

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 for consultation as provided in Government Code section 51191, the landowner who is seeking the solar-use easement shall pay the Department of Conservation a fee of \$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 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.

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

A landowner proposing to rescind a Williamson Act contract and place the subject land into a solar-use easement shall submit an application to the county or city in which the proposed solar-use easement is to be located. All application materials shall be forwarded by the city or county to the Department of Conservation. The application shall include the following:

a.) a written narrative factually demonstrating that even under the best currently available management practices, continued agricultural practices would be substantially limited on the solar-use easement land due to the soil's reduced agricultural productivity from chemical or physical limitations;

b.) a soil test conducted no more than six (6) months immediately prior to submission of the application demonstrating that the characteristics of the soil on the solar-use easement land significantly reduce the soil's agricultural productivity;

c.) an analysis of water availability for the solar-use easement land demonstrating the insufficiency of water supplies for continued agricultural production on the land;

d.) an analysis of water quality available to the solar-use easement land demonstrating that continued agricultural production on that land would, under the best currently available management practices, be significantly reduced;

e.) crop and yield information regarding the solar-use easement land for the immediately preceding six (6) years;

f.) a soil management plan;

g.) a copy of the proposed Solar-Use Easement Agreement.

Authority: Sections 51191.8 Government Code

Reference: Government Code section 51191

Section 3103. Substantially Limited Agricultural Practices

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

- a.) project name or number (if any is assigned);
- b.) a list of the parcel numbers located within the proposed solar-use easement;
- c.) 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;
- d.) the existing agricultural conditions in the county and region;
- e.) the existing agricultural uses on the solar-use easement site;
- f.) 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;
- g.) a location map of the solar-use easement site, including parcel boundaries, individual field locations and their cropping histories; and
- h.) 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 or Built-up land, or Other Land as defined by the Department of Conservation's Farmland Mapping and Monitoring Program as of January 1, 2010, or the most recent map released by the Farmland Mapping and Monitoring Program.

Authority: Sections 51191.8 Government Code

Reference: Government Code section 51191

Section 3104. Soil Test Report

- a.) The soil test report demonstrating that the characteristics of the soil significantly reduce the soil's agricultural productivity shall be 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 showing 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: Government Code section 51191

Section 3105. Water Availability Analysis

The analysis of water availability demonstrating the insufficiency of water supplies for continued agricultural production shall include;

- 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: Government Code section 51191

Section 3106. Water Quality Analysis

The analysis of water quality demonstrating that continued agricultural production would, under the best currently available management practices, be significantly reduced shall include:

- a.) a qualitative description of surface water sources 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.

Authority: Sections 51191.8 Government Code

Reference: Government Code section 51191

Section 3107. Crop and Yield Information

The crop and yield information for the immediately preceding six (6) years shall include:

- a.) at a minimum, annual cropping history and yields over the immediately preceding six (6) years, as indicated on the map of the proposed solar-use easement area submitted pursuant to Section 3103(h) of this article;
- b.) supporting information in the form of crop insurance or disaster assistance approvals;
- c.) 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.

Authority: Sections 51191.8 Government Code

Reference: Government Code section 51191

Section 3108. Soil Management Plan.

- a.) At the time that a landowner applies for a solar-use easement, the landowner shall submit a proposed soil management plan to the city or county that describes how the soil will be managed and protected for future agricultural use during the life of the easement including site restoration, and how impacts to adjacent agricultural operations

will be minimized. The city or county shall forward the management plan to the Department of Conservation. The proposed management plan shall satisfy the requirements of Government Code section 51191(c) and shall include:

1.) the name and contact information, including the address, telephone number, and e-mail address, for the landowner, the easement applicant, the operator of the solar project, and an agent for service of process.

2.) the location of the solar-use easement including:

- A. a brief description of the lands involved in the solar-use easement;
- B. a legal description of the lands on which the solar-use easement is to be located;
- C. the acreage involved in the solar-use easement;
- D. any and all access routes to the solar-use easement;
- E. a map of the location of the solar-use easement.

3.) a description of the solar-use easement area including the current condition, the existing land uses, the soils, and the distribution of state Farmland Mapping and Monitoring Program designations for:

- A. the land located within the proposed solar-use easement;
- B. the land in the surrounding areas.

4.) a description of the project including:

- A. the project time frame which shall consist of the start date and the projected life of the project;
- B. the projected energy production.

5.) a description of the soil management to be on the solar-use easement land including:

A. the affect of construction activities, including, but not limited to, grading depth and soil removal techniques, on the current condition of the easement's soils;

B. soil management during the life of the easement, including but not limited to:

- 1. soil removal, storage and protection;

2. concurrent grazing activities;
3. irrigation;
4. maintenance activities;

C. the affect of soil removal activities upon the condition of the easement's soils, at the end of the project life.

6.) a description of activities to mitigate the project's impacts, including, but not limited to:

A. a description of direct and indirect physical impacts,

B. growth inducing impacts, land use impacts, and noise impacts to adjacent agricultural operations;

C. a description of how the impacts described in subdivisions A. and B. will be minimized including, but not limited to, property buffers, and limited hours of operation.

7.) a site restoration plan.

b.) If the Department of Conservation 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 requirements of the easement, all recommendations regarding the soil management plan that are made by the Department of Conservation;

2.) require implementation of the soil management plan.

Authority: Sections 51191.8 Government Code

Reference: Government Code section 51191, 51192.1

Section 3109. Site Restoration

The soil management plan to be submitted when the landowner applies for a Solar-Use Easement, shall include a site restoration 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. The city or county shall forward the restoration plan to the Department of Conservation.

- a.) The proposed site restoration plan shall describe the procedures to be used to restore the solar-use easement site to its prior general condition including, but not limited to, regrading, revegetation, and storage and removal of structures and equipment;
- b.) Proposed restoration plan shall indicate whether revegetation is proposed, and if so, the procedures to be employed to do so, including:
 - 1.) a baseline study documenting the vegetative density, cover, and species richness on the site at the time of approval or acceptance of the solar-use easement;
 - 2.) the test plots to be employed;
 - 3.) the proposed revegetation mix;
 - 4.) the planting schedule;
 5. the means of irrigation, including the source of irrigation water;
 - 6.) the protective measures for revegetation area or areas;
 - 7.) monitoring of the site, including the means, manner and timing of:
 - A. maintenance and weeding;
 - B. planting and seeding inspection;
 - C. data collection and reporting;
 - D. replanting contingencies;
 - 8.) a means for measurement of the success of revegetation
 - A. for farmland not designated as Prime Farmland, Unique Farmland, and Farmland of Statewide Importance by the Farmland Mapping and Monitoring Program, the success of revegetation may be demonstrated by restoration of the site vegetation to a condition consistent with the measurements taken in the baseline study conducted in accord with subsection (b)(1);
 - B. for Prime Farmland, Unique Farmland, and Farmland of Statewide Importance, the success of restoration may be demonstrated when the productive capability of the restored area is equivalent to or exceeds, for two similar crop years, the immediately previous agricultural condition;

C. a point intercept method may be used to monitor progress toward the applicable revegetation or crop production standards.

D. annual monitoring of the restored area or areas shall be conducted to track revegetation success. Success shall be measured by quantitative standards for cover, density, and species richness.

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 an 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 the termination of the easement.

d.) At any time that the solar-use easement landowner, or the city, the county, or the Department of Conservation determines that the solar-use easement land cannot be restored in accordance with the approved management plan, a solar-use easement landowner shall submit a proposed amendment to the site restoration section 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 the termination of the easement.

Authority: Sections 51191.8 Government Code

Reference: Government Code section 51191, 51191.3, 51192.1

Section 3110. Site Inspections

The city, county or Department of Conservation may, in accordance with this section, inspect lands that have been placed into a solar-use easement and all activities thereon to ascertain whether there has been a violation of the solar-use easement statutes, this article, or the applicable solar-use easement.

a.) Inspection of a solar-use easement may be conducted once or more each calendar year to determine whether the solar-use easement and the operations thereon are in compliance with the requirements of the solar-use easement statutes, this article and the easement's soil management plan.

b.) The landowner shall be responsible for the reasonable cost of any inspections conducted by the city, county or the Department of Conservation.

c.) 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. If the city or county conducts the inspection, the inspector shall provide a copy of the completed inspection report along with any statement by the city or county regarding the status of compliance of the project to the Department of Conservation 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

a.) Cities and counties shall require financial security for restoration of the solar-use easement land in accordance with Government Code sections 51191.3(b)(3) and (c), the approved soil management plan, and with this article.

b.) For term easements or self-renewing easements the restrictions, conditions, or covenants shall include a requirement for the landowner to post a performance bond or other securities adequate to fund the restoration of the land that is subject to the easement, to the conditions that existed immediately preceding the approval or acceptance of the easement by the time that the easement terminates. The performance bond or other restoration security shall:

- 1.) be made payable to the city or county in which the project is located;
- 2.) be submitted to the city or county, in consultation with the Department of Conservation, for review and approval prior to the commencement of operations on the project site;
- 3.) be reviewed annually by the city or county;
- 4.) be adjusted annually, as necessary, to account for changes in the estimated cost of restoration and inflation;
- 5.) include a detailed, itemized estimate of restoration costs, including costs associated with, but not limited to:
 - A. regrading;
 - B. revegetation; 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

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3

Section 3112. Restoration Security Instruments

- a.) Cities and counties shall require financial securities adequate to fund restoration and ensure that restoration of the easement land is performed in accordance with the approved soil management plan and Government Code section 51191(c).
- b.) "Restoration Security" means 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,

upon review and approval by the Department of Conservation, reasonably 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.) other forms of financial securities approved by the city or county and the Department of Conservation as 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.) 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.

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3

Section 3113. Criteria for Determining Financial Capability.

The city or county and the Department of Conservation shall use, but not be limited to, the following criteria when determining the financial capability of a solar-use easement landowner to perform site restoration. It is the sole responsibility of the solar-use easement landowner to provide the city or county and the Department of Conservation with sufficient information to reasonably demonstrate the landowner's financial capability. A landowner shall be found financially incapable if the city, county or the Department of Conservation makes any of the following findings:

a.) The landowner is incapable of providing, or refuses to provide restoration security in an amount deemed adequate by the city, county or the Department of Conservation; or,

b.) The landowner is incapable of providing, or refuses to provide, a restoration security instrument approved by the Department of Conservation in Section 3112(b) of these regulations.

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3

Section 3114. Administration by City or County.

a.) Record Keeping. The city or county shall establish and maintain in-house measures and procedures to ensure organized record-keeping and monitoring of solar-use easements under their jurisdiction. The city or county shall forward a copy of each solar-use easement, and approved soil management plan and restoration security instrument to the Department of Conservation.

b.) Restoration Security. The city or county shall ensure that the restoration of the solar-use easement land will be attained in accordance with the approved management plan. This shall include the inclusion of provisions in the restoration security instrument that allow forfeiture if restoration is not completed in accordance with the approved soil management plan and Government Code section 51191.3(c).

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3

Section 3115. Calculation of Restoration Security Amount.

a.) The city or county, in consultation with the Department of Conservation, shall determine the amount of restoration security that shall be posted by the solar-use easement landowner.

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

c.) The amount of the Restoration Security shall be calculated, based on and in an amount adequate to secure estimated restoration costs.

d.) "Restoration costs" shall be defined as 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 soil management plan, including but not limited to:

1.) an analysis of the physical activities and materials necessary to implement the approved management plan;

2.) the city's or county's and the Department of Conservation's costs, and costs for third party contracting, for each of the activities required by the soil management plan;

3.) a contingency amount not to exceed 10% of the restoration costs;

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

e.) The amount of Restoration Security may be modified annually to reflect the most current calculation of restoration costs.

f.) In order for the city, county and the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Restoration Security, the landowner shall annually submit to the city or county an update of the written calculation of the amount of Restoration Security.

Authority: Sections 51191.3, 51191.8,

Reference: Government Code section 51191, 51191.3

Section 3116. Review by the Department of Conservation.

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 of Conservation 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 indicate to the Department of Conservation that the

city or county has determined that the amount of Restoration Security is adequate to ensure that the city, county and the Department of Conservation will have sufficient funds to conduct and complete restoration of the solar-use easement land in accordance with the approved soil management plan and this article.

Authority: Sections 51191.3, 51191.8,

Reference: Government Code section 51191, 51191.3

Section 3117. Modification or Release of Restoration Security.

a.) Prior to the modification of a restoration security amount, or the release of the restoration security instrument, the city or county shall provide to the Department of Conservation the following documents at one time:

- 1.) an inspection report indicating that there are aspects of the solar-use easement land that require modification of the existing restoration security amount, or stating that the solar-use easement land has been restored in accordance with the approved management plan, and that there are no aspects of the restored solar-use easement land that are inconsistent with the meaning of restoration as defined in Government Code section 51191(c).

- 2.) a revised restoration security cost estimate prepared by the landowner and accepted by the city or county, with supporting documentation, indicating the specific cost changes to the existing restoration security amount, or indicating that there are no further outstanding restoration liabilities to be covered by the restoration security.

- 3.) if the city or county proposes release of the restoration security, a statement with supporting documentation that shall include the most recent inspection report and any reports prepared as part of the inspection report, indicating that the solar-use easement land has been restored in accordance with the approved soil management plan, that there are no outstanding restoration liabilities, and recommending to the Department of Conservation that the restoration security be released.

b.) The Department of Conservation may review and comment upon a proposed modification 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 of Conservation's concurrence that the modified restoration security amount is adequate, or that there appear to be no outstanding restoration liabilities on the solar-use easement land and that the restoration security may be released, at which time the city or county may release the restoration security; or,

2.) Notify the city or county that the Department of Conservation has found that aspects of the activities on the solar-use easement land require additional modifications to the restoration security amount, 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; or,

3.) Commence the restoration security forfeiture process provided by this article.

c.) If a violation of the solar-use easement is confirmed by the city, county or the Department of Conservation, then the city or county shall take actions under these regulations and Government Code section 51191.5 to seek an injunction to correct the violation or violations. The restoration security shall not be released until the violation is corrected.

(d.) If a violation of the solar-use easement is confirmed, and the city or county does not take action under Government Code section 51191.5 to correct the violation by injunction then the Department of Conservation may seek an injunction pursuant to section 51191.5 or require forfeiture of the restoration security.

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3

Section 3118. Amendment Fee

If a landowner submits a proposed amendment to a solar-use easement management plan or modification of restoration security is proposed, the landowner shall pay the Department of Conservation a fee, not to exceed the initial solar-use easement application fee, to cover the costs incurred by the Department of Conservation in reviewing the proposed amendment.

Authority: Sections 51191.3, 51191.8 Government Code

Reference: Section 51191.3, Government Code

Section 3119. Forfeiture of Restoration Security

A city, county or the Department of Conservation may require forfeiture of restoration security when any of the following circumstances has occurred:

- a.) the city, county or the Department of Conservation, determines that a solar-use easement landowner is financially incapable of performing restoration in accordance with the approved soil management plan; or,
- b.) a landowner has not completed restoration in compliance with the approved soil management plan for the solar-use easement by the time it terminates; or,
- c.) a landowner has failed to provide the city, county or the Department of Conservation with a revised restoration security cost estimate as required by section 3117 that adequately addresses the criteria contained in this article within 30 days of receipt of notification from the city, county or Department of Conservation to provide a revised cost estimate.
- d.) an acceptable restoration security instrument has lapsed and has not been renewed or replaced by another acceptable restoration security instrument within 30 days and any remaining restoration security coverage is not, according to the city, county or the Department of Conservation adequate by itself to ensure restoration of the solar-use easement lands in accord with the approved soil management plan.

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3

Section 3120. 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 of Conservation 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 of Conservation may delegate the determination to an employee of the Department of Conservation.

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

Authority: Sections 51191.3, 51191.8,

Reference: Government Code sections 51191, 51191.3