DEPARTMENT OF CONSERVATION

PROPOSED ADOPTION OF REGULATION

Title 14, California Code of Regulations

Chapter 6

Article 2

Section 3100 through 3118

SOLAR-USE EASEMENTS

INITIAL STATEMENT OF REASONS /

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are adopted to establish the procedural and substantive requirements for submission, consideration, and approval of solar-use easement applications, and ongoing oversight of those easements. These regulations will establish the fee to be paid by landowners to the Department of Conservation (Department) for the consultation required by Government Code section 51191. The regulations will standardize the information that must be included in an application for a solar-use easement. They will provide authority for management of solar-use easements; and the regulations will establish the standards for restoration securities and procedures to enforce solar-use easements. Unless the Department adopts these regulations, it will not have authority to recover its cost to conduct the consultation, and the only standards regarding the requirements for solar-use easements will be those codified by the Legislature in statute.

Specific Purpose and Factual Basis

Historical Background

In 1965, the Legislature, in accord with public approval of a state Constitutional amendment, adopted the California Land Conservation Act (the “Act” or the “Williamson

Act"). The Act's purposes include the preservation of the maximum amount of the limited supply of agricultural land, discouragement of premature and unnecessary conversion of agricultural land to urban uses, discouragement of discontiguous urban development patterns, preservation of open space in agricultural production, and otherwise promote the general welfare and protect the public interest in agricultural land. (Government Code section 51220; all references herein are to the Government Code unless noted otherwise).

As our state, nation, and the world have developed so has the need for energy to operate our homes, businesses, and industries. Much of the energy used is electrical energy, and, historically, much or most of that electricity has been produced by burning fossil fuels. It is now widely accepted that the burning of fossil fuels results in the production of carbon dioxide and other "greenhouse gasses." The state has undertaken a number of initiatives to arrest the production of greenhouse gas. Included within the state's efforts was the adoption of a renewable portfolio standards program that is intended to further the transformation of the state's energy production away from burning fossil fuels and toward the use of renewable resources, including the production of electricity from solar energy at utility-scale photovoltaic facilities.

In order for California to meet its 2020 renewable energy goals, it has been estimated that photovoltaic panels will need to be installed on 100,000 or more acres of land, and possibly more to meet the 2050 greenhouse gas reduction targets. Many of the same attributes that make land useful as farmland, such as an abundance of sun and wide open spaces, make the land attractive to developers of photovoltaic facilities. In addition, in order to reduce costs, solar developers look for land that is near electricity transmission lines and/or substations. The combination of these factors can result in solar developers proposing to locate their facilities on prime farmland that is subject to Williamson Act contracts.

In an attempt to stanch the conversion of prime agricultural land into utility-scale photovoltaic electricity generation facilities, the Legislature enacted Senate Bill 618 in 2011. The Legislature's purpose and intent is evidenced by its findings and declarations regarding the importance of the Williamson Act and the long-term conservation of agricultural and open-space land. Among its findings and declarations, the Legislature explicitly said that the Williamson Act "is critical to the welfare of the people of our state and nation." The Legislature also found and declared that "the long-term conservation of agricultural and open-space land ensures that a steady supply of high-quality, low-cost fresh foods is available to urban residents, provides open-space uses that benefit the public seeking escape from the closeness of urban society, protects watersheds and vast areas of wildlife habitat, and conserves world-class

agricultural soils." In addition, the Legislature acknowledged the state's goal that one-third of the state's electricity would come from renewable resources by the year 2020 and that many important benefits are likely to result from the development of those renewable resources.

With SB 618, the Legislature provided a means to balance the benefits arising from the development of photovoltaic electricity generation facilities, which are renewable resources, and the value of prime farmland. The Legislature found that "encouraging utility-scale photovoltaic energy facilities on marginally productive or physically impaired land by providing expedited termination of Williamson Act contracts, without penalty, will protect the many statewide benefits of the program while providing significant economic incentives for new solar power development."

The purpose of SB 618 was to encourage the development of utility-scale solar, photovoltaic facilities on physically impaired and marginally productive farmland instead of prime farmland that has been protected by Williamson Act contracts. To accomplish its purposes, the Legislature passed SB 618 which enacted Chapter 6.9 of Part 1 of Division 1 of Title 5 of the Government Code, (commencing with section 51190). That chapter created solar-use easements. Solar-use easements are:

> a "…right or interest acquired by a county, or city in perpetuity, for a term of years, or annually self-renewing as provided in Section 51191.2, in a parcel or parcels determined by the Department of Conservation pursuant to Section 51191 to be eligible, where the deed or other instrument granting the right or interest imposes restrictions that, through limitation of future use, will effectively restrict the use of the land to photovoltaic solar facilities for the purpose of providing for the collection and distribution of solar energy for the generation of electricity, and any other incidental or subordinate agricultural, open-space uses, or other alternative renewable energy facilities. A solar-use easement shall not permit any land located in the easement to be used for any other use allowed in commercial, industrial, or residential zones. A solar-use easement shall contain a covenant with the county, or city running with the land, either in perpetuity or for a term of years, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument provided that those reservations would not be inconsistent with the purposes of this chapter and that would not be incompatible with the sole use of the property for solar photovoltaic facilities." (Government Code section 51190(c))

In order to encourage the establishment of solar-use easements on land that is marginally productive or physically impaired, the Legislature added a provision in the Williamson Act authorizing a city or county and a landowner to mutually agree to rescind a Williamson Act contract and reenter the land into a solar-use easement.

The Legislation

SB 618 codified provisions in the Government Code and the Williamson Act that define and establish substantive standards and procedures for establishment of solar use-easements. SB 618 only allows the placement of solar-use easements on lands that are either marginally productive or physically impaired. The bill places responsibility for determining whether a parcel or parcels are eligible for placement into an easement on the Department, who must do so in consultation with the Department of Food and Agriculture. The Department must also review and comment upon the landowner's proposed management and restoration plans for the solar-use easement land. The bill also authorizes and, in some instances, requires the posting of financial securities to ensure that the land will be restored to its prior condition when the easement terminates. However, despite the extent of SB 618's prescriptions, the bill is not comprehensive enough to allow its full implementation without the adoption of regulations; therefore, the Department was authorized to adopt these proposed regulations.

Necessity of the Regulations

SB 618 was thorough in defining solar-use easements, in providing criteria for qualification of land in a solar-use easement, in requiring management and restoration plans, and in requiring the posting of financial security to ensure ultimate restoration of the land. However, the legislation does not specifically designate the information that must be submitted in order for the Department to make an eligibility determination. Neither does the legislation specify the particular components of management or restoration plans, or adequately define or provide guidance regarding the requirements for financial securities. Consequently, landowners, cities, and counties need additional guidance in order for solar-use easement applications to be complete and to ensure that only those easements that satisfy the statutory criteria will be approved. The Legislature recognized the value that regulations can provide in the implementation of SB 618 by explicitly providing the Department authority to adopt implementing regulations.

The regulations will also clarify the roles of cities, counties, and the Department in administering solar-use easements.

The regulations will establish an application fee that will be payable by landowners to the Department. The fee will cover the estimated costs incurred by the Department to conduct the eligibility determination and consult on proposed management plans. Without imposition of the application fee, the Department will be compelled to redirect resources in order to perform the duties prescribed to it by SB 618. Depending upon the volume of consultations that will be requested, such a redirection of resources could result in reduction of services currently provided by the Department's Division of Land Resource Protection.

Purpose of the Regulations

The purpose of these proposed regulations is to provide the guidance necessary for landowners, project proponents, cities, counties, and the Department to implement SB 618 and otherwise establish and administer solar-use easements. By adopting these regulations the Department will further the Legislature's goal to encourage the development of solar photovoltaic electricity generation facilities on land that is either physically impaired or only marginally productive for agricultural use.

According to SB 618, solar-use easements may be established on land that has been covered by a Williamson Act contract. The legislation was necessary because, prior to SB 618, there was no mechanism for allowing development of photovoltaic electricity generation facilities on land covered by a Williamson Act contract. Land covered by these contracts is limited to agricultural and agriculturally compatible uses. SB 618 added provisions to the law that allow rescission of a Williamson Act contract and re-entry of the land into a solar-use easement. This rescission and re-entry changes the use of the land from agricultural and agriculturally compatible uses, to the generation of electricity by photovoltaic energy. This provision is codified in the Williamson Act in new Government Code section 51255.1.

The legislation does not allow all agricultural land covered by Williamson Act contracts to be entered into a solar-use easement. Only land that is physically impaired or marginally productive qualifies for a solar-use easement. The definition of, and conditions for eligibility into, a solar-use easement are codified in the Government Code, (commencing with section 51190). New section 51191 provides the standards to determine whether land is physically impaired or marginally productive.

The Department's Division of Land Resource Protection will administer the solar-use easement program; however, SB 618 did not provide the Department with funds to carry out the Department's administrative responsibility for the program. Instead, new section

51191, at sub-section (e), authorizes the Department of Conservation to charge a fee to recover the estimated costs incurred by the Department in conducting the consultation prescribed in section 51191.

SB 618 requires the Department to review, comment upon, and determine the eligibility of proposals for the entry of land into a solar-use easement. In furtherance thereof, the Legislature authorized the Department to collect a fee to be paid by the landowner to the Department that will allow the Department to recover the estimated costs the Department incurs in conducting the consultation required in order for land to be taken out of a Williamson Act contract and placed into a solar-use easement. Instead of setting the amount of the fee in statute, the Legislature authorized the Department to set the fee. Establishment of the fee must be done by adoption of a regulation; section 3100 of these regulations will establish that fee at $7,100.

In accord with the statutory requirement that the Department make the eligibility determination, the statute requires landowners to submit certain information to the Department. That information includes: to the extent applicable, a written narrative demonstrating that even under the best currently available management practices, continued agricultural use of the property would be substantially limited due to chemical or physical limitations of the soil. Landowners must also submit, to the extent applicable, a recent soil test, an analysis of water availability, an analysis of water quality, and/or crop and yield information for six years.

The Department anticipates that its determination may also require research regarding geographic information from the state's Farmland Mapping and Monitoring Program, the USDA-Natural Resources Conservation Service, and on-site inspection.

Proposed regulations sections 3101 through 3107 will clarify the statutory criteria by specifying what information must be included with an application in order for the Department to make an eligibility determination.

SB 618 also requires landowners who seek to put their land into a solar-use easement to submit a management plan describing how the impacts to the soil will be managed and how impacts to adjacent agricultural operations will be minimized during the life of the easement. The plan must also describe how the land will be restored to its previous general condition upon termination of the easement. The Department is charged with reviewing and commenting upon these plans as well. These regulations will establish requirements for what must be included in these plans; the regulations will also include provisions prescribing when these plans shall be amended. Proposed section 3108 will establish standards for soil management and site restoration plans.

Section 3109 will clarify the authority of cities and counties and the Department to place requirements upon solar-use easements.

SB 618 did not establish provisions for inspection of solar-use easement sites. However, in order to ensure continuing compliance with the solar-use easement requirements, the Department has determined that cities and counties must have authority to conduct periodic inspections. Section 3110 will provide for site inspections as necessary to ensure compliance with the requirements for solar-use easements.

Sections 3111 through 3115 will establish standards for the restoration securities required by the statutes. Section 3111 will provide the requirements for determining the proper dollar amount of restoration securities. SB 618 allows, and, in some circumstances, requires that landowners provide financial security to fund restoration of the solar-use easement land in the event that the landowner fails to complete the restoration. Since the solar-use easement statutes give cities and counties discretion whether to require landowners to post restoration security for perpetual easements, these regulations clarify that cities and counties have discretion to determine what type and amount of security must be posted for perpetual easements.

For term easements and self-renewing easements, section 51191.3(c) of the solar-use easement statutes requires the posting of securities. However, the solar-use easement statutes do not specify the requirements that restoration securities must satisfy. Therefore, the Department has utilized the financial assurances regulations that have been adopted by the State Mining and Geology Board for restoration of mined lands pursuant to the state Surface Mining and Reclamation Act (SMARA), as the model on which to base the restoration of solar-use easement lands. The SMARA regulations are similar to the proposed solar-use regulations in that the SMARA regulations also require the restoration of agricultural land that has been disturbed for another use. In addition, the SMARA requirements have been developed and refined over many years and, therefore, provide reliable guidance to the Department, cities, counties, and landowners regarding the types of securities that are available and effective.

The solar-use easement regulations will clarify the restoration security requirements for term and self-renewing easements and also clarify that the security must be valid and in force during the entire life of the solar-use easement. The regulations will prescribe the costs that must be included in ascertaining the amount of restoration security. The regulations will also require periodic review of the security to ensure that the security remains adequate to restore the land to its agricultural use. The regulations also will require review and approval of restoration securities by the city, county, or Department.

Since the form of financial security is not clearly delineated in the statutes, Section 3112 of these regulations lists certain types of securities that will constitute acceptable restoration security. This section will also require that the security be adequate to cover all costs of site restoration.

Section 3113 will require that the city or county provide the Department with a copy of the restoration security and the calculations upon which the security was based. This section will also require that the city or county affirm that the security will provide sufficient funds to complete restoration of the site. Submission of the restoration security for review by the Department is consistent with section 51191.3(c) which requires the Department to review proposed restoration plans.

The statutes do not state when or under what circumstances the restoration security may be released. Therefore, Section 3114 will provide the requirements for reduction or release of restoration security. Since cities and counties have discretion whether to require restoration securities for perpetual easements, section 3114(a) will allow cities and counties to determine whether and when a restoration security for perpetual easements may be released.

Section 3114(b) will require that, prior to reducing or releasing the security for term and self-renewing easements, cities and counties inspect the easement, and submit a report to the Department indicating the condition of the solar-use easement land. The inspection report must be supported by facts to support their conclusion that the condition of the land has changed to a degree that the existing restoration security may be reduced without compromising the ability of the city or county to restore the solar-use easement land.

The inspection report must include a revised restoration security cost estimate, supported by facts, indicating the specific cost changes supporting reduction of the security.

If the city or county proposes to release the restoration security, the city or county must provide the inspection report, with supporting facts, demonstrating that the solar-use easement land has been restored in accordance with the approved site management and restoration plan.

Section 3114(c.) allows the Department to review and comment upon a proposed reduction or release of restoration security and to conduct its own inspection of the

solar-use easement. The Department may also notify the city or county of the Department's concurrence or disagreement with the proposal.

Section 51191.3(b)(4) allows cities and counties to permit necessary amendments to solar-use easements provided the amendments are consistent with the solar-use easement statutes. When a landowner proposes to amend their management or restoration plan, Section 3115 will require the landowner to pay the Department's cost to review the proposed amendment. Since Section 51191(c) authorizes the Department to establish a fee to cover its costs to consult, review, and comment upon management and restoration plans, the establishment of an amendment fee is consistent with the authority granted to the Department by the solar-use easement statutes. Section 3115 also provides that the amendment fee shall not exceed the $2,200 fee for consultation on the initial management plan as established by Section 3100(b) of this Article.

Provisions for forfeiture of restoration security are necessary to ensure that the security can be utilized for restoration of the easement land. Section 3116 will declare that, in addition to any other action available to enforce the easement, a city or county may take action to compel forfeiture of the restoration security. This section will also establish five specific grounds to require forfeiture of the restoration security. Establishing the grounds for forfeiture is necessary to provide notice to landowners, cities and counties regarding the circumstances when forfeiture can be required.

Sections 3117 will provide criteria to determine whether a landowner applicant is financially capable of completing restoration.

Section 3118 will require the city, county, or the Department provides the landowner with a public hearing before they determine that a landowner must forfeit their restoration security. This section will ensure that landowners will be afforded due process before their security can be forfeited.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

"Workload Cost Analysis:" Department of Conservation Division of Land Resource Protection, December 2012. The Department assumed that its cost to process an application for a solar-use easement would roughly equate with the cost it incurs to process a petition to cancel a Williamson Act contract. Consequently, the Department approximated the number of staff hours necessary to process a cancellation and utilized that calculation to estimate its costs to process a proposal for a solar-use easement. This estimation resulted in establishing the initial consultation fee at $7,100.

Tracking the Sun V: An Historical Summary of the Installed Cost of Photovoltaics in the United States from 1998 to 2011, November 2012.

SunShot: Photovoltaic Pricing Trends: Historical, Recent, and Near-Term Projections; US Dept. of Energy; November, 2012.

Tracking the Sun IV: An Historical Summary of the Installed Cost of Photovoltaics in the United States from 1998 to 2010, September 2011.

Harvesting Clean Energy; How California Can Deploy Large-Scale Renewable Energy Projects on Appropriate Farmland, October 2011.

"SB 618 Economic Study of Soil Testing Costs;" Department of Conservation, Division of Land Resource Protection; 2012.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The development of large, utility-scale solar photovoltaic facilities for the generation of electricity is still in its infancy. Therefore, the Department has no definitive, historical information regarding the economic impact that the proposed regulations will have on development of such facilities or upon other businesses. The following assessment and analysis was prepared to ascertain the likely economic impact of these proposed regulations.

The Department's assumptions of the number of large-scale photovoltaic facilities likely to be developed relied upon a policy paper prepared by the UC Berkeley Center for Law, Energy, and the Environment; UCLA's Environmental Law Center; and Bank of America. That paper is titled, "Harvesting Clean Energy; How California Can Deploy Large-Scale Renewable Energy Projects on Appropriate Farmland," (October, 2011). It was from that paper that the Department assumed that it is likely that up to 100,000 acres of land will need to be developed into large-scale photovoltaic facilities by 2020, and more by 2050.

In addition, in order to consider the potential economic impact of the proposed regulations upon the development of solar facilities, the Department has considered the overall installed cost of photovoltaic generation as estimated by the Lawrence Livermore Laboratories. (Tracking the Sun IV: An Historical Summary of the Installed Cost of Photovoltaics in the United States from 1998 to 2010, September 2011.)* It is against those projected costs, as well as the costs reported in various publications

referenced herein, that the Department has weighed the likely economic impact of these regulations.

> *During the interim since the analysis herein was drafted, the Lawrence Berkeley updated its “Tracking the Sun IV” publication to a “Tracking the Sun IV” version (November 2012), and the US Department of Energy has published SunShot, Photovoltaic (PV) Pricing Trends: Historical, Recent, and Near-Term Projections (November 2012). However, neither of those publications report or projects installed costs of utility-scale photovoltaic electricity generation that is less than the costs assumed in this analysis. Therefore, this analysis continues to estimate the installed costs of photovoltaic electric generation for utility-scale facilities to be from $1 million to $2 million per megawatt.

The Department’s analysis considers whether the proposed regulations will have a significant statewide adverse economic impact on the creation or elimination of jobs within this state, the creation of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. The analysis concludes that to the extent that the proposed regulations may affect business, including small businesses, the impact is not likely to be significantly adverse.

The proposed regulation will benefit the health and welfare of the residents of this state by facilitating the construction of clean, renewable solar electricity generation facilities in accord with the state’s renewable energy and greenhouse gas reduction goals. Furthermore, the regulations will clarify and implement the Legislature’s intent to encourage the siting of large-scale photovoltaic facilities on land consisting predominately of soils with significantly reduced agricultural productivity or land that has severely adverse soil conditions. By facilitating the siting of these facilities on marginal and impaired farmland, these regulations will reduce the conversion of the most productive agricultural land within this state. The regulations will also provide revenue to partially fund the Department in carrying-out its responsibilities.

Discussion

The state has established ambitious renewable energy goals. In order to meet these goals, it has been estimated that photovoltaic panels will need to be installed on up to 100,000 acres in the near term; thereafter, panels may need to be installed on additional acreage in order for the state is to meet its 2050 goals.

Many of the same attributes that make land useful as farmland, such as an abundance of sun and wide open, flat spaces also make the land attractive to solar developers for

photovoltaic facilities. In addition, solar developers typically look for land that is near electricity transmission lines and/or substations. Developers consider development of large, utility-scale solar facilities on undeveloped land to be most cost-effective; and farmland is often considered the type of undeveloped land suitable for siting solar facilities.

The Williamson Act is the state's primary mechanism for preserving the state's farmland. Approximately 16 million of the state's roughly 100 million total acres, which is about one-third of all privately owned land or one-half of all the state's farmland, have been enrolled in Williamson Act contracts. About one-third of the total land enrolled in Williamson Act contracts is considered prime farmland.

The combination of the factors above has resulted in numerous solar developers proposing to locate their facilities on prime farmland that has been placed under Williamson Act contracts. However, Williamson Act contracts prevent the construction of solar facilities on contracted land. Recognizing the competing interests in the need to protect prime farmland and the need for land upon which to construct solar facilities, in 2011 the Legislature passed Senate Bill 618. This legislation makes farmland that has been entered into a Williamson Act contract available for photovoltaic facilities, under certain conditions. The legislation only makes Williamson Act contracted land available where the land's productivity is physically impaired or of only marginal value. Those provisions were also codified by SB 618 in the above-referenced Chapter 6.9, of Part 1 of Division 1 of Title 5 of the Government Code.

Recognizing that land subject to a Williamson Act contract is not available for development of utility-scale solar facilities, the Legislature included a provision in SB 618 that added section 51255.1 to the Williamson Act [Government] code. Section 51255.1 allows cities and counties and landowners to mutually agree to rescind a Williamson Act contract and reenter the subject land into the newly created solar-use easements. The proposed regulations do not implement or otherwise interpret or administer the rescission and re-entry process provided in section 51255.1. Instead, the proposed regulations will clarify and implement the substantive and procedural provisions specific to the newly added sections of the Government Code (Chapter 6.9, commencing with section 51190; all references herein are to the Government Code) which created solar-use easements.

The substantive provisions governing solar-use easements include the definition of those easements and establish the qualifications for entry of Williamson Act land into those easements. Those are the provisions of SB 618 that these regulations will make specific, interpret, and implement.

The legislation requires the Department to determine whether any particular parcel or parcels are eligible for placement in a solar-use easement. According to section 51191(a), the Department must consult with the Department of Food and Agriculture to determine whether any particular parcel or parcels are eligible for placement into a solar-use easement. The matters that the Department must review and confer upon include:

- A written narrative demonstrating that even under the best currently available management practices, continued agricultural use of the property would be substantially limited due to chemical or physical limitations of the soil.

- A soil test demonstrating that the characteristics of the soil significantly reduce the soil's productivity.

- An analysis of water availability that demonstrates the amount of available water is insufficient to support continued agricultural production.

- An analysis of water quality demonstrating that continued agricultural production would be reduced even if the best currently available management practices are utilized.

- Crop and yield information associated with the proposed site for the previous six years.

In addition, the Department anticipates that the consultation may require research regarding geographic information from the Farmland Mapping and Monitoring Program, the USDA-Natural Resources Conservation Service, and on-site inspection.

The Department must also review and comment upon the landowner's plan to manage the soil during the term of the easement. The landowner's plan must include a description of how the soil will be managed during the life of the easement, describe how impacts to the soil will be minimized, and describe how the land will be restored to its general condition prior to the easement.

In addition, the solar-use easement statutes allow, and in some instances, require the posting of financial securities such as performance bonds to ensure restoration of solar-use easement land. However, the statutes do not provide any additional guidance regarding the types or amount of securities that will be adequate to cover the cost of

restoration. These proposed regulations will provide standards for the types of bonds and estimate the costs that must be covered by financial securities.

Section 51191, sub-section (e), authorizes the Department to charge a fee to recover the estimated costs it incurs, such as the expenditure of staff time, in its participation in the eligibility consultation process required by section 51191. The Department has estimated that the total cost to the Department will be approximately $7,100 to conduct each consultation. Consequently, proposed regulation section 3100 will specify a one-time consultation fee in the amount of $7,100. However, the proposed regulation will allow the fee to be paid in two installments; each installment payable as the Department completes a portion of the consultation and review process. The first installment will be $4,900 and will be due at the time the application is submitted to the Department for eligibility review. The eligibility review will consider the various grounds for entry into a solar-use easement. The initial $4,900 will cover the costs incurred by the Department to consult with the Department of Food and Agriculture and determine whether the parcel(s) are eligible to be placed under a solar-use easement. If the Department determines that the parcel(s) are not eligible, the project proponent can stop the process and need not pay the second component of the application fee. If the Department determines that a project is eligible for a solar-use easement, the developer can continue the consultation and review process and, only then must pay the second installment of the fee. The second installment is proposed to be $2,200.

As authorized by SB 618, the amount of the fee is estimated to cover the costs incurred by the Department to carry out the consultation regarding a proposed solar-use easement. Since the consultation process for these rescissions of Williamson Act contracts will be reasonably comparable to the process the Department utilizes to review a proposal to cancel a Williamson Act contract, the Department has used the costs it incurs in the cancellation process to estimate its costs for a solar-use easement eligibility consultation.

The Department reached its estimated costs by estimating the personnel hours and overhead that will be expended in order to complete its consultation responsibilities at each of the two steps of review. The estimate totaled approximately 98 hours of various levels of staff time to complete each consultation. The staff to be utilized will include environmental planners, environmental scientists, land and water use scientists, staff services analysts, a program manager, and staff counsel. Estimating the hours and overhead for each classification results in a per-project cost of approximately $7,100; with cost for the first step being $4,900 and $2,200 for the second step.

It is expected that the type of solar facility to be developed on solar-use easement land will be utility-scale photovoltaic projects. This is the expectation because SB 618 declares that its purpose is to encourage the development of utility-scale photovoltaic projects and because these projects are being developed for the sale or delivery of electricity to utilities for distribution off of the easement site. But this expectation is more grounded on the fact that these easements will be on land formerly covered by a Williamson Act contract. The Williamson Act presumes that parcels covered by a Williamson Act contract should be at least 10 acres in size for prime agricultural land or 40 acres for non-prime land. Therefore, it is assumed that the parcels to be transitioned from the Williamson Act contracts and into solar-use easements should be 40 acres or larger, but will be at least 10 acres.

As utility-scale facilities, the projects are expected to generate anywhere from 1.25 megawatts of electricity to over 500 megawatts. The Department has received at least one application for cancellation of a Williamson Act contract on 20 acres where the proposal was to convert the land into a 2.5 megawatt photovoltaic facility, which equates to 1.25 MW on 10 acres. Furthermore, this estimate is consistent with reliable estimations that six to eight acres will support a one megawatt photovoltaic facility. A facility that generates one megawatt of electricity would provide electricity to power approximately 750 homes for a year.

In addition, news articles have reported on proposals to develop very large utility-scale photovoltaic plants, which range to over 500 megawatts in size. Those projects include:

California Valley Ranch http://www.californiavalleysolarranch.com/about.html)
Location: San Luis Obispo
Output: 250 MW
Total Cost: $1.6 billion (estimated)
(http://www.nytimes.com/2011/11/12/business/energy-environment/a-cornucopia-of-help-for-renewable-energy.html?_r=1&pagewanted=all)
Cost/watt $6.4 Cost/Megawatt: $6,400,000

Panoche Valley Solar Farm
(http://en.wikipedia.org/wiki/Panoche_Valley_Solar_Farm)
Location: San Benito
Output: 399 MW
Total Cost: $1.8 billion (estimated) (http://gigaom.com/cleantech/warren-buffetts-midamerican-buys-massive-topaz-solar-farm/)
Cost/Watt: $4.5; Cost/Megawatt: $4,500,000

Topaz Solar Farm
(http://www.seia.org/galleries/pdf/Major%20Solar%20Projects.pdf)
Location: San Luis Obispo

Output: 550 MW
Total Cost: $2 billion (estimated) (http://gigaom.com/cleantech/warren-buffetts-midamerican-buys-massive-topaz-solar-farm/)
Cost/Watt: $3.6; Cost/Megawatt: $3,600,000

Desert Sunlight Project
(http://www.seia.org/galleries/pdf/Major%20Solar%20Projects.pdf)
Location: Riverside
Output: 550 MW
Total Cost: $1.46 billion (estimated)
(http://www.renewableenergyworld.com/rea/news/article/2011/09/doe-closes-on-three-major-solar-projects?cmpid=SolarNL-Tuesday-October4-2011)
Cost/Watt: $2.6; Cost/Megawatt: $2,600,000

Blythe Solar Power Project – Phase 1
(http://www.seia.org/galleries/pdf/Major%20Solar%20Projects.pdf)
Location: Riverside
Output: 500 MW
Total Cost: $2.8 billion (estimated) (http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/04/18/BA1U1J3184.DT
Cost/Watt: $5.6; Cost/Megawatt: $5,600,000

A 2011 survey by the Lawrence Berkeley National Laboratory (Tracking the Sun IV: An Historical Summary of the Installed Cost of Photovoltaics in the United States from 1998 to 2010, September 2011) shows that utility-scale photovoltaic plants cost from $4 million to $6 million per megawatt for small (less than 1 megawatt to 4 megawatts) facilities compared to $2 million to $6 million per megawatt for larger (20 megawatt to 107.6 megawatt) facilities. Although that survey included a caveat that, because of its limitations, the survey may not accurately depict the current costs of typical utility-scale photovoltaic projects, even if the costs were to be reduced by half, a photovoltaic project would still cost from $1 million to $3 million per megawatt.

During the interim since this analysis was drafted, the Lawrence Berkeley updated its "Tracking the Sun" publication to a version V (November 2012), and the US Department of Energy has published SunShot, Photovoltaic (PV) Pricing Trends: Historical, Recent, and Near-Term Projections (November 2012). However, neither of those publications report or projects installed costs of utility-scale photovoltaic electricity generation that is less than the costs assumed in this analysis. Because these studies relied on costs from several years ago and PV prices have continued to fall, this analysis uses the cost estimate of $2 – 6 million per megawatt, but also recognizes that current costs could be as low as $1 million per megawatt.

Consequently, it is conceivable that the cost to develop a utility-scale photovoltaic solar energy project would run from at least $1 million (for a one-megawatt facility) to over $2 billion (for the largest anticipated projects). It is against these projected costs that the economic impact of the proposed regulations is balanced.

The total proposed solar-use easement eligibility consultation fee is $7,100. A fee of that amount would constitute only 0.71 percent of the total cost of even the smallest, least expensive, one megawatt, least expensive (at $1 million per megawatt, or half that fraction if the $2 million per megawatt estimate is used) solar facilities. Using the lowest actual estimated cost per megawatt of $2 million to $6 million for the above-referenced large projects, a micro-scale 1.25 megawatt project would cost approximately $3.250 million, and the $7,100 fee would only be 0.219 percent of the total cost of the facility. For the large facilities, such as the 500 megawatt Blythe Solar Power 1 project, the total project cost is estimated to be $2.8 billion; the $7,100 fee for that project would constitute 0.00026 percent of the total facility cost. Moreover, the fee could be amortized over the life of the project. Since solar-use easements must be of 20 year's duration, except in some cases where the duration can be ten years, the fee would only equate to $710 per year for 10-year projects or $355 per year for 20-year projects.

For the purpose of estimating costs, the Department projected a 160-acre photovoltaic generation facility. At six to eight acres per megawatt, a 160-acre facility would generate from 20 to 27 megawatts. Utilizing the costs estimated in 2011, by the Lawrence Laboratory of $2 million to $6 million per megawatt, a 20 to 27 megawatt facility would cost between $40 million and $162 million. Assuming a low-end cost of $2 million per megawatt, a $7,100 fee would constitute a 0.0178 percent addition to the total cost of a 20 megawatt facility. At the other end of this spectrum, a 27 megawatt facility that costs $6 million per megawatt would have a total cost of approximately $162 million; a $7,100 fee would represent an approximately 0.0043 percent (roughly four thousandths of one percent) addition to that cost.

Utilizing these estimates demonstrates that a $7,100 consultation fee will be less than 1 percent of the total cost of even the smallest, least expensive facilities and approximately 0.00026 percent of the cost of the largest facilities. Such a small impact is likely a very minor, or *de minimis*, additional cost to landowners and developers of utility-scale solar energy projects. Therefore, the impact of the $7,100 application consultation fee would likely be too small of an expense to significantly impact the development of the expected solar projects. Since the fee will not significantly impact the project, it is unlikely that the fee will have a significant statewide adverse economic impact on the creation or elimination of jobs within this state, the creation of new business or the elimination of existing businesses in this state, or the expansion of

businesses currently doing business in this state. The extent that the fee may affect business, including small businesses, and job creation is not likely to be significantly adverse.

Furthermore, the consultation fee established by proposed regulation section 3100 is only charged to landowners who elect to enter into solar-use easements. Therefore, section 3100 imposes no costs on anyone who does not choose to pursue a solar-use easement.

Proposed regulation section 3101 will only adopt definitions of terms to be utilized in the regulations; therefore it will have no economic impact.

Proposed section 3102 will clarify the statutory requirements and establish additional requirements for the contents of a solar-use easement eligibility application. Subdivisions (1.) through (6.), of sub-section (a.), of section 3102 list specific information that will be required in all applications, in addition to the statutorily required information. This additional information is a project number, the parcel numbers of the land proposed for inclusion in the easement, the total number of acres that are currently under Williamson Act contract(s) that is/are to be rescinded for the project, location map of the easement site that includes parcel and field boundaries, and a current map indicating the quality of the farmland, as indicated in the state Farmland Mapping and Monitoring Program maps. This regulation will also require disclosure of the project's proposed start date and its projected life, as well as the total projected energy production.

Section 3102(b) will require that a written narrative, as provided in section 51191(b)(1) be submitted with all applications. The contents of the written narrative will be clarified by section 3103 of this Article.

Section 3102(c) will clarify that the information regarding a soil test, a water availability analysis, a water quality analysis, and crop and yield information will only be required in an application to the extent that the information is applicable to the particular application.

The information required by sub-divisions (a.)(1) through (a.)(6.) is the type of information likely to already be in the possession of a landowner, or be readily available to a landowner through public documents. The project name or number is designated by the landowner or project proponent, therefore, inclusion of the name or number would impose no cost on the landowner. The parcel number(s) and total number of acres are typical information contained in plat maps, title documents, Williamson Act

contracts, or other public or recorded documents. Similarly, the location map with parcel numbers is the type of information contained in those public or recorded documents. Once the landowner locates the parcel map, the landowner can draw the individual field locations on the map. The Farmland Mapping and Monitoring maps are available from the Department of Conservation. The start date, projected life, and projected energy production is also information that a landowner would be expected to have in order to determine the viability of the project. Therefore, the cost to include the information required by section 3102 will be negligible and not likely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. The extent that the fee may affect business, including small businesses, and job creation is not likely to be significantly adverse.

Section 3103 clarifies the requirements regarding the written narrative required by section 51191(b)(1). However, this regulation will expand upon the statutory provision that only requires submission of the narrative "to the extent applicable;" instead, Section 3103 will require the narrative in all applications. This requirement will ensure that the landowner can demonstrate a rational line of reasoning between the relevant facts and the requirements for establishment of a solar-use easement. The regulation will require some specific information to be included in the narrative, in addition to the statutorily required information. The narrative must include USDA NRCS Soil Survey information for the proposed easement area. This information is available from USDA NRCS, therefore, inclusion of this information will not impose a significant cost on landowner applicants. The existing agricultural uses and the typical cultivation and management practices on the site is clearly information that would be in the landowner's possession. Since this regulation does not require the narrative to be written by someone with any particular expertise, the landowners can write it themselves and can rely on their own knowledge or observations to describe the agricultural conditions in the surrounding area and county and to explain why the best currently available management practices are not likely to allow continued agricultural production on the site. If additional information would be necessary, it will likely be the type of information available from the local county agricultural commissioner. Therefore, the cost to include the information required by section 3103 will be negligible and not likely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. The extent that the fee may affect business, including small businesses, and job creation is not likely to be significantly adverse.

Section 3104 implements the statutory requirement of section 51191(b)(2) of the solar-use easement statutes which requires a recent soil test report to the extent applicable.

Therefore, this regulation only adds those expenses resulting from the requirements added by the regulation. In that regard, these regulations will require that the soil test report be prepared by a Certified Soil Scientist or Certified Professional Soil Classifier. The report shall include the name, employer, date of licensure, and contact information of the Soil Scientist or Classifier. The report must also include a map indicating the locations where the soil samples used in the report were taken; and the soil test must have been conducted no more than six months prior to submission of the application. This regulation will not require that any specific soil tests be performed. Instead, it will be the responsibility of the landowner or applicant who asserts that their land qualifies for a solar-use easement, based upon the soil's reduced agricultural productivity, to explain the basis for determining that the land's soil conditions are adverse to production agriculture. However, to ensure that the soil test is reliable, the regulations will require that the soil test report be prepared by a certified professional Soil Scientist or Soil Classifier, and the test report must provide the data necessary to support the report's conclusion. Soil testing will only be required to the extent applicable; if the site is marginally productive or physically impaired for reason(s) unrelated to soil degradation, publically available soil survey data produced by the US Department of Agriculture may be sufficient to characterize soil conditions for this section.

In projecting the cost of a soil test, the Department made a few standard assumptions. The Department hypothesized a 160-acre easement area, an eight-hour site visit that includes the travel and set-up time, 50 miles travel to the site, collection of 12 samples, and three hours staff time to prepare the report.

The Department surveyed 21 Certified Professional Soil Scientists (CPSS) and Certified Professional Soil Classifiers (CPSC) regarding the cost to conduct a soil test. The average total cost estimated by those professionals was $2,279.29; the highest estimated cost was $2,425, and the lowest estimate was $907.

As with the proposed fee to be imposed upon applicant landowners, it is estimated that the cost of the soil test report will be negligible and will not affect whether a photovoltaic facility will be developed. The hypothesized 160 acre project area for which soil professionals estimated costs could support a project of between 20 and 27 megawatts, assuming 6 to 8 acres per megawatt. Soil testing fees of $2,279.29 for this 160 acres would equate to a prorated cost of between $85.47 and $113.98 per megawatt. Soil testing fees would increase proportionally to the size of the project, at between $5.67 and $15.16 per acre, based on estimates provided by soil professionals. For a large, 500-plus megawatt facility, such as the Blythe Solar Power 1 project, which has an estimated total project cost of $2.8 billion, soil test reports would constitute between 0.00061percent (low bid, 6 acre per megawatt efficiency) and 0.00214 percent (high

bid, 8 acres per megawatt efficiency) of the total cost of the facility. Moreover, spreading the soil test fee across twenty years results in per-year costs of between0.00003 percent and 0.00011 percent, respectively. Consequently, the cost to include the information required by section 3104 will be negligible and not likely to significantly, adversely impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state.

Section 3105 implements the statutory requirement, in section 51191(b)(3) for a water availability analysis, to the extent applicable. The proposed regulation will not require that the availability analysis be conducted by any particular person or entity; therefore, a landowner could prepare the analysis themselves. Moreover, the regulation does not necessarily require the expenditure of funds to obtain the factual information required for the analysis. The information required by this regulation will be of the type that will typically be in possession of a farmer. A farmer will know the source of their water supply. If they have obtained their water pursuant to their ownership of water rights, it is anticipated that they will know how much water they have used because their use is constrained by their rights. If a farmer has purchased water from an irrigation district or other water purveyor, pursuant to a water supply agreement, they should know the amount of water they have purchased, received, and applied or be able to obtain that information from the water purveyor. In addition, a farmer will typically know the availability of groundwater and feasibility for use, and they will know whether they have engaged in dryland farming on the site. Consequently, the cost to include the information required by section 3105 will be negligible and not likely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. The extent that the fee may affect business, including small businesses, and job creation is not likely to be significantly adverse.

Section 3106 implements the statutory requirement for a water quality analysis. As with the soil test and the water availability analyses, the water quality analysis is required only to the extent the analysis is applicable to a particular proposal. The water quality analysis will only be required when a landowner has asserted their eligibility for a solar-use easement based upon the quality of the water. The requirement that the analysis demonstrate that continued agricultural production would be significantly reduced even if the best currently available management practices were utilized, is required by section 51191(b)(4). Therefore, the costs resulting from Section 3106 are only those resulting from any additional expense necessarily incurred to comply with the additional requirements imposed by this regulation.

This regulation clarifies that a satisfactory water quality analysis must include an analyses of either or both, the surface water sources or the groundwater sources available to the site. It is reasonable to assume that if a landowner believes that the quality of water is the reason for the reduced production from their land, the landowner will have a rational reason for their belief. This regulation will require that landowners disclose and explain the reason for that belief; therefore, the regulation is not likely to require landowners to obtain or produce information not already within their possession. Although the analysis must focus upon the chemical content and any other constituents that impact agricultural productivity on the site, the regulation will allow a landowner to rely upon information available from other sources, such as an agricultural commissioner, water purveyor, or water resources control board, in conducting the quality analysis. Therefore, since this regulation allows use of information that may already be in possession of, or available to, a landowner at little or no cost, the regulation itself might not impose any costs on landowner applicants. This regulation also specifies that a description of techniques, such as blending and pre-treatment, be included in this analysis. However, if these techniques are considered best management practices, this description is required by section 51191(b)(4) of the statutes. Therefore, the requirement to describe techniques to mitigate impacts to water quality is not a product of the proposed regulation. Consequently, the cost to include the information required by section 3106 will likely be negligible and not likely to impact the development of photovoltaic facilities, or the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. The extent that the fee may affect business, including small businesses, and job creation is not likely to be significantly adverse.

When an application is based upon reductions in crop yield, section 3107 of these regulations will require crop and yield information for the site for the immediately preceding six years. This requirement is consistent with section 51191(b)(5) of the statutes. It is reasonable to assume that this information would be in the possession of a landowner, therefore a landowner would incur no cost to acquire this information. Furthermore, since the regulation does not require that this analysis be conducted by anyone other than the landowner, the landowner may prepare this analysis themselves and might not incur any cost to provide the information required by this regulation. To the extent that this regulation requires a comparison between the yield information for the site and yield information for the same crop in the county, it allows the landowner to utilize information obtained from the County Agricultural Commissioner's Office. Therefore, it is likely that a landowner will incur no cost, or a negligible cost, to comply with this regulation. Consequently, the cost to provide the information required by section 3107 is not likely to impact the development of photovoltaic facilities, or the creation or elimination of new business or the elimination of existing businesses in this

state, or the expansion of businesses currently doing business in this state. The extent that the fee may affect business, including small businesses, and job creation is not likely to be significantly adverse.

Section 3108 implements the requirements of solar-use easement statute section 51191(c) which requires that a proposed solar-use easement include a management plan that describes how the site's soil will be managed during the life of the easement, how impacts to adjacent agricultural operations will be minimized, and how the solar-use easement land will be restored to its previous general condition upon termination of the easement. The management plan itself is required by section 51191(c); the statute also specifies that the plan include a soil management component and a restoration component. Consequently, the general types of information required pursuant to section 3108 are actually or impliedly required by the statute, not the regulation.

In addition to the statutory requirements, Section 3108 will require disclosure of operations that could affect soil quality during the life of the project. Sub-section (a) of section 3108 is the soil management component; it requires a management plan to require certain information regarding the management of soils on the site. The soil management component requires disclosure of the planned site preparation and construction activities, including grading and grading depth, any soil removal techniques, and an explanation of how those activities will affect the condition of the farmland. The management component must also describe the proposed management of the soil during the life of the easement including soil removal, grazing activities, irrigation, maintenance, erosion protection, and the affects of these activities upon the easement's soils. The various activities that must be disclosed are of the type that a landowner would employ to prepare a site for construction and continued operation of a photovoltaic facility; therefore, a landowner would likely incur no cost to describe their plans.

Like the soil management plan, the restoration plan is required by statute. Sections 3108(b)(1) & (2) specifically prescribe certain information that must be included in the site restoration component of the management plan. To be most effective, the restoration plan should especially focus on the topsoil. This regulation furthers the statutory requirement by requiring disclosure of activities and matters that a landowner would likely consider in designing a facility that will ultimately implement a restoration plan in compliance with the solar-use statutes. In effect, this regulation only requires disclosure of the type of information that an applicant landowner for a solar-use easement is likely to possess. Since the solar-use statutes require the land to be restored to its pre-project condition, it is the statutes that require a landowner to plan for preservation of the soil. Therefore, this regulation is not likely to impose a significant

cost upon the development of photovoltaic facilities. Therefore, if a landowner has prepared a restoration plan that complies with the statutory requirements, they likely will have the information required to be disclosed by section 3108(b)(1) & (2), and therefore the cost to comply with these sub-sections is likely to be negligible.

Sub-sections 3108(c) & (d) will require a landowner to amend a previously approved management plan or restoration plan whenever the project changes in such a way that the management plan or restoration plan is no longer adequate to achieve restoration. These sub-sections will ensure that amended plans will satisfy the management and restoration requirements prescribed by the statutes.

The management plan and restoration plan are required by section 51191(c) of the solar-use statutes. That statute specifies general information that must be included in those plans. However, in order to ensure that those plans are thorough and adequate, section 3108 will require the disclosure of certain specific information within those plans. it is likely that a landowner would need the required information in order to devise and describe their plans in accord with the requirements prescribed by the statute. To the extent that the information may not be required by the statute, it is likely information that a landowner applicant will possess or can obtain with little expenditure. Consequently, the cost to provide the information required by section 3108 is not likely to impact the development of photovoltaic facilities, or the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state.

Section 3109 clarifies the provisions and requirements of sections 51191(c) and 51191.3(b). Section 51191(c) allows the Department to require that cities and counties impose additional measures within management plans. Section 51191.3(b), allows cities and counties to include restrictions, conditions, and covenants within solar-use easements as is necessary or desirable to restrict use of the easement land to solar facilities. Although this regulation may be duplicative of those statutes, this regulation will place the statutory provisions within the regulatory scheme and ensure that landowners, cities and counties are aware of the authority of the Department, cities, and counties to place requirements, in addition to the explicit statutory requirements, on solar-use easements. Consequently, any cost resulting from section 3109 is likely to be a product of the statutes not the regulations. Therefore, this regulation is not likely to impact the development of photovoltaic facilities, or the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Moreover, since statutory allowance for imposition of these additional requirements is very broad, the extent that the statutes

and this regulation may result in impacts to the development of solar facilities or upon businesses cannot be known.

Section 3110 requires solar-use easement landowners and operators to allow cities, counties, and the Department to inspect solar-use easement lands. Since this sub-section merely requires landowners and project operators to allow inspections, it imposes no cost on landowners.

Section 3110 sub-section (a) limits inspections to the extent necessary to ascertain whether the landowner or operator is in compliance with, or has violated, the solar-use easement statutes, this Article, and the solar-use easement's requirements, including the management plan. Since this sub-section merely limits the scope of inspections that may be conducted pursuant to this regulation it imposes no cost on landowners.

Section 3110 sub-section (b) will require preparation of an inspection report that addresses compliance with the requirements placed upon solar-use easements. Sub-section (b) also requires the inspection report to include any other documents prepared by the site inspector with regard to the particular solar-use easement. Finally, sub-section (b) requires that the inspection report be provided to the landowner and the Department within 30 days of completion of the inspection.

Section 3111 clarifies the statutory requirement for solar-use easement landowners to post financial securities to cover restoration of the solar-use easement land and lists costs and activities that the security must be adequate to cover.

Sub-section (a) clarifies the statutory provision in Section 51191.3(b)(3), that provides cities and counties with discretion to require restoration security for perpetual easements. Therefore, since cities and counties have discretion whether to require security for these easements at all, this sub-section allows them to determine the amount of the security.

Section 51191.3(c) requires posting of a performance bond or other securities to fund restoration of solar-use easement land that is subject to term and self-renewing easements. Sub-sections (b) and (c) provide requirements for the restoration securities of those easements. Sub-section (b) clarifies the statutory requirement that landowners must post, and, at all times keep in force, financial securities adequate to cover restoration of land that is subject to term and self-renewing easements. Sub-section (c), including sub-divisions (c)(1) through (4) prescribe certain costs that the restoration securities must cover; like Section 3108, these requirements are modeled upon the state Surface Mining and Reclamation Act (SMARA). Sub-division (c)(1) requires that

the security be sufficient to cover the costs of certain physical activities and the materials that are likely to be necessary to restore the easement land. Sub-division (c)(2) requires that the security be adequate to cover costs incurred by the city, county and any third party in conducting any activities required by the management and restoration plan. Sub-division (c)(3) requires that 10 percent be added to security to cover any other contingencies. Sub-division (c)(4) exempts the costs of completing construction or continued operation of the project from the required security amount. Sub-section (d) makes it the sole responsibility of the landowner to demonstrate that the amount of the security is adequate to restore the easement land. Sub-section (e) requires the security to be submitted to the city or county who shall, in consultation with the Department, determine whether the security is adequate. Sub-section (f) requires that the restoration security be made payable to the city or county in which the easement is located. Sub-section (g) requires a landowner to review the security at least once every five years and requires that the city or county re-approve the security at that time. This sub-section allows cities and counties to require more frequent review when it is necessary to ensure compliance with the restoration security requirements of the solar-use easement.

Whether restoration securities must be posted for perpetual easements is a function of the discretion afforded to cities and counties by the statute. The authority for cities and counties to determine whether securities must be posted to cover term and self-renewing easements is provided by the Section 51191.3(b)(3) of the solar-use easement statutes. Therefore, any cost that may result from Section 3111(a) is a function of cities' and counties' exercise of their authority and the solar-use easement statutes, not these regulations. Consequently, Section 3111(a) will not impose any costs upon the development of photovoltaic facilities, or the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state.

Section 51191.3(c) clarifies the statutory requirement that landowners must post restoration securities for term and self-renewing easements. Sub-section 3111(b) provides cities and counties with authority to determine the amount of the restoration security for these easements. This is consistent with the statutory scheme that these programs be administered by the local agencies. This sub-section also clarifies that the security must be in force at all times until it is released by the city or county; since the purpose of these securities is to ensure adequate funds to restore the solar-use easement lands, it is clearly implied by the statutes that the securities be in force from the commencement of the project until the security is released by the city or county. Since it is cities and counties who will determine the requisite amount of the securities, it is unknown what actual costs may result from this regulation. However, the posting of

these securities is required by the solar-use easement statutes and, therefore, any resulting costs are the result of the statutes.

Section 3111(c) also applies to restoration securities for term and self-renewing easements. That the securities be adequate to cover restoration is clearly implied by the statutes. It is reasonably foreseeable that development and operation of the solar photovoltaic facilities will require preparation and alteration of the solar-use easement land. This regulation clarifies that the security must be adequate to restore the land to pre-easement conditions. Although this sub-section prescribes that the securities be adequate to cover the costs of certain listed activities, those activities and their resulting costs, are a function of the Sections 51191(c) and 51191.3(c) which requires restoration of these easements and the posting of securities to cover the costs of restoration. Consequently, any costs or impacts upon the development of photovoltaic facilities, or the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state are primarily a function of the solar-use easement statutes, not this regulation.

Sub-section 3111(d) places responsibility upon the landowner to provide the information needed by cities and counties to determine the adequacy of restoration securities.

Sub-sections 3111(e) through (f) provide for review, approval and modification of the securities as necessary, and clarify that the security be payable to the relevant city or county. The requirement for security to cover restoration is contained within the above-referenced statutes; since these regulations primarily clarify the statutes, it is assumed that the costs resulting from the requirement for restoration securities will be a product of the statutes and not this regulation. Therefore, this regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Any such impact that does result is not likely to be substantially adverse.

Section 3112 clarifies the types of financial instruments that may be utilized as restoration security instruments.

As is recognized by Section 3111(a), Section 51191.3(b) of the solar-use easement statutes authorizes, but does not require, cities and counties to require restoration security for perpetual easements. Therefore, since cities and counties have discretion whether to require security for these easements at all, this sub-section allows them to determine the type of the security to be required.

Section 3112(b) applies to restoration securities for term and self-renewing easements. This sub-section lists five types of securities that may be posted as restoration securities; but, sub-section (b)(6) allows cities and counties to approve other types of securities as long as the securities are adequate to ensure restoration as required by solar-use easement statutes section 51191.3(c). The types of securities that are listed are of the same type that SMARA requires. The posting of financial securities is required by statutes. Although this regulation designates certain types of securities that can constitute restoration security instruments, it allows additional types of instruments if a city or county finds such other security adequate to ensure restoration. Therefore, it is projected that this regulation will impose no costs upon development of photovoltaic facilities beyond what is required by the applicable statute. Consequently, this regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Any such impact that does result is not likely to be substantially adverse.

Section 3113 will require that proposed restoration security instruments be submitted to the Department for review. This section will allow the Department to review and comment upon proposed restoration security instruments. Since section 51191.1(c) requires the Department to review management and restoration plans, this regulation is consistent with the statute in that the Department will also review the securities proposed to be posted in order to ensure that restoration occurs. However, since this regulation only allows the Department to review and comment upon restoration securities, it will not impose nor necessarily result in any cost to landowners or operators of photovoltaic facilities. Therefore, it is projected that this regulation will impose no costs upon development of photovoltaic facilities. Consequently, this regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Any such impact that does result is not likely to be substantially adverse.

Section 3114 provides procedures for the reduction and release of restoration securities. Section 3114(a) applies to securities for perpetual easements. Since cities and counties have discretion whether to require restoration securities for perpetual easements, sub-section (a) leaves approval of a reduction or release of security for these easements within the discretion of cities' and counties.'

Section 3114(b) requires that cities and counties provide information to the Department confirming that circumstances have changed to the degree that the security can be reduced or released. Section 3114(b)(1) and (2) apply to a proposed reduction of

restoration amount and require submission of an inspection report and a revised estimate of restoration costs. If a city or county proposes release of a security for a term or self-renewing easement, sub-section (b)(3) requires the submission of information confirming that the easement land has been restored and that there are no outstanding liabilities which militate against release of the security. Sub-section 3114(b) allows the Department to review and comment upon proposed reductions or release of restoration security. Sub-section 3114(c) also allows the Department to review and comment upon its concurrence or disagreement with a proposed reduction or release of restoration security. It also allows the Department to conduct its own inspection of the easement land. Since this regulation only provides a process for review of proposals to reduce or release securities, it is projected that this regulation will impose no costs upon development of photovoltaic facilities. Consequently, this regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state.

Pursuant to Section 51191.3(b)(4), these regulations do not prohibit amendment of solar-use easements. However, consistent with solar-use easement statutes section 51191(c), the landowner must submit any proposed amendments to management or restoration plans for review by the Department. Consistent with Section 51191(e), Section 3116 allows the Department to charge a fee to recover the Department's estimated cost to review the plan. This fee is consistent with solar-use easement statutes section 51191(c) because, in reviewing a proposed amendment to either of these plans, the Department will likely incur the same costs as it will incur to review an initial management or restoration plan. This regulation will limit the amendment fee to the actual costs incurred by the Department, not to exceed the $2,200 fee for reviewing and consulting upon the initial management plan. Since this fee is a fraction of the total, initial application fee of $7,100, which this analysis has determined to be negligible and not likely to effect the development or ongoing operation of photovoltaic facilities, section 3115 is not likely to significantly, adversely affect these facilities, and is, therefore, unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Any such impact that does result is not likely to be substantially adverse.

Section 3116 provides grounds for forfeiture of restoration security. This regulation will clarify that, in addition to taking action to enforce a solar-use easement, a city or county may take action to require forfeiture of restoration security. This regulation will allow forfeiture when a city or county determines that a landowner is financially incapable of performing the required restoration, or when the restoration has not been completed in accordance with the management plan by the time the easement terminates, or if the

landowner has failed to provide a revised restoration security cost estimate, or if an existing restoration security instrument is about to lapse and not been replaced. The security may also be forfeited if the city or county determines that the security is no longer adequate to ensure restoration and the landowner has not provided satisfactory evidence that the substitute or additional security will be posted within 30 days' notice.

It is the solar-use easement statutes that require the posting of financial securities. The Department reasonably infers from the statutory mandate that the security must be available, and in an amount adequate to cover restoration at all times. The purpose of the security is to ensure that the land will be restored. If a landowner is not capable of completing restoration, the city or county must be able to redeem the security in order to complete restoration. In addition, regardless of a landowner's capability to complete restoration, if a landowner has not completed restoration by the time that the easement terminates, sub-section (b) allows the city or county to redeem the security and perform restoration itself. Sub-section (c) allows the city or county to redeem the security if they have requested a revised estimate of restoration costs but the landowner does not provide it within 30 days. Similarly, if a security is due to lapse in the near future, the landowner must provide a replacement security instrument before the security lapses; if the landowner fails to do so, sub-section (d) allows the city or county to require forfeiture. Sub-section (e) allows forfeiture if the city, county, or the Department determine that the restoration security is not adequate to restore restoration and the landowner does not provide additional security within 30 days of notice of the inadequacy.

The solar-use easement statutes require the posting of restoration security, and from those statutes it can be inferred that the security must be adequate and remain in force until restoration is complete. Therefore, although this regulation clarifies instances when a city or county can require forfeiture, since forfeiture is the mechanism to access the restoration security, authority for cities and counties to require forfeiture is necessarily implied from the statutes. Consequently, any costs are the product of the statute. Therefore, it is projected that this regulation will impose no costs upon development of photovoltaic facilities, and the regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Any such impact that does result is not likely to be substantially adverse.

Section 3117 provides criteria to determine whether a landowner is financially incapable of performing site restoration. This regulation complements sub-section (a) of Section 3116. According to this criteria, a landowner can be found financially incapable if the landowner fails to provide restoration security in an amount found to be adequate by the

city or county, or if the landowner fails to provide a restoration security instrument that has been approved by the city or county. It is the statutes that require the posting of restoration security to fund restoration of the easement land, and it is clear that the security must be in an amount satisfactory to complete the restoration. Moreover, it is clear that the security must be of a type upon which the city or county can rely to be available at any and all times until the land is restored. Therefore, it is projected that this regulation will impose no costs upon development of photovoltaic facilities. Consequently, this regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. Any such impact that does result is not likely to be substantially adverse.

Section 3118 requires that a landowner be provided a public hearing prior to forfeiture of their restoration security. Although a landowner might incur costs to participate in that hearing, provision of the hearing does not itself impose any costs on a landowner. Consequently, it is projected that this regulation is unlikely to impact the creation or elimination of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state.

Aggregate Economic Impact of the Proposed Regulations

The Department has made an initial determination that the adoption of these regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. In making this determination, the Department has relied upon its conclusion that the one-time $7,100 fee, in addition to the other costs likely to result from these regulations would be *de minimis* in relation to the multi-million dollar cost to develop a utility-scale photovoltaic electricity generation facility.

In addition to the $7,100 application fee to be required by Section 3100, it is projected that section 3104 will result in additional costs to a photovoltaic developer ranging from $907 to $2,425 for a hypothetical 20 to 27 megawatt project located on 160 acres. As with the application fee, the additional cost incurred to obtain a soil test report would be negligible and *de minimis* in relation to the multi-million dollar cost to develop a utility-scale photovoltaic electricity generation facility.

As discussed above, it is projected that the balance of the regulations may not impose any costs upon landowners and photovoltaic developers. It is assumed that landowners will typically have the information required to be disclosed by sections 3102, 3103, and 3105 through 3108; therefore landowners could incur no costs to acquire and submit

that information. Therefore, the only cost that would be the cost for the soil test required by section 51191(b)(2) of the statutes and section 3104. The written narrative to be required by section 3103, and the analyses and plans required by sections 3105 through 3108 may be prepared by the landowner applicants based upon their own knowledge and observations, or information that is likely to be readily available to the public at no, or little, cost. Therefore, the landowner applicants will not necessarily incur any costs for preparation of those analyses and plans. In addition, the information and analyses will only be required by sections 3104, 3105, 3106, and 3107 if the landowner seeks approval of a solar-use easement. Consequently, it is projected that sections 3102, 3103, and 3105 through 3108 will not necessarily impose any costs on the development of photovoltaic facilities on solar-use easement land.

As discussed above, the costs resulting from Sections 3109 will actually be costs imposed by the solar-use easement statutes. Section 3110 will require the landowner to allow site inspections and allow cities and counties to recover the reasonable cost of the inspection from the landowner. However, inasmuch as site inspections are common and routine in the business community, and the inspections will be limited to observations, this section is not likely to result in significant costs to the landowner. . Although sections 3111 through 3113 place requirements upon the financial securities that landowners must post, the actual requirement for posting those securities is codified in the solar-use easement statutes. Sections 3116 and 3117 are reasonably inferred from statutory the requirements that landowners post restoration securities. Section 3118 only provide procedures for forfeiture of restoration securities; therefore, the costs resulting directly therefrom are projected to be zero. Ultimately this regulation only implement the statutory requirements and, therefore, any costs to be incurred by landowners would be a result of the statutes. Those costs that will result from the additional requirements imposed by the regulations are projected to be negligible or, not significant.

The regulations clarify that management and restoration plans must remain current. To this end, the regulations will require that those plans be amended as necessary. Section 3117 will impose a fee for the Department to review any proposed amendments; that fee will be capped at $2,200 per amendment, which would likely be negligible and insignificant.

However, the impact of the fees cannot be measured only by their individual impact; the impact of the fees must be measured by their aggregate affect. For the purpose of this analysis, the aggregate fee is estimated to include the $7,100 initial application fee plus the additional projected costs. Since the only additional projected cost is for soil testing, averaging $2,279.29 for a 160 acre (20 to 27 megawatt) facility, the total cost for such a

facility would be less than $9,400. This cost would constitute an addition of no more than 0.025 percent to the total project budget of the hypothetical 160 acre facility. Total cost for a one-megawatt, $2 million facility (six to eight acres), the smallest facility likely to be developed pursuant to the solar-use easement statutes, would be approximately $7,250, based on the highest rates provided by soil testing professionals. The fee for soil testing would rise proportionally with project size. Estimates provided by soil professionals resulted in fees of between $5.67 and $15.16 per acre. Larger projects would likely be able to obtain lower rates for bulk testing. For a 500 megawatt, $2.8 billion facility such as the Blythe Solar Project, the combined cost of the eligibility consultation and soil testing would constitute between 0.0009 percent and 0.0024 percent of the total project cost. Even if the costs projected to result from these regulations were doubled, the impact of the costs would be no more than 1 percent of a micro-scale, one megawatt facility. A $20,000 cost would be 0.05 percent of a hypothetical, (160 acre) $40 million, 20 megawatt facility. Consequently, the total projected cost impact, is likely to be no more than 1 percent for the smallest facilities, and could be down to a tiny fraction of one percent for the largest facilities. Therefore, the aggregate cost would be negligible or *de minimis* to any of the projected facilities and, therefore, unlikely to have any significant statewide adverse impact upon the construction of the facilities or on the creation or elimination of jobs within this state, the creation of new business or the elimination of existing businesses in this state, or the expansion of businesses currently doing business in this state. The extent that the costs may affect business, including small businesses, and job creation the affect is not likely to be significantly adverse.

BENEFIT OF THE PROPOSED REGULATIONS

These regulations will benefit the welfare of the people of this state by facilitating the establishment of solar-use easements that will, in turn, facilitate the development of photovoltaic electricity which is a form of renewable energy that conforms with the state's renewable energy goals. Furtherance of the renewable energy goals will reduce the production of greenhouse gas and contribute to the slowing of global warming, both of which will further the health and welfare of the people of this state.

The regulations will also establish an application fee that will provide funds to cover the cost of the consultation to be provided by the Department. This provision of funds will therefore prevent the redirection of funds and resources from other responsibilities of the Department's Division of Land Resources Protection.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Whether a landowner decides to enter their land in a solar-use easement is entirely voluntary on the landowner's part. Therefore, the solar-use statutes and these regulations do not mandate any cost upon any landowner.

The requirement that an applicant for a solar-use easement pay a fee to cover the estimated cost to the Department to process the application is authorized by statute. The Department has determined that the fee for conducting the consultation would be minimal and insignificant in light of the overall cost to develop a solar photovoltaic project. Therefore, the proposed application fee regulation would not have a significant statewide adverse economic impact directly upon developers of photovoltaic solar facilities.

The balance of the proposed regulations address the standards to satisfy the statutory requirements for establishment and administration of solar-use easements. The requirements for solar-use applications primarily regard the provision of information to the Department. Much, if not most or perhaps all, of the information may already be in possession of the landowner applicant; therefore, in some instances the only cost imposed by the regulations will be the cost of submitting the information and their application. The Department has prepared an economic impact assessment from which the Department has concluded that, when the landowner applicant must obtain or generate information, the cost will be a small fraction of the overall cost of the entire solar, photovoltaic facility.

Moreover, in addition to the economic impact assessment prepared by the Department, a Standard Form 399 was prepared, and these assessments were relied upon in proposing this regulatory action.

UNNECESSARY DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS:

THE DEPARTMENT OF CONSERVATION IS A DEPARTMENT WITHIN THE NATURAL RESOURCES AGENCY. THERE ARE NO FEDERAL REGULATIONS ADDRESSING THE ISSUE OF SOLAR-USE EASEMENTS IN CALIFORNIA WITH WHICH THE PROPOSED REGULATION COULD CONFLICT OR DUPLICATE.

The federal government does not regulate the use of privately owned farmland for development of photovoltaic facilities. Preservation and development of this state's farmland is fully within this state's jurisdiction. Therefore, these regulations, that will

implement SB 618, a state law to encourage development of photovoltaic facilities on marginally productive or physically impaired land, do not duplicate or conflict with federal statutes or regulations.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The proposed regulations implement a voluntary program that was codified in statute. Since the legislation authorized the Department to recover its estimated cost to process a solar-use easement application, the Department considered no alternatives that would lessen any adverse impact of the fee on small businesses.

The Department could forego the adoption of regulations sections 3101 through 3118. However, in doing so landowners, cities, and counties would not have clear, objective, uniform standards applicable to a solar-use easement application. Nor would they have such standards to utilize when considering implementation of a solar-use easement. calculation and management of restoration securities, standards for forfeiture of restoration securities, or enforcement of solar-use easement requirements. Consequently, small businesses would not know the clear and definite standards that they must satisfy to establish and manage solar-use easements. Such lack of clarity and guidance could result in unnecessary costs to small businesses as they search for compliance with the statutory requirements.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

Section 3100: Application Consultation and Review Fee

Alternative 1: Proposed regulation section 3100 will establish the total consultation and eligibility fee at $7,100. It will also provide that the application consultation fee is payable in two components. The eligibility consultation component will be $4,900, and the management and restoration plan review and consultation component will be $2,200.

Analysis: This alternative will establish the fee payable by the landowner to the Department to cover the Department's estimated costs to conduct the statutorily required application consultation processes. Those processes include ascertainment whether a parcel or parcels are eligible to be placed into a solar-use easement and that the easement includes an adequate soil management and restoration plan.

The adoption of the consultation fee will place the cost of the Department's participation in the process for development of solar-use easements directly on the landowners and developers of solar facilities. Imposition of this cost was authorized by statute and will therefore further the Legislature's policy decision. Since an alternative to this regulation would be either a reduced fee, an increased fee, or no fee at all, no alternative would allow the Department to recover the full cost, and only the full cost, of its consultation in the solar-use easement application process. As such, proposed section 3100 is the most efficient and effective means to implement the underlying statute.

The Department anticipates that the consultation process for these easements will be reasonably comparable to the review and consultation process the Department utilizes when a landowner proposes cancellation of a Williamson Act contract. Therefore, the Department has used the costs it incurs when a contract is cancelled on which to base its estimated costs for a rescission consultation.

The Department has estimated the number of personnel hours and overhead that will be expended in order to complete its consultation responsibilities. The staff to be utilized will include environmental planners, environmental scientists, land and water use scientists, staff services analysts, a program manager, and staff counsel. These estimates approximate a total of 98 hours of various levels of staff time to conduct each consultation. This estimation results in a cost of approximately $7,100 for each consultation. Breaking down the work into two segments, the eligibility determination, and the management and restoration plan consultation, results in estimated costs to the Department of approximately $4,900 to ascertain the eligibility of a parcel for a solar-use easement, and $2,200 to review and comment upon the project's management plan.
Alternative 2: Establish the fee at $4,900, which will cover the cost of the eligibility determination.

Analysis: Section 51191(e) allows the Department to establish a fee to cover the cost of the consultation required by section 51191. The only consultation specifically referenced in the statute is the Department's consultation with the Department of Food and Agriculture and that consultation is limited to determining whether a project is eligible for a solar-use easement. Therefore, under this alternative, landowners would only be required to pay $4,900 which is the estimated cost of the eligibility determination.

However, the city or county must include any recommendations provided by the Department regarding the soil management and restoration plan. Since the solar-use easement may not be established without a management and restoration plan, that plan is, necessarily, a component of a solar-use easement application. Therefore, the

Department must also review and consult with the Department of Food and Agriculture on those plans. Section 51191(e) authorizes the Department to establish a fee to recover its costs to conduct the consultation required by Section 51191.

If the fee were to be limited to the cost of the eligibility determination, the Department would not be recovering all of its costs to conduct the consultation. Therefore, alternative 2 would not fully implement the authorizing statute.

Alternative 3: Do not establish any fee to pay the Department for its estimated costs to review and consult upon proposals for solar-use easements.

Analysis: The Legislature authorized the Department to recover the Department's estimated costs to determine whether a land is eligible for a solar-use easement and to review and comment upon the project's proposed management and restoration plan. Since the fee would be a rule of general application, establishment of the fee must be accomplished by adoption of a regulation. Absent such a regulation, there can be no fee.

Although the Legislature assigned the Department with responsibility to determine the eligibility of proposals for a solar-use easement and to also review and comment upon proposed management plans for the solar-use easement land, the Legislation did not provide funds to the Department to carry out these new responsibilities. Instead, the Legislature authorized the Department to establish a fee to cover the Department's estimated costs. By establishing the application fee, the Department's Division of Land Resource Protection will be able to carry out its new responsibilities with minimal impact upon the budget that it relies upon to carry out the rest of its responsibilities.

In addition, prior to formulating these draft regulations, the Department distributed, and conducted a workshop, seeking comments upon, previously proposed draft regulations. At that time, it was suggested that a proponent of a solar-use easement should not be required to pay the Department's cost to review a management plan until and unless their proposal has been determined eligible for an easement. The Department has accepted that suggestion and broken the application consultation fee into two components.

The Department proposes to adopt Alternative 1.

Section 3101: Definitions

Section 3101 will adopt definitions of four terms utilized repeatedly in the regulations. Adoption of these definitions will make the regulations clear and more concise.

Definitions Alternative 1: Adopt definitions for six terms repeatedly utilized throughout the regulations.

Analysis: These regulations implement various sections of SB 618 which created solar-use easements. Various provisions throughout the regulations, reference the proposed projects, the owners of land that is proposed for a solar-use easement, the land itself, and the enabling statutes.

The definitions will allow more convenient reference to the defined terms and will not impose or result in any costs to landowner applicants.

Definitions Alternative 2: Do not adopt definitions.

Analysis: Since this proposed regulation will not result in costs to project proponents and will allow easier reference to the various terms, no alternative was considered by the Department.

The Department proposes to adopt Alternative 1.

Section 3102: Applications

Applications Alternative 1: Proposed Section 3102 states, in one place, the information that must be included in all applications for solar-use easements. This section makes clear that the written narrative required by new Government Code section 51191(b)(1) and section 3103 of this Article, is a required component of all applications.

Subdivisions (a.) through (f.) list information that identifies and describes the nature of the project. This regulation also clarifies that the information listed in Sections 3104 through 3107 will only be required to the extent that the information is applicable to the application.

Analysis: Although SB 618 provides the substantive requirements for establishing a solar-use easement. However, the statute does not provide adequate guidance for landowners, cities, and counties, and the Department to determine whether a particular project satisfies those requirements.

Proposed section 3102(a) will require a landowner applicant to identify the particular land, and that land's characteristics, to be covered by the easement. Without such identification and information, it would not be possible to confirm the contents of the application, or to conduct a real evaluation of a proposal or police the easement. The proposed section 3102(b) will also require an applicant landowner to submit a written narrative describing the facts and rationale that support their proposal for a solar-use easement. This narrative is intended to explain the connection between the facts and the project's eligibility. Without this narrative, the Department, cities, and counties would be left with a collection of various facts and a proposed conclusion that states that the alleged facts warrant approval of the proposal. The narrative will ensure that the landowner accurately describes their project and the reasons it is eligible for a solar-use easement.

Section 3102 will also clarify that the information described in sections 3104 through 3107 will only be required to the extent that the information is relevant to a particular application.

Alternative 2: Do not adopt a regulation to establish the requirements of a solar-use easement application and rely upon the statute to provide guidance regarding the contents of a satisfactory application.

Analysis: This alternative would require project proponents to sift through all of the various statutes and regulations to draw their own conclusion regarding the necessary components of an application. Absence of this regulation would leave landowners, cities, and counties, and the Department without enforceable standards for the information that must be included in a solar-use easement application.

In addition, without this regulation, applicants would not be required to submit a written narrative that includes a plain language explanation of their project or the landowners' rationale for believing that their project satisfies the requirements for a solar-use easement.

Since the Department considers that a written narrative will be necessary for it to make the eligibility determination required by section 51191(a), the Department has rejected the no regulation alternative.

Section 3103: Written Narrative

Alternative 1: Section 3103 prescribes the information that will be required for the written narrative component of all applications.

Analysis: Section 51191(b)(1) of SB 618 does not require submission of a written narrative in all applications; instead the statute only requires a written narrative when it would be necessary to explain that, even under the best management practices, continued agricultural use would be substantially limited due to the soil's reduced agricultural productivity from chemical or physical limitations. However, the Department anticipates that a written narrative will be necessary and useful in the Department's consideration of the eligibility of the solar-use easement proposal.

Section 3103 also describes the information that must be included within the narrative. That information includes USDA NRCS Soil Survey information, existing agricultural uses, typical agricultural practices on the land, agricultural conditions in the surrounding area, and a discussion of the best currently available management practices. It will also be required to explain whether one or a combination of those best practices would allow continued agricultural production.

The written narrative should enable the city, county, and Department to understand the connection between the facts relevant to the solar-use easement and the conclusion that the proposed location is either marginally productive or physically impaired for agricultural use and will, therefore, satisfy the requirements for a solar-use easement. By listing the particular information that will be required, the regulations will inform applicants of what information is relevant to the Department's eligibility determination and the required consultations, reviews, and comments.

Alternative 2: Do not establish requirements for the written narrative, and rely instead upon the statutory requirements.

The purpose of SB 618 was to encourage the development of photovoltaic facilities on land that is either marginally productive or physically impaired for continued agricultural use. However, the statute does not explicitly require the written narrative in all applications; the absence of a written narrative leaves the Department without the information that it anticipates will be necessary, or at least useful in determining whether a project is on land that is either marginally productive or physically impaired.

Since the Department anticipates that the information to be required by section 3103 will be necessary to make the determination required by section 51191(a), the Department has rejected the no regulation alternative.

Section 3104: Soil Test Report

Alternative 1: Section 3104 clarifies the requirements for a soil test report. This regulation will also clarify that a soil test report is only required when eligibility is based upon reduced productivity caused by the proposed solar-use easement land's soil. The information to be required will include a soil test or soil survey, prepared by a certified professional in soil science, that demonstrates the significant reduction in the soil's productivity. The regulation will require identification of the Soil Scientist or Classifier and their employer. This regulation will require submission of a map indicating where the samples of the soil used in the test or survey were taken. The regulation will also require that the test be conducted within six months of the application.

Analysis: This regulation will ensure that the soil test will be conducted by a person who has the expertise to measure the agricultural productivity of the soils on the proposed solar-use easement land. By requiring submission of a map indicating where the samples were taken, the regulation will ensure that cities, counties, and the Department can see whether the test is representative of the current condition of the entire parcel or parcels to be included in the easement. By requiring that the test be conducted within six months of the application, the regulation will ensure that the results of the test indicate the current condition of the land.

Alternative 2: Do not adopt a regulation and allow the landowner to submit whatever documentation that they believe to be adequate to demonstrate the reduced productivity of the easement soils.

The Department believes that Section 3104 will require the minimum information necessary for a satisfactory soil test. Therefore, Section 3104 will require the information in all cases where eligibility is based upon reduced productivity because of adverse soil conditions. By placing these requirements in regulation the Department can require the information of all applicants and all applicants will know the requirements. Therefore, the proposed regulation will prevent needless rejections based upon inadequate information.

The Department rejected the no regulation alternative.

Section 3105: Water Availability Analysis

Alternative 1: Section 3105 describes the information that will be required in a water availability analysis. This regulation will clarify that this analysis is only required if eligibility is premised upon an insufficiency of water that would be needed for continued agricultural production. In order to demonstrate water insufficiency, this regulation will require disclosure of the sources of water and the amounts of water that have been used for agriculture on the site. Pursuant to this regulation, applicants will be required to explain why the available water will be insufficient for the continuation of agricultural operations.

Analysis: Insufficiency of water for continued agricultural production is one of the statutory grounds for eligibility for a solar-use easement. In order to demonstrate future water insufficiency, landowners will be required to disclose their water sources; this will allow the Department to review the likelihood of future water availability.

Alternative 2: Do not codify in regulation the information that the Department anticipates will be necessary to demonstrate water insufficiency, and allow applicant landowners to submit whatever information that they consider sufficient to demonstrate water insufficiency.

As with the proposed soil test regulation, the Department believes that the provisions of section 3105 will require the minimum information necessary to demonstrate water insufficiency and will therefore require the information in all cases where eligibility is based upon lack of an adequate amount of available water. By placing these requirements in regulation the Department can require the information of all applicants and all applicants will know the requirements. Therefore, the proposed regulation will prevent needless rejections based upon inadequate information. Moreover, since an agricultural landowner would typically have the type of information required to be disclosed by this regulation, and the analysis can be conducted by anyone including the landowner, this regulation would not necessarily result in any cost to landowner applicants.

The Department proposes to adopt Alternative 1.

Section 3106: Water Quality Analysis

Section 3106 describes the information required for a water quality analysis.

Alternative 1: This section will clarify that a water quality analysis is only required when an applicant landowner asserts that the quality of the water available to the proposed solar-use easement land significantly reduces agricultural productivity. Applicants will be required to explain the quality of the water available to the site and why the productivity of the soil is significantly reduced as a result of the quality of that water. The explanation must describe the chemical content of the water and other water constituents that cause the reduction in productivity.

Analysis: If a landowner asserts that eligibility is based upon reduced production because of poor water quality, the landowner should be required to disclose the facts that indicate the poor water quality. If a landowner observes a reduction in agricultural productivity, it is reasonable to assume that they would investigate the cause. Therefore, if water quality is the cause, it is reasonable to expect that the landowner would know the deficiencies of the water, including chemical content.

Alternative 2: Do not codify in regulation the information that the Department anticipates will be necessary to demonstrate poor water quality, and allow applicant landowners to submit whatever information that they consider sufficient to demonstrate poor water quality.

As with the proposed water availability regulation, the Department believes that the provisions of section 3106 will require the minimum information necessary to demonstrate poor water quality. Therefore, the Department will require the water quality information in all cases where eligibility is based upon reduced productivity resulting from the quality of the site's water. By placing these requirements in regulation the Department can require the information of all applicants and all applicants will know the requirements. Therefore, the proposed regulation will prevent needless rejections based upon inadequate information. Moreover, since an agricultural landowner would typically have the type of information required to be disclosed by this regulation, and the analysis can be conducted by anyone including the landowner, this regulation would not necessarily result in any cost to landowner applicants.

The Department proposes to adopt Alternative 1.

Section 3107: Crop and Yield Information

Section 3107 will describe the information necessary to determine whether the crops and yield on the site demonstrate physical impairment or reduced productivity resulting from the site's soil.

Alternative 1: This alternative will require landowners who are basing eligibility upon reduced crop yield to disclose the crop and yield history on the solar-use easement site. The required history will be six years, which is consistent with the statutory requirement. The regulation will require that the cropping history indicate the parcel and field locations on the map required by section 3102. It will also require a comparison of yield for the site as compared to average yields for the same crops in the county.

Alternative 2: Do not codify in regulation the information that will be required to demonstrate reduced crop yields. Instead of requiring information regarding cropping and yield in the county, allow the landowner to demonstrate reduced yield by only submitting information regarding their own property.

Analysis: The purpose of SB 618 was to encourage photovoltaic developments on land that is marginally productive or physically impaired. Therefore, landowner applicants should be required to disclose their farming practices, including whether the solar-use easement land has been idled for any period of time. Moreover, unless information regarding crops and yield in the county is required, the application for a solar-use easement would not provide a comparison between the proposed easement land and other land in the county. Therefore, absence of this information could mask the affect of drought or other conditions, besides low soil productivity, which can reduce yields.

Since Alternative 2 would not provide adequate information to allow a reliable measure of crop and yield history, it would not be adequate to satisfy the purpose of the solar-use statutes.

Once the requirements of section 3102 through 3107 have been satisfied, to the extent applicable, the Department can make a determination whether the site is eligible for a solar-use easement.

Section 3108(a): Soil Management Plan

Proposed regulation section 3108 establishes the requirements for a soil management plan and a site restoration plan.

Alternative 1: Section 3108(a) requires that the soil management plan include the soil management practices to be utilized while the solar-use project is occurring on the easement land. The practices to be included are construction, grading, soil removal techniques, irrigation, and erosion protection. The plan must also disclose the effect of soil removal activities upon the easement's soil.

Analysis: The solar-use easement statutes require that a management plan describe how impacts to adjacent agricultural operations will be minimized and describe how the solar-use easement land will be restored to the same general condition as existed prior to the easement. Section 3108(a) lists various soil and land management activities that can affect the long-term productivity of the land. By requiring disclosure of the planned management activities, the Department can assess the management activities' likely impact upon the land.

Alternative 2: Do not codify in regulation the information that will be required in a soil management plan. By not prescribing information regarding specific activities, a landowner could focus their plan on the particular characteristics of their land and their proposed activities. However, the Department believes that the provisions of section 3108(a) will require the minimum information necessary to explain the management practices to be employed on easement land, and the likely affects resulting from those activities.

By adopting the aforementioned requirements within this regulation, the Department can require the information of all applicants, and all applicants will know the requirements. Therefore, the proposed regulation will prevent needless rejections based upon inadequate information. Moreover, since an agricultural landowner would typically adopt their own plans for managing their land, a landowner could write the plan required by this regulation. Therefore, this regulation would not necessarily result in any cost to landowner applicants.

The Department proposes to adopt Alternative 1.

Section 3108(b): Restoration Plan

Alternative 1: Section 3108(b) describes the information that will be required for the site restoration plan required by the solar-use easement statutes to be part of a management plan.

Analysis: The restoration plan must ensure that the solar-use easement land will be restored to the general condition that existed at the time the easement was created. Section 3108(b) will require that the restoration plan describe various activities typically utilized in the management of land, including grading and removal of structures. The restoration plan must include procedures to restore the site, procedures to monitor the site, and a means to measure the success of restoration.

Alternative 2: Do not codify in regulation the information that will be required in a restoration plan.

Analysis: By not prescribing information regarding specific activities, a landowner could focus their plan on the particular characteristics of their land and their proposed activities to restore the land to the same general condition that existed at the time that the easement was established. However, the Department anticipates that the provisions of section 3108(b) will require the minimum information necessary to assess the likelihood of success of a restoration plan on easement land.

By adopting the aforementioned requirements within this regulation, the Department can require the information of all applicants, and all applicants will know the requirements. Therefore, the proposed regulation will prevent needless rejections based upon inadequate information. Moreover, since an agricultural landowner would typically adopt their own plans for managing their land, it is reasonable to expect that they are capable of writing a plan to restore the solar-use easement land to the condition that existed before the easement was established, as required by this regulation. Therefore, this regulation would not necessarily result in any cost to landowner applicants.

The Department proposes to adopt Alternative 1.

Section 3108(c): Amendment of Management and Restoration Plans

Alternative 1: Section 3108(c) will require a landowner who proposes to change their project in such a way that the management plan will no longer be adequate to restore the easement land, to submit a proposed amended plan to the city or county and the Department.

Analysis: This regulation will ensure that the solar-use easement land is always covered by satisfactory management and restoration plans. It will also ensure that landowners update their management and restoration plans whenever necessitated by changes to the project. In addition, by strong inference, section 3108(c) will clarify that management and restoration plans must remain current and, at all times, be satisfactory to ensure that the easement land will be restored.

Alternative 2: Do not adopt a regulation that requires an amendment to a management plan or restoration plan.

Analysis: The solar-use easement statutes are silent on changes to projects or amendment of management or restoration plans. Therefore, this regulation is not

mandated by statute. However, as noted above, it is reasonable to recognize a strong inference in the statutes that management and restoration plans be adequate at all times to serve their purpose. The only way to ensure that the plans will stay current is to clarify that management and restoration plans must be amended as necessary to satisfactorily ensure that the easement land will be restored.

Section 3108(d): Amendment Required By the City, County or the Department

Alternative 1: Section 3108(d) will recognize the ongoing authority of the city or county and the Department to continually police solar-use easements. This regulation will require the landowner to amend their management or restoration plan when the city or county or the Department determines that new information has arisen, which was not available at the time the permit was issued, which makes the original management or restoration plan inadequate to ensure restoration of the easement land.

Analysis: This regulation will ensure that management and restoration plans remain adequate to restore easement land.

Alternative 2: Do not adopt a regulation that requires an amendment to a management plan or restoration plan when new information arises after the time the permit is issued.

Analysis: The solar-use easement statutes are silent on changes to projects or amendment of management or restoration plans. Therefore, this regulation is not mandated by statute. However, as noted above, it is reasonable to recognize a strong inference in the statutes that management and restoration plans be adequate to serve their purpose. The only way to ensure that the plans will stay current is to clarify that management and restoration plans must be amended as necessary to satisfactorily ensure that the easement land will be restored.

Just as cities, counties, and the Department must review and approve the initial management and restoration plans, they must have authority to require that those plans continually remain adequate. Therefore, the Department will adopt Alternative 1.

Section 3109: Additional Requirements

This regulation re-states provisions in the solar-use easement statutes that allow the Department, cities and counties to place restrictions, conditions and covenants on solar-use easements that are in addition to the restrictions, conditions and covenants specifically denominated in the statutes.

Analysis: Section 3109 provides for the inclusion within the easement of any requirements proposed by the Department of Conservation, the city or the county. This provision is in accord with sections 51191 and 51191.1 of the solar-use easement statutes because, in approving an easement, the city or county must require implementation of the management plan, and the plan must include any recommendation provided by the Department. In addition, section 51191.2(a) authorizes cities and counties to also require any restrictions, conditions or covenants that the city or county determines are necessary or desirable in order to restrict use of the land to the proposed photovoltaic facility.

Alternatives: Since these regulations only re-state the substance of the statutes, the only alternative would be to not adopt this regulation. However, by re-stating the statutory provisions, this regulation will provide clarity to landowners, cities and counties that the adoption of these regulations, and their silence on any matter, do not foreclose the exercise of additional authority provided by the solar-use easement statutes.

Section 3110: Site Inspections

Alternative 1: Section 3110 provides that landowners must allow site inspections by the city or county.

Analysis: This provision is necessary to provide cities and counties with authority to inspect the uses and conditions on solar-use easement lands. Inspection authority is necessary to ensure ongoing compliance with the easement requirements and enable the city or county to take any necessary enforcement actions.

This regulation also allows the city or county to charge the landowner or operator the reasonable costs of inspection; in so doing, more of the cost of administering the solar-use easements will be borne by those persons and entities that benefit from the solar-use easement program.

Alternative 2: Do not adopt a regulation that provides for site inspections.

Analysis: Absent authority to inspect solar-use easement sites, cities and counties would be severely constrained in their ability to effectively police solar-use easements.

The Department proposes to adopt Alternative 1.

Sections 3111 through 3118: Restoration Security

These sections provide the requirements for restoration securities as authorized and required by Section 51191.3(b)(3) and (c). The solar-use easement statutes allow cities and counties to determine whether to require restoration securities for perpetual easements. Therefore, these regulations will recognize that the cities' and counties' authority whether to require securities extends to allow them the discretion to determine the amount of the security, the type of security that will be required, and whether to reduce or release the security.

These regulations will implement the statutory requirement that landowners post restoration securities for term and self-renewing easements. For those types of easements, these regulations will provide that the restoration securities are financial assurances, including performance bonds, letters of credit, corporate guarantees or other securities to fund restoration of the solar-use easement land. These restoration security regulations were modeled upon, but do not copy, the restoration security requirements in the state's Surface Mining and Reclamation Act (SMARA). SMARA's regulations were utilized as a model because they have a history of effective use, and have proved to be manageable, by the surface mining industry.

Section 3111(a): Perpetual Easements

Alternative 1: Section 3111(a) clarifies and implements section 51191.3(b)(3) of the solar-use easement statutes in that it states that cities and counties may, but are not mandated to, require restoration securities for solar-use easements that are not term easements or self-renewing easements.

Analysis: This section re-states the statutory provision giving cities and counties discretion whether to require landowners to post financial security adequate to restore land that is subject to a perpetual easement. Since this regulation is proposed to ensure understanding of the cities' and counties' authority, no other alternative was considered.

Section 3111(b) through (g): Term and Self-Renewing Easements

Alternative 1: These sub-sections will re-state and implement the statutory requirement that a landowner must post financial securities to ensure restoration of land that will be entered into easements that will expire after some period or will only continue until such time as the easement is not renewed. Since the purpose of the financial security is to ensure that funds will be available at all times to restore the easement land, these sections will require that the security be in effect from the date of the establishment of the easement until restoration is complete. In addition, since the security must be in an

amount adequate to ensure restoration, these regulations will designate certain costs that must be estimated for purposes of establishing the necessary amount of the security. These sections will require that the security be made payable to the city or county, and be submitted for review and approval by the city or county in consultation with the Department prior to commencement of any operations on the easement land. They will also require landowners to review the security at least every five years, or as often as the city or county determines is necessary to keep the security current.

Analysis: Section 51191.3(c) requires landowners to post a "performance bond or other securities" to fund the restoration of land that is subject to a term or self-renewing easement. The provisions of section 3111(b), through (g) are necessary to ensure that the financial securities are in effect at all times that the land is being developed or utilized for photovoltaic use. It will also ensure that the security will be adequate to cover costs of restoration by designating the estimation of certain costs and requiring submission to the city or county for review and approval, and by requiring ongoing, periodic review and adjustment.

Alternative 2: Do not codify in regulation the information that must be considered in estimating the restoration security amount, or require approval by the city or county in consultation with the Department.

Analysis: By not requiring the estimation of certain specified activities, a landowner could focus their restoration plan on the particular characteristics of their land and the actual activities that will be necessary to restore the land to the same general condition that existed at the time that the easement was established. However, the Department believes that the provisions of sections 3111(b) through (g) will require the minimum information necessary ascertain the amount of restoration security and to ensure that the amount remains adequate throughout the life of the easement until restoration is complete.

The Department proposes to adopt Alternative 1.

Section 3112: Restoration Security Instruments
Alternative 1: Section 3112 will describe the amount and type of financial instruments that will satisfy the requirements for restoration securities.

Section 3112(a) recognizes that cities and counties discretion whether to require restoration securities for perpetual easements extends to allow them to determine what constitutes an acceptable restoration security.

Section 3112(b) describes the types of securities that can satisfy the requirements for term easements and self-renewing easements. Section 3112(c) will require that the security be in an amount sufficient to cover restoration of the easement land. Section 3112(d) will clarify that restoration security constitutes an obligation by the landowner to the city or county.

Analysis: Since cities and counties have discretion whether to require security for perpetual easements, it is reasonable to recognize that their discretion extends to determining what types of securities will be required for those easements.

For term and self-renewing easements, Section 51191.3(c) requires the posting of a "performance bond or other securities" to fund restoration. By specifically referencing performance bonds, the statute suggests that the other securities that can be posted should be similar to performance bonds. The Department has again utilized SMARA as the model for the restoration security regulations, in particular the type of instruments that can qualify as restoration securities. It is expected that SMARA is an appropriate model because its terms have been proven to be satisfactory to implement restoration of land from mining.

Alternative 2: Do not limit the types of securities that can be utilized to ensure restoration of the land. Since this will be a locally administered program, allow the cities and counties to decide what financial instruments will be required.

Analysis: The purpose of this regulation is to ensure that securities exist to fund restoration of the solar-use easement land; the type of security is not material, only its adequacy. If an instrument proves inadequate the landowner remains obligated to restore the land. This flexibility may expand the number of landowners who may qualify for solar-use easements because some landowners might not qualify for the listed securities, or find the listed securities to be too expensive. This alternative would allow landowners to shop for, negotiate and provide other types of instruments.

The Department proposes to adopt Alternative 1 in order to ensure that the securities are of a type that has proven to be reliable.

Section 3113: Review by the Department of Conservation

Alternative 1: Section 3113 will require that cities and counties proposing to enter into a term easement or a self-renewing easement submit a copy of a proposed restoration security instrument along with a calculation of restoration security amount to the Department for review and comment.

Analysis: This regulation will allow the Department to review proposed restoration securities. This added level of review will be consistent with the statutory requirement that management and restoration plans be reviewed by the Department in that posting of an adequate security is the insurance that the easement lands will be restored as required by the management and restoration statutes and project plans.

Alternative 2: Do not require submission of the securities to the Department.

Analysis: The statutes do not require that the Department review or approve restoration securities; consequently there may be a question whether the Department has authority to adopt this regulation. In addition, the Williamson Act and solar-use easements are administered locally; requiring review by the Department could insert the Department into decision-making that has primarily been local.

The Department proposes to adopt Alternative 1.

Section 3114: Reduction or Release of Restoration Security

Section 3114(a) will allow cities and counties to determine when and under what conditions restoration security can be reduced or released for perpetual easements.

Analysis: Since cities and counties have discretion whether to require restoration security for perpetual easements, Section 3114(a) will allow cities and counties to determine whether to allow reduction or release of the security. No other alternative was considered.

Section 3114(b) will require the submission of information regarding the status of the easement to the Department before the restoration security may be reduced or released.

Alternative 1: Section 3114(b) will require cities and counties to submit a site inspection report and a revised restoration cost estimate if the city or county proposes to reduce or release restoration security. It will also require submission to the Department of the inspection report and revised cost estimate, along with documentation proving that the easement land has been restored, if the city or county proposes to release the restoration security.

Analysis: This regulation is consistent with section 51191.3(c) because that statute requires the posting of restoration securities for term and self-renewing easements and

specifically authorizes the Department to adopt regulations to implement that section. This regulation will ensure that the facts and circumstances support reduction or release of the securities by providing a second level of review.

Alternative 2: Do not require the submission of the information to the Department.

Analysis: Although the statute requires the posting of the security and allows the Department to adopt implementing regulations, it does not provide for review and approval by the Department. The Department views this alternative as inadequate because it would not provide the information necessary for the Department to conduct a second level of review regarding a local determination to reduce or release the securities.

Section 3114(c) will allow the Department to review and comment upon proposals to reduce or release restoration security.

Alternative 1: This sub-section will allow the Department to review and comment upon proposed reductions or releases of restoration security. It will also allow the Department to inspect easement sites to determine whether a reduction or release of restoration security is warranted. Upon conducting its review, the Department may notify the city or county whether the Department concurs or disagrees with the local determination that the security be reduced or released.

Analysis: This regulation will provide the Department with the information necessary for it to ascertain whether a reduction or release of the security is warranted and supported by relevant facts. By providing for oversight by the Department, this regulation will ensure that the state's interests are considered and protected before a restoration security is reduced or released.

Alternative 2: Do not require submission of the information to the Department or otherwise allow the Department to review proposed reductions or releases of the restoration security.

Analysis: The statutes do not provide for the Department to review or approve restoration securities, much less review proposed reductions or releases of the securities. It is the cities and counties who have the information, or have direct access to the information from the landowner, necessary to determine whether circumstances have changed enough to warrant a reduction or release of the restoration security.

However, Section 51191.3(c) specifically authorizes the Department to adopt regulations to implement the restoration security requirements and this authority is not expressly limited by that statute.

Since the Department anticipates that its review of proposed reductions or releases of restoration securities will further ensure that the securities remain satisfactory, the Department proposes to adopt Alternative 1.

Section 3115: Amendment Fee

Alternative 1: Section 3115 will require submission by the landowner to the Department of any proposal to amend a management plan or restoration plan. It will also require the payment of a fee to cover the Department's estimated cost to review the proposed amendment. The fee shall be not more than the Department's actual cost to review the amendment, but not exceed the $2,200 fee for review of an initial management plan. Analysis: Section 51191(d)(4) allows easements to be amended if they are consistent with the solar-use easement statutes; to be consistent with the statutes, the management and restoration plans must be current. The Department has interpreted section 51191(e) to mean that the Department's review of the management and restoration plans is included in the consultation described in section 51191. Since the Department may charge a fee for its initial review of management and restoration plans, it is reasonable to conclude that requiring payment of a fee to cover the Department's cost to review proposed amendments to those plans is consistent with the statutory framework.

Alternative 2: Do not require payment of an amendment fee to the Department.

Analysis: Section 51191(e) is the statute which explicitly allows the Department to charge a fee for conducting the consultation provided pursuant to section 51191(a). Neither statute provides for the Department to charge any other fee.

The Department proposes to adopt Alternative 1. The review and comment upon an amendment to a management or restoration plan is analogous to review and comment upon the initial plans; therefore Alternative 1 more closely reflects the statutory framework.

Section 3116: Forfeiture of Restoration Security

Alternative 1: In addition to clarifying that a city or county may take any other action to enforce a solar-use easement, Section 3117 will provide explicit grounds for forfeiture of

restoration security. This regulation will explicitly allow cities and counties to require a landowner to forfeit their restoration security when the city or county determines that a landowner is no longer financially capable of restoring the easement land, has not completed restoration by the time that the easement has terminated, has failed to provide a revised estimate of restoration costs as required by section 3111(g), or if the previously accepted security instrument will lapse within 30 days and the landowner has not provided the city or county with sufficient evidence that another restoration security instrument will take effect by the time that the existing security lapses such that restoration security will be in effect at all times.

Analysis: The regulation is necessary to ensure that a city or county can take control of the restoration security funds as soon as it becomes apparent that the funds will likely be needed to complete the restoration.

Alternative 2: No other alternative is suggested because cities and counties must be able to secure the funds when the landowner can no longer be relied upon to complete the restoration, or before the security instrument lapses or otherwise becomes unavailable for restoration.

The Department proposes to adopt Alternative 1.

Section 3117: Financial Capability

Alternative 1: Section 3117 adds to Section 3116 and will require that cities and counties find that a landowner is not financially capable of completing site restoration if the landowner either fails to provide restoration security in an amount that the city or county deems adequate for site restoration, or if a landowner does not provide a restoration security instrument that satisfies the requirements of Section 3112. This section will also allow cities and counties to utilize other criteria to determine financial capability in addition to the criteria listed in the proposed regulation. It will also clarify that it is the responsibility of the landowner to provide the city or county with information that the city or county considers sufficient to prove the landowner's financial capability.

Analysis: The solar-use easement statutes make it the responsibility of the landowner to restore the easement land to the same general condition that existed prior to the easement. This regulation will ensure that a landowner prove their financial capability by providing financial security of a type and amount that will guarantee restoration. Furthermore, the point at which a landowner does not or cannot demonstrate their financial capability is the time at which forfeiture of the restoration security becomes warranted,

Alternative 2: Provide more flexibility for landowners to prove their financial capability to restore easement sites. Instead of requiring cities and counties to find a landowner financially incapable if the landowner does not provide the specifically required financial security, give cities and counties the discretion to determine whether a landowner is financially capable. A landowner might be able to show the city or county that the landowner's net worth or the value of the land is sufficient to cover restoration in the event that the landowner does not satisfactorily complete restoration.

Analysis: This alternative would allow landowners who have adequate financial resources available to restore the land, to avoid the added expense of purchasing a performance bond or other financial security instrument when doing so is not necessary. Although the purpose of the restoration security is to ensure that cities and counties will have funds to cover site restoration, the solar-use easement statutes place responsibility for restoration upon the landowner. Alternative 2 provides the landowner with more options to prove that they have the financial capability of restoring the land. In addition, this alternative could include a provision that the landowner must provide the restoration security identified in Alternative 1 if the landowner's financial condition changes and they no longer have the resources to fund restoration by themselves.

Although a landowner might be able to show that they have resources available to restore the land at the inception of the easement, their financial condition may change over time. The purpose of this regulation is to ensure that adequate financial resources are available at all times. Alternative 1 will ensure the availability of adequate restoration funds in the event that the landowner's resources cease to be adequate or available to fund restoration.

The Department proposes to adopt Alternative 1.

Section 3118: Procedure for Forfeiture of Restoration Security – Public Hearing

Alternative 1: This regulation will ensure that landowners will be provided notice and a public hearing before their restoration security is forfeited. It will allow the city or county to determine the hearing process when they conduct the hearing. When the Department conducts the hearing, this regulation will prescribe use of the Informal Hearing process established in the State's Administrative Procedures Act. The regulation will require that a forfeiture decision made by the city, county, or Department be based only upon the record before the agency, and the grounds set out in Section 3116 and 3117 of this Article.

Analysis: This regulation will ensure that landowners' will be provided notice and a hearing before their security is forfeited. Since these rights are guaranteed by the constitution, no other alternative was considered.