

TITLE 14

DEPARTMENT OF CONSERVATION

PROPOSED REGULATION

Chapter 6

Article 1

California Farmland Conservancy Program

[Sections 3000 through 3015 No Change]

Article 2

Solar-Use Easements

**Section 3100. Solar-Use Easement Consultation Fee**

At the time that a proposed solar-use easement application is submitted to the Department of Conservation (Department) for consultation as provided in Government Code section 51191, the landowner who is seeking the solar-use easement shall pay the Department of Conservation an application fee.

The application may be submitted and fee paid in accord with either the option provided by subdivision (a.) or the option provided by subdivision (b.):

- (a) The landowner may submit the entire application and pay the entire fee of \$7,100 at one time.
  
- (b) The landowner may submit the application and pay the fee in two increments. The first increment of the fee shall be \$4,900 to cover the Department's cost to determine whether the site is eligible for a solar-use easement. If the Department determines that a parcel is eligible for placement into a solar-use easement, the landowner may proceed with their application and shall pay the second increment of the application fee. The second increment shall be \$2,200 to cover the Department's cost to review and comment upon the management plan required by

Government Code section 51191(c). In either option, the total application fee shall be \$7100.00.

Authority: Sections 51191, 51191.8 Government Code.

Reference: Section 51191, Government Code.

### **Section 3101. Definitions**

For the purposes of this article, the following definitions shall apply:

(a.) A “solar-use easement project” and “project” shall mean all land and photovoltaic panels and foundations, and other installations, facilities, buildings, accessory structures, or other improvements to the land that are related to the photovoltaic generation of electricity on land that is or has been proposed to be placed into a solar-use easement.

(b.) A “solar-use easement landowner” shall mean “landowner” as that term is defined in Section 51190 of Part 1, of Division 1 of Title 5 of the Government Code, and any person or entity who owns, or has leased, or is a trustee as provided in that statute, of land that is, or has been proposed to be, placed into a solar-use easement.

(c.) “Solar-use easement land” shall mean the land that is or has been proposed to be placed into a solar-use easement.

(d.) “Solar-use easement statutes” shall mean Chapter 6.9 (commencing with Section 51190), of Part 1, of Division 1 of Title 5 of the Government Code.

(e.) “Operator” shall mean any person, corporation, utility, or other entity that applies for a solar-use easement, develops, constructs, supervises, manages, or owns a solar-use easement project. “Operator” and “landowner operator” include the owner of the solar-use easement land.

(f.) “Applicant” means any person or entity who applies for a solar-use easement; applicants include landowners and operators who propose to develop, construct, supervise, manage, or own a solar-use easement project.

Authority: Sections 51191.8 Government Code.

Reference: Government Code Title 5, Division 1, Part 1, Chapter 6.9, commencing with section 51190

## **Section 3102. Application for a Solar-Use Easement**

An application to determine eligibility for a solar-use easement shall include:

- (a) the information listed in sub-sections (1.) through (6.) of this section;
  - (1.) the project name or number (if any is assigned).
  - (2.) a list of the parcel numbers located within the proposed solar-use easement.
  - (3.) the total number of acres currently under the Williamson Act contract or contracts proposed to be rescinded for entry into the proposed solar-use easement.
  - (4.) a location map of the solar-use easement site, including parcel boundaries and individual field locations.
  - (5.) a current farmland designation map indicating whether the solar-use easement land is Prime Farmland, Unique Farmland, Farmland of Statewide Importance, Farmland of Local Importance, Grazing Land, Urban and Built-up land, or "Other Land" as defined by the Department's Farmland Mapping and Monitoring Program as of January 1, 2010, or the most recent map released by the Farmland Mapping and Monitoring Program.
  - (6.) the project start date, its projected life, and its projected energy production.
- (b) a written narrative describing the facts that are being used to support the eligibility application, as required by section 3103 of this article.
- (c) to the extent applicable, any information outlined in sections 3104 through 3107 of this article, that supports the application for eligibility.

Authority: Sections 51191.8 Government Code.

Reference: Sections 51191, Government Code.

## **Section 3103. Written Narrative Regarding Eligibility Based On Soil, Chemical, or Physical Properties**

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

(a.) reference to USDA NRCS Soil Survey information for the proposed easement area, including:

- 1) a soil map that clearly delineates the soil mapping units found on the site.
- 2) the Land Capability Classification, indicating whether the land is irrigated or non-irrigated, for each soil mapping unit.
- 3) the Soil Survey description of the primary physical or chemical limitation(s) to agricultural use for each soil mapping unit.

(b.) the existing agricultural use(s) on the solar-use easement site.

(c.) a discussion of the typical cultivation and management practices used to carry out the uses described in (b) above.

(d.) the existing agricultural conditions in the surrounding area and county.

(e.) a discussion of the best currently available agricultural management practices and an explanation as to whether one or a combination thereof would allow continued agricultural production on the project site.

Authority: Sections 51191.8, Government Code.

Reference: Section 51191, Government Code.

### **Section 3104. Soil Test Report**

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

(a.) A soil test report and/or a soil survey demonstrating that the present characteristics of the soil significantly reduce the soil's agricultural productivity. The soil test report or

survey shall have been conducted by a Certified Soil Scientist or Certified Professional Soil Classifier.

(b.) The soil test report shall include the name, employer, date of licensure, and contact information of the Certified Soil Scientist or Certified Professional Soil Classifier who conducted the soil test.

(c.) All soil samples utilized in the soil test report shall be taken from the land proposed for the solar-use easement. The soil test report shall include a map that shows the locations on the solar-use easement land where the soil samples were taken.

(d.) The soil test shall be conducted no more than six (6) months prior to submission of the application for a solar-use easement.

Authority: Sections 51191.8, Government Code.

Reference: Section 51191, Government Code.

### **Section 3105. Water Availability Analysis**

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

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

(b.) a characterization of the groundwater available to the solar-use easement land including the well depth, the amount of groundwater applied, the groundwater fluctuation over the immediately preceding six (6) years, and saline water depths.

(c.) a description of any dryland farming on the solar-use easement land.

Authority: Sections 51191.8, Government Code.

Reference: Sections 51191, Government Code.

### **Section 3106. Water Quality Analysis**

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

(a.) a qualitative description of surface water source(s) that is focused on chemical content and other constituents with the potential to impact agricultural productivity.

(b.) a qualitative description of groundwater that is focused on chemical content and other constituents with the potential to impact agricultural productivity.

(c.) a description of water source blending, pre-treatment, and other techniques used to mitigate water quality issues, and the limitations of such techniques specific to the site.

Authority: Sections 51191.8, Government Code.

Reference: Section 51191, Government Code.

### **Section 3107. Crop and Yield Information**

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

(a.) annual cropping history and yields, by parcel and individual field location, over the immediately preceding six (6) years, as indicated on the map of the proposed solar-use easement area submitted pursuant to Section 3102(a)(4) of this article.

(b.) a comparison of crop yield information for the site against average crop yields for the same crop on a county basis. County level data may be acquired from the County Agricultural Commissioner's office.

(c.) if applicable, supporting information in the form of crop insurance or disaster assistance approvals may be provided as evidence of crop and yield impacts.

Authority: Sections 51191.8, Government Code.

Reference: Sections 51191, Government Code.

### **Section 3108. Soil Management and Site Restoration**

Upon the Department's determination that the site proposed for a solar-use easement is eligible, the landowner shall submit a proposed soil management and site restoration plan to the city or county that describes the site including the information required by section 3102. The plan shall describe how the soil will be managed and protected for future agricultural use during the life of the easement, provide for site restoration, and describe how impacts to adjacent agricultural operations will be minimized. The city or county shall forward the proposed management plan to the Department. The proposed management plan shall satisfy the requirements of Government Code section 51191(c). A management plan shall consist of two components, a soil management component and a site restoration component.

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

(1.) the construction activities, including, but not limited to, grading depth and soil removal techniques, and their effect on the current condition of the easement's soils.

(2.) soil management during the life of the easement, including but not limited to:

- A. soil removal, storage and protection
- B. concurrent grazing activities
- C. irrigation
- D. maintenance activities
- E. soil erosion protection

(3.) the effect of soil removal activities upon the condition of the easement's soils.

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

(1.) the procedures to be used to restore the site, which may include but is not limited to re-grading, and storage and removal of structures and equipment.

(2.) the provisions for monitoring the site, including the means, manner, and timing of:

- A. maintenance and weeding
- B. planting and seeding inspection
- C. data collection and reporting
- D. re-planting contingencies

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

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

Authority: Sections 51191.8, Government Code.

Reference: Sections 51191, 51191.3, 51192.1, Government Code.

**Section 3109. Additional Requirements**

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

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

(2.) require implementation of the soil management plan.

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

(1.) mitigation measures on the land that is subject to the solar-use easement.

(2.) mitigation measures beyond the land that is subject to the solar-use easement.

(3.) if deemed necessary by the county or city to ensure that decommissioning requirements are met, provisions for financial assurances to fund restoration of the solar-use easement land to the conditions that existed before the approval or acceptance of the easement by the time the easement terminates.

Authority: Sections 51191.8, Government Code.

Reference: Section 51191, 51191.3, 51192.1, Government Code.

### **Section 3110. Site Inspections**

Solar-use easement landowners and project operators must allow cities, counties and the Department to inspect lands that have been placed into a solar-use easement and all structures and activities taking place thereon. The inspections are subject to the following conditions:

(a.) Inspection of a solar-use easement may be conducted to determine whether the solar-use easement and the operations thereon have violated any requirements of the solar-use easement statutes, this Article, and the easement's soil management and restoration plan.

(b.) Upon completion of an inspection, an inspection report shall be generated. The inspection report shall include the matters described in subsection (a), and any other

reports or documents prepared by the inspector or inspection team regarding the solar-use easement. The completed inspection report, along with any statement by the city or county regarding the status of compliance of the project, shall be provided to the Department and the solar-use easement landowner within 30 days of completion of the inspection.

Authority: Sections 51191.8, Government Code.

Reference: Government Code, Title 5, Division 1, Part 1, Chapter 6.9 commencing with section 51190

### **Section 3111. Restoration Security Amount**

(a.) For perpetual easements, cities and counties may require financial security for restoration of the solar-use easement land in whatever amount that the city or county deems necessary to ensure restoration of the solar-use easement land will be accomplished in accord with Government Code sections 51191.3(b)(3), the approved soil management plan, and with this Article.

(b.) For term easements and self-renewing easements, landowner applicants shall post a restoration security instrument in an amount that complies with the provisions of this section. The restoration securities shall be in an amount determined by the city or county to be adequate to fund the restoration of the easement land to the conditions that existed immediately preceding the approval or acceptance of the easement by the time that the easement terminates. The restoration security instrument shall be in effect at the commencement of the project and remain in force at all times until the bond or restoration security instrument is released by the city or county.

(c.) The performance bond or other restoration security required by sub-division (b) shall be sufficient to cover all restoration costs. "Restoration costs" shall include all costs calculated to be incurred to restore the solar-use easement land to the general condition that existed at the time of approval or acceptance of the easement and in accord with the approved management and restoration plan, including, to the extent applicable:

(1.) the cost of the physical activities and materials necessary to implement the approved management plan including:

- A. re-grading
- B. re-vegetation; including monitoring
- C. labor and supervision
- D. equipment
- E. mobilization and transportation
- F. removal of buildings, structures, and equipment
- G. soil tests

- H. fencing
- I. liability insurance;
- J. any other necessary restoration procedures

(2.) the city's or county's costs, and costs for third party contracting, for each of the activities required by the soil management and restoration plans.

(3.) a contingency amount not to exceed 10 percent of the restoration costs.

(4.) the calculated amount shall not include the cost of completing construction or continued operation of the solar project on the solar-use easement land.

(d.) It shall be the sole responsibility of the solar-use easement landowner to provide the city or county with sufficient information to demonstrate that the amount of Restoration Security is adequate to restore the solar-use easement lands in accord with the approved management plan and the requirements of Government Code section 51191.3(c).

(e.) The restoration security shall be submitted to the city or county who, in consultation with the Department, shall review and approve the security prior to the commencement of operations on the project site.

(f.) the security shall be made payable to the city or county in which the project is located.

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

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.

### **Section 3112. Restoration Security Instruments**

(a.) If a city or county requires restoration security pursuant to Government Code section 51191.1(b)(3) and section 3111(b) of this article, the city or county shall determine what type, and the amount, of financial assurances or financial instruments the landowner shall provide to ensure that restoration of the easement land is performed in accordance with the approved soil management plan and Government Code section 51191(c).

b.) For term easements and self-renewing easements, "Restoration Security" shall mean an instrument, fund, or other form of financial assurance as required by section 51191.3(b)(3) and (c) of the Government Code, and may take the form of any one or a combination of the following, which the city or county determines are adequate to perform restoration in accordance with Government Code section 51191(c) and the approved soil management plan:

- (1.) performance bonds
- (2.) surety bonds
- (3.) irrevocable letters of credit
- (4.) trust funds
- (5.) a corporate guarantee
- (6.) other forms of financial securities, approved by the city or county, to be adequate to ensure restoration of the solar-use easement land to the same general condition that existed at the time of approval or acceptance of the easement.

(c.) If restoration security is required, the amount of the Restoration Security shall be that amount of money sufficient to cover restoration costs as that term is defined in section 3115(d) of this Article.

(d.) Restoration security shall constitute an obligation to pay by the landowner or operator.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.

### **Section 3113. Review by the Department of Conservation**

For term easements and self-renewing easements, the city or county shall submit a copy of the proposed Restoration Security and the calculation of the Restoration Security amount submitted by the landowner, to the Department for review. With this submittal, the city or county shall include the information and documentation relied upon in calculating the amount of the proposed Restoration Security and shall affirm that the city or county has determined that the amount of Restoration Security is adequate to ensure that the city or county will have sufficient funds to conduct and complete restoration of the solar-use easement land in accordance with the approved soil management and restoration plan and this Article, if the landowner or operator fails to do so upon termination of the easement.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.

**Section 3114. Reduction or Release of Restoration Security.**

(a.) For perpetual easements, the city or county may determine whether and when a restoration security can be reduced or released.

(b.) For term easements or self-renewing easements, prior to the reduction or release of a restoration security instrument, the city or county shall provide the following to the Department:

- (1.) an inspection report supported by facts indicating that the condition of the solar-use easement land has changed to a degree that reduction of the existing restoration security may be made without compromising the ability of the city or county to restore the solar-use easement land.
- (2.) a revised restoration security cost estimate prepared by the landowner and accepted by the city or county, with supporting facts and documentation, indicating the specific cost changes supporting reduction to the existing restoration security amount.
- (3.) if the city or county proposes release of the restoration security, a statement with supporting facts and documentation that shall include the most recent inspection report and any other reviews prepared as part of the inspection report, indicating that the solar-use easement land has been restored in accordance with the approved soil management and restoration plan, that there are no outstanding restoration liabilities, and recommending to the Department that the restoration security be released.

(c.) The Department may review and comment upon a proposed reduction or release of restoration security and conduct its own inspection of the project and the solar-use easement land, and may do any of the following:

- (1.) notify the city or county of the Department's concurrence that the restoration security may be reduced or released, at which time the city or county may reduce or release the restoration security.

- (2.) notify the city or county that the Department has found that aspects of the activities on the solar-use easement land warrant retention or modification to the restoration security, or that there are aspects of the activities on the solar-use easement land that are not in compliance with the approved soil management plan or the solar-use easement statutes.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.

### **Section 3115. Amendment Fee**

If authorized by the city or county, a landowner may amend their solar-use easement. Amendments shall be subject to the same requirements as an initial application. If a landowner submits a proposed amendment to a solar-use easement management or restoration plan, the landowner or operator shall pay the Department the reasonable cost to review the proposed amendment to the plan. The amendment fee shall not exceed the costs incurred by the Department to review the proposed amendment or the \$2,200 assessed for initial management plan review by section 3100(b) of this Article.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Section 51191.3, Government Code.

### **Section 3116. Forfeiture of Restoration Security**

In addition to an action to enforce the terms of a solar-use easement, a city or county may require forfeiture of restoration security when any of the following circumstances has occurred:

- (a.) the city or county determines that a solar-use easement landowner is financially incapable of performing restoration in accordance with the approved management plan.
- (b.) a landowner has not completed restoration in compliance with the approved management plan for the solar-use easement by the time the easement terminates.
- (c.) a landowner has failed to provide the city or county with a revised restoration security cost estimate as required by section 3111(g) that adequately

addresses the criteria contained in this Article within 30 days of receipt of notification from the city or county to provide a revised cost estimate.

- (d.) an acceptable restoration security instrument will lapse within 30 days and the landowner has not provided evidence satisfactory to the city or county that another restoration security instrument will take effect before the security lapses.
- (e.) if the restoration security coverage is not, according to the city, county, or the Department adequate to ensure restoration of the solar-use easement lands in accord with the approved soil management plan and the landowner has not provided evidence satisfactory to the city or county with substitute or additional security within 30 days' notice from the city or county.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.

### **Section 3117. Criteria for Determining Financial Capability**

For term easements or self-renewing easements, the city or county shall determine that a solar-use easement landowner does not have the financial capability to perform restoration of the solar-use easement land if the city or county can make either finding located in sub-division (a.) or (b.) below. The city, county may also utilize other relevant facts to determine whether the solar-use easement landowner has the financial capability to perform site restoration. A solar-use easement landowner shall provide the city, county, or the Department with any and all information requested by any of those agencies to ascertain the landowner's financial capability. A landowner shall be found financially incapable if the city or county makes either of the following findings:

- (a.) the landowner has not provided restoration security in an amount deemed adequate by the city or county.
- (b.) the landowner has not provided a restoration security instrument that has been approved by the city or county as required by in Section 3113 of this Article.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.

### **Section 3118. Procedure for Forfeiture of Restoration Security - Public Hearing**

(a.) A landowner shall be provided a public hearing before a determination is made that the landowner shall forfeit their restoration security. When the city or county conducts the public hearing provided by this regulation, the city or county shall decide the process to be utilized in conducting the public hearing. When the Department conducts the hearing provided by this regulation, the public hearing shall be conducted as an informal hearing pursuant to the requirements of Article 10, Chapter 4.5, Part 1, Division 3 of the Government Code. The Director of the Department may delegate the determination to an employee of the Department.

(b.) Following the public hearing, the city, county, or the Department shall determine, based on the record before it and the criteria described in section 3118 of these regulations, whether and to what extent that the restoration security shall be forfeited.

Authority: Sections 51191.3, 51191.8, Government Code.

Reference: Sections 51191, 51191.3, Government Code.