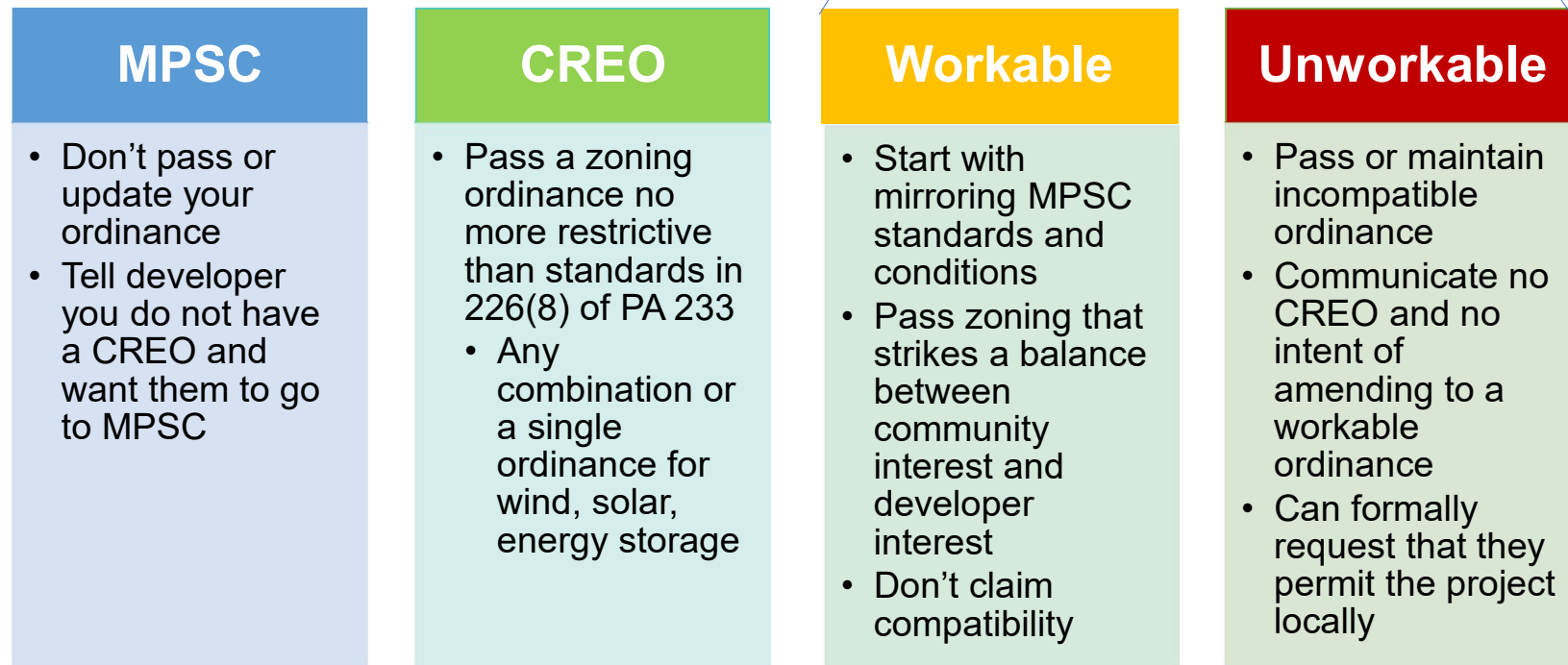
## Anticipated drawbacks of each path

**Incompatible:** Developer can call MPSC



Source: EGLE, Renewable Energy Academy

## How (work with your municipal attorney)



Source: EGLE, Renewable Energy Academy

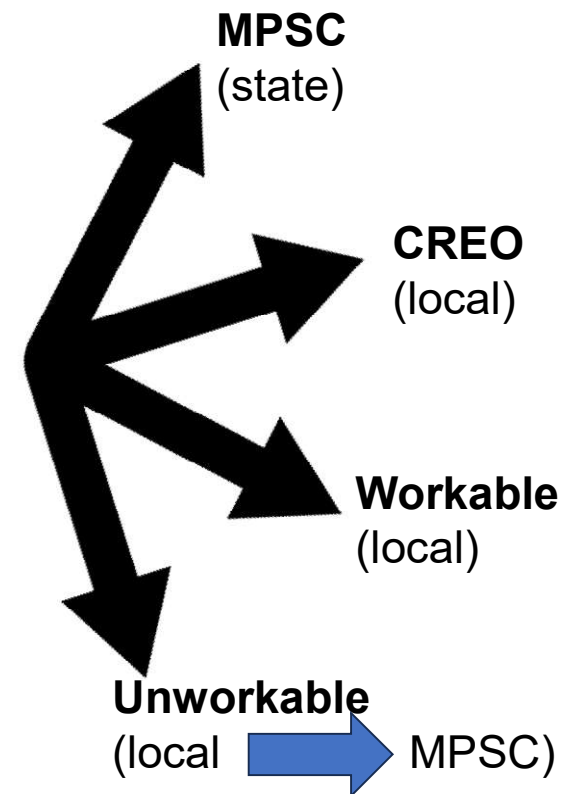
## What to do next?

### Talk to your neighbors and constituents

- What are the good, the bad, the trade-offs?
- What does the path toward a decision look like?
- Consider sharing attorney if multiple local units
- Watch for MPSC Administrative Rules (Oct.?)

### Should we wait....?

- Applicants can go to MPSC if current ordinance is not workable/no CREO- after November 29, 2024
- Is a project eminent or in discussion?
- Check MISO queue

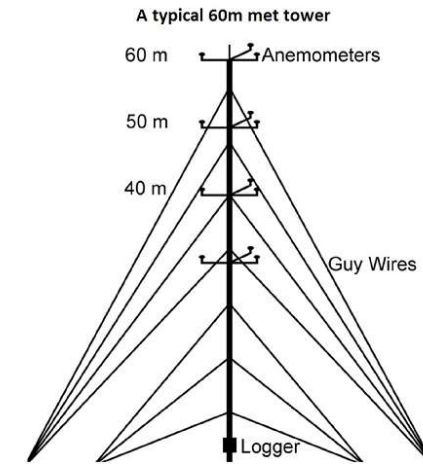


# Wind-Solar Testing Activities Zoning Preemption

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## Act 233 (MCL 460.1231)

- (1) A local ordinance shall not prohibit or regulate testing activities undertaken by an electric provider or independent power producer for purposes of determining the suitability of a site for the placement of an energy facility.
- Temporary Meteorological Evaluation Towers (MET) wind testing (60-90 meters)
  - Installed for approximately 1-2 years
- Temporary solar resource testing and solar monitoring equipment



FYI



## Resources

- Mary Reilly, MSU Extension, [reillym8@msu.edu](mailto:reillym8@msu.edu)
- **Madeleine Krol**, U of M, Land Use Specialist, [krol@umich.edu](mailto:krol@umich.edu)
- Sarah Mills, U of M, [sbmills@umich.edu](mailto:sbmills@umich.edu)
- Zona Martin, EGLE, [martinz2@michigan.gov](mailto:martinz2@michigan.gov)
- Yingxin Wang, EGLE (Suitability Mapping) [wangY3@michigan.gov](mailto:wangY3@michigan.gov)

### Training:

MTA- CREO Sample ordinance available!

U of M= sample CREO available (a little different)

- Eventual updated wind/zoning guidebooks and MSUE Resources
- Sample CREO (hosted on U of M site)
- Components of workable ordinances (from existing MI ordinances 2018-2023)
- Your municipal attorney

## Resources

- Resources/FAQs

- <https://graham.umich.edu/media/files/FAQ-How-HB5120-Works.pdf>
- <https://graham.umich.edu/project/MI-energy-siting>
  - Sample CREO, Workable Ordinances Data, FAQs

MISO Queue- Active Project map-

<https://giqueue.misoenergy.org/PublicGiQueueMap/index.html>

- Events

### Renewable Energy Academy Workshops (EGLE)

- **October 8, 2024 (10-3, deep dive/workshop)**  
**[West Michigan Shoreline Regional Development Commission Workshop](#)**  
**Registration Deadline: October 1, 2024**  
Muskegon Community College, 221 Quarterline Rd., Muskegon, Michigan.  
Counties in Region XIV include Lake, Mason, Muskegon, Newaygo, and Oceana.