



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION



SENATE BILL 618

SOLAR-USE EASEMENTS

ADVICE FOR APPLICANTS, CITIES, AND COUNTIES

Senate Bill 618 (Statutes of 2011, Chapter 596) authorizes the parties to a Land Conservation (Williamson) Act or Farmland Security Zone contract, after an eligibility determination and management plan review conducted by the Department of Conservation, in consultation with the Department of Food and Agriculture, to mutually agree to rescind a contract (or a portion of) in order to simultaneously enter into a solar-use easement that would require that the land be used for solar photovoltaic facilities for a term of 20 years, or if the landowner requests, for a term of not less than 10 years.

On February 1, 2014, regulations to implement the State's solar-use easement statutes (SB 618) became official. Together with the SB 618 statutes, these regulations establish the procedures, fees, standards, and criteria for solar-use easements between agricultural landowners and cities and counties that are parties to Land Conservation and Farmland Security Zone Act contracts.

The State's solar-use easement statute (Government Code § 51191 through § 51191.8), the California Department of Conservation (Department) regulatory code sections (14 California Code of Regulations § 3100 through § 3117), and related Revenue and Taxation Code § 402.1 are referenced throughout this advice paper. For the complete text of each code section, see the Department of Conservation's webpage on [Solar-Use Easements](#).

Criteria for Entering into a Solar-Use Easement

[Government Code § 51191](#) (General Provisions) states that a parcel or parcels are eligible for rescission of a Land Conservation (Williamson) Act or Farmland Security Zone contract pursuant to GC § 51255.1, and placement into a solar-use easement if the following criteria are met:

1) *The land meets either of the following:*

- a) *The land consists predominately of soils with significantly reduced agricultural productivity for agricultural activities due to chemical or physical limitations, topography, drainage, flooding, adverse soil conditions, or other physical reasons. Or,*
- b) *The land has severely adverse soil conditions that are detrimental to continued agricultural activities and production. Severely adverse soil conditions may include, but are not limited to, contamination by salts or selenium, or other naturally occurring contaminants.*

2) *The parcel(s) are not located on lands designated as Prime Farmland, Unique Farmland, Or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program.*

- a) *Exceptions¹ for land classified as above must demonstrate that circumstances exist that limit the use of the parcel(s) from agricultural activities, and that eligibility must be determined by both the Department of Conservation and the Department of Food and Agriculture.*
- 3) *Demonstration that even under the best currently available management practices continued agricultural practices would be substantially limited due to the soils reduced agricultural productivity from chemical or physical limitations.*
- a) *A recent soils test demonstrating that the characteristics of the soil significantly reduce its agricultural productivity.*
 - b) *An analysis of water availability demonstrating the insufficiency of water supplies for continued agricultural production.*
 - c) *An analysis of water quality demonstrating that continued agricultural production would under the best currently available management practices, be significantly reduced.*
 - d) *Crop & yield Information for the past six years.*
- 4) *If the Department's of Conservation and Food and Agriculture determine that land is eligible for a solar-use easement, then the landowner shall provide the city or county with a proposed Soil Management and Site Reclamation Plan, which shall then be forwarded to the Department of Conservation for the Department's review, comment and provision of recommendations.*
- a) *The Soil Management and Site Reclamation Plan will describe how the soil will be managed during the life of the easement, how impacts to adjacent agricultural operations will be minimized, how the land will be restored to its previous general condition, as it existed at the time of project approval, upon termination of the easement.*

REQUIRED DOCUMENTATION AND SUPPORTING DATA

Eligibility Application Materials

An application for a solar-use easement shall be submitted by the landowner to the city or county that is a party to the Land Conservation Act or Farmland Security Zone contract. Once the city or county has determined that they wish to proceed with the request for a solar-use easement, they will review the application for completeness, and will forward the application for eligibility and all supporting documents² to the Department for review and comment³. (CCR § 3102)

¹ The exceptions are based on data required for the eligibility application, GC §51191(b)(1) through (5), and the Department's SB 618 implementing regulations (14 CCR § 3103 – § 3107), outlined in the eligibility application materials.

² Pursuant to CCR § 3102 through § 3109, § 3112, GC § 51191, § 51191.3, and § 51192.1.

³ Department review times are to be consistent with the Permit Streamlining Act (GC § 65920) and GC § 51284.1.

The application for eligibility shall include⁴:

- The project name and/or number assigned by the City/County
- A list of the APN's (or portions thereof) associated with the project
- The total number of acres currently under contract on which the proposed project is located
- A location map⁵ of the project site, including parcel boundaries and individual field locations
- The current farmland classification⁶ for the project site per the Farmland Mapping and Monitoring Program
- The project start date, its projected life, and its projected energy production
- A written narrative describing the facts that are being used to support the eligibility application
- Department of Conservation's consultation fee⁷ (CCR § 3100)
- Any information that supports the application for eligibility (as listed in CCR §3104-§3107)

WRITTEN NARRATIVE REGARDING ELIGIBILITY BASED ON SOIL, CHEMICAL, OR PHYSICAL PROPERTIES

The written narrative shall include a factual description demonstrating that, even under the best currently available cultivation and management practices continued agricultural use of the proposed solar-use easement area is substantially limited due to chemical or physical properties of the soils found on the site. The narrative shall include:

1. Reference to USDA NRCS soil survey information for the proposed easement area, including:
 - a. A soil map that clearly delineates the soil mapping units found on the site.
 - b. The land capability classification, indicating whether the land is irrigated or non-irrigated, for each soil mapping unit.
 - c. The soil survey description of the primary physical or chemical limitation(s) to agricultural use for each soil mapping unit.
2. The existing agricultural use(s) on the solar-use easement site.
3. A discussion of the typical cultivation and management practices used to carry out the uses

⁴ The city or county is required to only submit those documents necessary to determine eligibility according to [CCR § 3102\(c\) through § 3107](#). If the Department determines the land is eligible, the city or county shall then forward all additional and supporting documents (as outlined in [CCR § 3108](#)) to the Department for review and comment.

⁵ All maps may be submitted in either paper or electronic (GIS) format.

⁶ Farmland classifications can be found on the [California Important Farmland Finder](#) interactive maps online.

⁷ The application packet shall include a consultation fee made payable to the [Department of Conservation](#). The landowner has the option to submit the entire application fee of \$7,100 at the time of filing, or pay the fee in two increments. The first increment, of \$4,900, covers the Department's cost to review the application and determine eligibility. If the Department determines that the land is eligible for placement into a solar-use easement, the landowner may pay the second increment of \$2,200 when the Soils Management and Site Restoration Plan are submitted.

described in (b) above.

4. The existing agricultural conditions in the surrounding area and county.
5. A discussion of the best currently available agricultural management practices⁸ and an explanation as to whether one or a combination thereof would allow continued agricultural production on the project site.

SOIL TEST REPORT

If the eligibility application is based on soils with significantly reduced agricultural productivity or severely adverse soil conditions detrimental to continued agricultural activities and production, the application shall include factual data specific to the site's soil conditions to support the eligibility, including:

1. A soil test report and/or a soil survey⁹ demonstrating that the present characteristics of the soil significantly reduce the soil's agricultural productivity. The soil test report or survey shall have been conducted by a certified soil scientist or certified professional soil classifier¹⁰.
2. The soil test report shall include the name, employer, date of licensure, and contact information of the certified soil scientist or certified professional soil classifier who conducted the soil test.
3. All soil samples utilized in the soil test report shall be taken from the land proposed for the solar-use easement. The soil test report shall include a map that shows the locations on the solar-use easement land where the soil samples were taken.
4. The soil test shall be conducted no more than one (1) year prior to submission of the application for a solar-use easement.

WATER AVAILABILITY ANALYSIS

If the eligibility application is based upon insufficient water availability, the application shall include an analysis of water availability demonstrating the insufficiency of water supplies for continued agricultural production and shall indicate the source or sources of water used for agricultural production on the proposed solar-use easement land. This analysis shall include factual data specific to the site's water availability conditions to support eligibility, including, as applicable, one or more of the following:

1. The source or sources of surface water used for agricultural production on the solar-use easement land including the number of acre feet delivered and applied for each of the immediately preceding six (6) years.

⁸ More information on agricultural management practices and soil health can be found at:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/health/mgmt/> and
<http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/health/resource/>.

⁹ For more information about recommended soil sampling tests and techniques, please refer to the USDA Soil Quality Test Kit Guidelines:

http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/health/assessment/?cid=nrcs142p2_053873.

¹⁰ A list of certified professional soil scientists can be found at:

<https://portal.sciencesocieties.org/BuyersGuide/ProfessionalSearch.aspx?Token>.

2. A characterization of the groundwater available to the solar-use easement land including the well depth, the amount of groundwater applied, the groundwater fluctuation over the immediately preceding six (6) years, and saline water depths.
3. A description of any dryland farming on the solar-use easement land.

WATER QUALITY ANALYSIS

If the eligibility application is based upon an assertion that the soil is marginally productive or physically impaired as a result of the quality of water available to the solar-use easement land, the application shall include an analysis of water quality demonstrating that continued agricultural production would, under the best currently available management practices, be significantly reduced. The analysis shall include factual data specific to the water quality conditions available to the site to support the eligibility, including, as applicable:

1. A qualitative description of surface water source(s) that is focused on chemical content and other constituents with the potential to impact agricultural productivity¹¹.
2. A qualitative description of groundwater that is focused on chemical content and other constituents with the potential to impact agricultural productivity.
3. A description of water source blending, pre-treatment, and other techniques used to mitigate water quality issues, and the limitations of such techniques specific to the site.

CROP AND YIELD INFORMATION

If the eligibility application is based upon an assertion that the soil is marginally productive or physically impaired in a manner that has impacted crop yield, the application shall include factual data specific to the site's crop and yield for the immediately preceding six (6) years. The crop and yield information for cultivated lands shall include:

1. Annual cropping history and yields, by parcel and individual field location, over the immediately preceding six (6) years, as indicated on the map of the proposed solar-use easement area (mentioned above in the list of items necessary for the application for eligibility).
2. A comparison of crop yield information for the site against average crop yields for the same crop on a county basis. County-level data may be acquired from the county agricultural commissioner's office.
3. If applicable, supporting information in the form of crop insurance or disaster assistance approvals may be provided as evidence of crop and yield impacts.

COMPLETION OF THE APPLICATION REVIEW PROCESS

Upon the Department's determination that the site proposed for a solar-use easement is eligible, the Department will contact the city or county and request the following documentation to

¹¹ Reference information regarding the impact of various constituents on crop productivity can be found at: http://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/search.shtml.

complete the application review process:

- The Soils Management and Site Restoration Plan¹²
 - A copy of the Restoration Security¹³ for the Soil Restoration Plan (if required)
- The valuation¹⁴ for the rescission fee
- The remainder of the Department of Conservation's consultation fee (if not paid in full with the eligibility application).

SOIL MANAGEMENT AND SITE RESTORATION PLAN

The landowner shall submit a proposed Soil Management and Site Restoration Plan to the city or county that describes the site including the information required by CCR § 3102. The plan shall describe how the soil will be managed and protected for future agricultural use during the life of the easement, provide for site restoration, and describe how impacts to adjacent agricultural operations will be minimized.

The city or county shall forward the proposed Soil Management and Site Restoration Plan to the Department for review and comment. A management plan shall consist of two components, a soil management component and a site restoration component.

Soil Management

The soil management component shall include a description of the soil management practices to be utilized on the solar-use easement land including:

1. The construction activities, including, but not limited to soil grading and its effect on the current condition of the easement's soils.
2. Soil management during the life of the easement, including, as applicable, but not limited to:
 - a. Soil erosion protection;
 - b. Concurrent grazing activities;
 - c. Irrigation;
 - d. Maintenance activities.
3. The effect of soil removal activities, if any, upon the condition of the easement's soils.

¹² Pursuant to CCR § 3108 & § 3109.

¹³ For term and self-renewing easements (limited term), a restoration security amount is required. It is an option for the city or county to decide if a restoration security is required for perpetual easements (CCR § 3111).

¹⁴ See GC § 51255.1(c) for information on the Assessor's role in determining the valuation and sending notice to all parties prior to approval of a solar-use easement.

Site Restoration

The site restoration component shall include a plan that describes how the solar-use easement land will be restored to the same condition that existed at the time of approval or acceptance of the solar-use easement, at the termination of the easement, which shall include:

1. The procedures to be used to restore the site, which may include but is not limited to re-grading and storage and removal of structures and equipment.
2. The provisions for monitoring the progress of restoration of the site, until restoration is complete and financial assurances are released.

If the landowner or project operator proposes to change or expand the project in such a way that an existing, approved management plan would no longer be adequate to ensure restoration of the solar-use easement land, the solar-use easement landowner shall submit, for approval by the city or county, a proposed amendment to the approved management plan. The amended plan shall be adequate to ensure the restoration of the solar-use easement land to the same condition that existed immediately prior to the time of project approval, upon termination of the easement.

At any time that the solar-use easement landowner, the city, or the county determines that the solar-use easement land cannot be restored in accordance with the approved management plan because of new information that was not available when the permit was issued, a solar-use easement landowner shall submit a proposed amendment to the site restoration component of the management plan. The amended plan shall be adequate to ensure the restoration of the solar-use easement land to the same condition that existed immediately prior to the time of project approval, upon termination of the easement.

Restoration Security

For term easements and self-renewing easements (limited term), landowner applicants shall post a restoration security instrument. The city or county shall determine what type, and the amount, of financial assurances or financial instruments the landowner shall provide to ensure that restoration of the easement land is performed in accordance with the approved soil management plan¹⁵. It is the discretion of the city or county whether a restoration security shall be required for a perpetual solar-use easement.

The restoration securities shall be in an amount determined by the city or county to be adequate to fund the restoration of the easement land to the same conditions that existed immediately preceding the approval or acceptance of the easement by the time that the easement terminates.

The restoration security instrument shall be in effect at the commencement of the project and remain in force at all times until the bond or restoration security instrument is released by the city or county.

The restoration security shall be sufficient to cover all restoration costs. "Restoration costs" shall include all costs calculated to be incurred to restore the solar-use easement land to the same condition that existed at the time of approval or acceptance of the easement and in accordance

¹⁵ Information regarding types of restoration security instruments and definitions can be found in [CCR § 3112](#).

with the approved management and restoration plan, including, to the extent applicable:

1. The cost of the physical activities and materials necessary to implement the approved management plan, including:
 - a. Re-grading;
 - b. Re-vegetation, including monitoring;
 - c. Labor and supervision;
 - d. Equipment;
 - e. Mobilization and transportation;
 - f. Removal and disposal of buildings, structures, and equipment;
 - g. Soil tests;
 - h. Fencing;
 - i. Liability insurance;
 - j. Any other necessary restoration procedures
2. The city or county's costs and costs for third party contracting for each of the activities required by the soil management and restoration plans.
3. A contingency amount not to exceed 10 percent of the restoration costs.
4. The calculated amount shall not include the cost of completing construction or continued operation of the solar project on the solar-use easement land.

It shall be the sole responsibility of the solar-use easement landowner to provide the city or county with sufficient information to demonstrate that the amount of restoration security is adequate to restore the solar-use easement lands in accordance with the approved management plan and the requirements of GC § 51191.3(c).

The restoration security shall be submitted to the city or county who shall review and approve the security prior to the commencement of operations on the project site. The city or county shall submit a copy of the proposed restoration security and the documentation relied upon in calculating the amount of the proposed restoration security to the Department. The Department may review, comment, and make recommendations upon the proposed restoration security amount and documentation.

The security shall be made payable to the city or county, in which the project is located.

The amount and validity of the restoration security shall be reviewed by the landowner no less often than once every five years, with the review submitted to the city or county for approval; the city or county may require more frequent review if the city or county determines that more frequent review is necessary to ensure compliance with the requirements of the solar-use easement.

VALUATION

Prior to the board or council agreeing to mutually rescind a contract and enter into a solar-use easement, the city or county Assessor for which the land is located, shall determine the current fair market value of the land as though it were free of the contractual restriction¹⁶. The city or county Assessor shall certify to the board or council the fair market valuation of the land for the purpose of determining the rescission fee.

At the same time, the Assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction and advise the parties, that upon their request, the Assessor shall provide all information relevant to the valuation, excluding third-party information. The notice shall also advise the landowner and the Department of the opportunity to request formal review from the Assessor¹⁷.

That rescission fee shall be an amount equal to 6 ¼ percent of the fair market valuation of the property if the land was held under a Land Conservation (Williamson) Act contract, and 12 ½ percent if the land was held in a contract designating the property as a Farmland Security Zone.

FINAL APPROVAL OF THE SOLAR-USE EASEMENT

Once the city or county receives approval from the Department, finalization of the solar-use easement agreement can occur.

CONDITIONS OF APPROVAL AND MITIGATION

If the Department, in consultation with the Department of Food and Agriculture, determines that lands are eligible to be included in a solar-use easement, the city or county shall:

1. Include, as conditions of approval or acceptance of the solar-use easement and as requirements of the easement, all recommendations regarding the soil management plan that are made by the Department; and
2. Require implementation of the soil management plan.

A county or city may require that a solar-use easement include additional restrictions, conditions, or covenants that the county or city determines are necessary or desirable to restrict the use of the land to photovoltaic solar facilities. Those restrictions, conditions, or covenants may include¹⁸:

1. Mitigation measures on the land that is subject to the solar-use easement.
2. Mitigation measures beyond the land that is subject to the solar-use easement.
3. If deemed necessary by the county or city to ensure that decommissioning requirements are

¹⁶ Pursuant to [GC §51255.1\(c\)](#)

¹⁷ In cases where the Landowner or Department believes that the valuation is not accurate, they may request a Formal Review from the Assessor (GC §51255.1(c)(4) and § 51203(b)).

¹⁸ Per [CCR § 3110](#), cities and counties are allowed to inspect lands that have been placed into a solar-use easement.

met for perpetual easements, provisions for financial assurances to fund restoration of the solar-use easement land to the same conditions that existed before the approval or acceptance of the easement by the time the easement terminates.

For cancellations where a restoration security instrument is required, it shall be in effect at the commencement¹⁹ of the project.

SOLAR-USE EASEMENT AND COVENANT

A solar-use easement shall contain a covenant²⁰ with the county or city, which runs with the land, either in perpetuity or for a minimum of 20 years, or if requested by the landowner, for not less than 10 years. The easement will impose restrictions that will effectively limit the use of the land to photovoltaic solar facilities, and any other incidental or subordinate agricultural, open-space uses outlined in the easement agreement.

Upon the acceptance or approval of any instrument creating a solar-use easement, the clerk of the governing body shall record the instrument in the office of the county recorder and file a copy with the Assessor. After the easement is recorded, it shall impart notice to all persons under the recording laws of this state.²¹

RESCISSION FEE

Prior to agreeing to mutually rescind a contract and enter into a solar-use easement agreement, the board or council shall determine and certify to the county auditor the amount of the rescission fee that the landowner shall pay the county treasurer upon rescission²².

When rescission fees are collected, they shall be transmitted by the county treasurer to the State Controller and deposited in the General Fund. The funds collected by the county treasurer with respect to each rescission of a contract shall be transmitted to the State Controller within 30 days of the execution of the mutual rescission of the contract by the parties.

FOR MORE INFORMATION, PLEASE CONTACT:

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¹⁹ The Department recommends that it shall be in effect prior to any grading or building (CCR § 3109(a)(1)).

²⁰ [REDACTED]

²¹ Pursuant to [GC § 51191.6](#). Copies of **all final and recorded documents** related to the approval of the solar-use easement, including but not limited to: the Resolution, Exhibits, Soil Management and Site Restoration Plan, Restoration Security, Solar-Use Easement Agreement, and information regarding funds paid to the State Controller, should be forwarded to the Department. Emailed PDF copies are encouraged.

²² The DOC recommends that the memo line of the check include a reference to the Solar Use Easement (e.g., project name, CUP #, or APN.)