

GOVERNMENT CODE

SECTION 51191-51191.8

51191. (a) For purposes of this chapter, and for purposes of Chapter 7 (commencing with Section 51200), the Department of Conservation, in consultation with the Department of Food and Agriculture, upon a request from a city or county, may determine, based on substantial evidence, that a parcel or parcels is eligible for rescission under Section 51255.1 for 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.

(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 or parcels 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 of the California Natural Resources Agency, unless the Department of Conservation, in consultation with the Department of Food and Agriculture, determines that a parcel or parcels are eligible to be placed in a solar-use easement based on the information provided in subdivision (b) that demonstrates that circumstances exist that limit the use of the parcel for agricultural activities. For purposes of this section, the important farmland designations shall not be changed solely due to irrigation status.

(b) To assist in the determination described in this section, the city or county shall require the landowner to provide to the Department of Conservation the following information to the extent applicable:

(1) A written narrative demonstrating that even under the best currently available management practices, continued agricultural practices would be substantially limited due to the soil's reduced agricultural productivity from chemical or physical limitations.

(2) A recent soil test demonstrating that the characteristics of the soil significantly reduce its agricultural productivity.

(3) An analysis of water availability demonstrating the insufficiency of water supplies for continued agricultural production.

(4) An analysis of water quality demonstrating that continued agricultural production would, under the best currently available management practices, be significantly reduced.

(5) Crop and yield information for the past six years.

(c) The landowner shall provide the Department of Conservation with a proposed management plan describing 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 the termination of the easement. If the Department of Conservation determines, in consultation with the Department of Food and Agriculture, pursuant to subdivision (a), that lands are subject to this section, the city or county shall require implementation of the management plan, which shall include any recommendations provided by the Department of Conservation, as part of any project approval.

(d) A determination by the Department of Conservation pursuant to this section related to a project described in Section 21080 of the Public Resources Code shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) The Department of Conservation may establish a fee to be paid by the landowner to recover the estimated costs incurred by the department in participating in the consultation described in this section.

51191.1. Any county or city may enter into an agreement with a landowner pursuant to Section 51255.1 to use lands determined to be eligible pursuant to Section 51191 in a solar-use easement in the manner provided in this chapter.

51191.2. The execution and acceptance of a deed or other instrument described in subdivision (c) of Section 51190 shall constitute a dedication to the public of the use of lands for solar photovoltaic use. Any term easement and covenant shall run for a term of not less than 20 years unless a shorter term is requested by the landowner, in which case the term may be not less than 10 years. A solar-use easement for a term of years may provide that on the anniversary date of the acceptance of the solar-use easement, or on any other annual date as specified by the deed or other instrument described in subdivision (c) of Section 51190, a year shall be added automatically to the initial term unless a notice of nonrenewal is given as provided in Section 51192.

51191.3. (a) A county or city may require a deed or other instrument described in subdivision (c) of Section 51190 to contain any restrictions, conditions, or covenants as are necessary or desirable to restrict the use of the land to photovoltaic solar facilities.

(b) The restrictions, conditions, or covenants may include, but are not limited to, the following:

(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 city or county to ensure that decommissioning requirements are met, the provision for financial assurances, such as performance bonds, letters of credit, a corporate

guarantee, or other securities to fund, upon the cessation of the solar photovoltaic use, the restoration of the land that is subject to the easement to the conditions that existed before the approval or acceptance of that easement by the time that the easement terminates.

(4) Provision for necessary amendments by the parties provided that the amendments are consistent with the provisions of this chapter.

(c) For term easements or self-renewing easements, the restrictions, conditions, or covenants shall include a requirement for the landowner to post a performance bond or other securities to fund the restoration of the land that is subject to the easement to the conditions that existed before the approval or acceptance of the easement by the time the easement is extinguished. The Department of Conservation may adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2) to implement this subdivision.

51191.4. No deed or other instrument described in subdivision (c) of Section 51190 shall be effective until it has been accepted or approved by resolution of the governing body of the county or city and its acceptance endorsed thereon.

51191.5. (a) During the term of the solar-use easement, the county or city shall not approve any land use on land covered by a solar easement that is inconsistent with the easement, and no building permit may be issued for any structure that would violate the easement. The county or city shall seek, by appropriate proceedings, an injunction against any threatened construction or other development or activity on the land that would violate the easement and shall seek a mandatory injunction requiring the removal of any structure erected in violation of the easement.

If the county or city fails to seek an injunction against any threatened construction or other development or activity on the land that would violate the easement or to seek a mandatory injunction requiring the removal of any structure erected in violation of the easement, or if the county or city should construct any structure or development or conduct or permit any activity in violation of the easement, a person or entity may, by appropriate proceedings, seek an injunction.

(b) The court may award to a plaintiff who prevails in an action authorized by this section his or her cost of litigation, including reasonable attorney's fees.

(c) Nothing in this chapter shall limit the power of the state or any county, city, school district, or any other local public district, agency, or entity, or any other person authorized by law, to acquire land subject to a solar-use easement by eminent domain.

51191.6. 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 county assessor. After the easement is recorded, it shall impart notice to all persons under the recording laws of this state.

51191.7. The parcel or parcels subject to a solar-use easement shall be assessed pursuant to Section 402.1 of the Revenue and Taxation Code during the term of the easement.

51191.8. The Department of Conservation may adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2) for the implementation of this chapter.
