



DEPARTMENT OF PLANNING AND BUILDING

DATE: APRIL 30, 2012
TO: AGRICULTURAL PRESERVE REVIEW COMMITTEE
FROM: TERRY WAHLER, SENIOR PLANNER, LAND CONSERVATION PROGRAM
SUBJECT: WILLIAMSON ACT LEGISLATION UPDATE – SENATE BILL 618 (WOLK) - REPLACING LAND CONSERVATION CONTRACTS WITH SOLAR USE EASEMENTS ON MARGINAL OR IMPAIRED AGRICULTURAL LAND

SUMMARY:

At today's meeting, staff will update the Agricultural Preserve Review Committee (APRC) on Senate Bill 618 (The Wolk Bill) which became effective in January of this year.

RECOMMENDATION:

Receive and discuss the staff update.

DISCUSSION:

Background

Senate Bill 618 (The Wolk Bill) was developed in response to mounting pressure from developers of utility scale solar facilities to convert Williamson Act contracted land to solar facilities. The bill, which became effective in January of 2012, is an effort to balance the State-mandated requirement to increase renewable energy with the State's long standing goal to protect agricultural land.

Recently, in some counties, Williamson Act Land Conservation Contracts have been subject to cancellation on properties with prime agricultural soils. Senate Bill 618 provides an incentive to direct these projects to marginally productive or physically impaired agricultural lands and off of prime land by allowing Williamson Act contracts to be converted to solar use easements in certain cases.

The following criteria from the Bill limits solar use easements to properties with the characteristics outlined below.

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

(A) *The land consists predominately of soils with significantly reduced agricultural productivity for agricultural activities due to chemical or physical limitations, topography, drainage, flooding, adverse soil conditions, or other physical reasons.*

(B) *The land has severely adverse soil conditions that are detrimental to continued agricultural activities and production. Severely adverse soil conditions may include, but are not limited to, contamination by salts or selenium, or other naturally occurring contaminants.*

(2) The parcel or parcels are not located on lands designated as prime farmland, unique farmland, or farmland of statewide importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Natural Resources Agency, unless the Department of Conservation, in consultation with the Department of Food and Agriculture, determines that a parcel or parcels are eligible to be placed in a solar-use easement based on the information provided in subdivision (b) that demonstrates that circumstances exist that limit the use of the parcel for agricultural activities. For purposes of this section, the important farmland designations shall not be changed solely due to irrigation status.

In addition to the above requirements the county must review and approve a proposed management plan, a restoration plan and a bond for restoration, in consultation with the State of California Department of Conservation. The following attachments provide an in depth discussion of the issues involved.

ATTACHMENTS:

1. Advice from the State of California Department of Conservation website.
2. Memo from John Gamper and Jack Rice of the California Farm Bureau Federation in Sacramento.

Senate Bill 618 – Advice for Applicants, Cities, and Counties

When a project application is received by a participating county for a rescission of a Williamson Act contract for placement into a solar-use easement (under Government Code Section 51255.1), the city or county must determine that the project meets the following two requirements:

1. Agricultural Productivity – Section 51191(a)(1)(A & B)

The land consists predominately of soils with *significantly reduced agricultural productivity for agricultural activities* due to chemical or physical limitations, topography, drainage, flooding, adverse soil conditions, or other physical reasons.

OR

The land has *severely adverse soil conditions that are detrimental to continued agricultural activities and production*. Severely adverse soil conditions may include, but are not limited to, contamination by salts or selenium, or other naturally occurring contaminants.

2. Important Farmland – Section 51191(a)(2)

The parcel or parcels are *not* located on lands designated as prime farmland, unique farmland, or farmland of statewide importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Natural Resources Agency, unless the Department of Conservation, in consultation with the Department of Food and Agriculture, determines that a parcel or parcels are eligible to be placed in a solar-use easement based on the information provided in subdivision (b) that demonstrates that circumstances exist that limit the use of the parcel for agricultural activities. For purposes of this section, the important farmland designations shall not be changed solely due to irrigation status.

In order to assist in the above determinations, the applicant shall submit the required items outlined in Section 51191(b)(1-5) to the county in which the proposed project site is located. Upon request from the county, the Department of Conservation will then be forwarded the materials for review and serve as a consulting party to the county.

Additionally, the applicant shall provide the Department with a proposed management plan (Section 51191(c)) and, for term or self-renewing easements, a performance bond or other security instrument (Section 51191.3(c)).

The following are the Department's recommendations on what each of the required items described in Sections 51191(b)(1-5), 51191(c), and 51191.3(c) should include:

Materials to Submit to the City or County - Sections 51191(b & c) and 51191.3(c)

Section 51191(b & c)

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

It is recommended that the written narrative should include the following:

- a.) List of the proposed project's parcel numbers.
- b.) Number of acres affected by the proposed project.
- c.) Existing agricultural conditions in the county and region.
- d.) Existing agricultural uses on the project site.
- e.) Discussion of the best currently available agricultural management practices and whether one or a combination thereof would allow continued agricultural activity on the project site.¹
- f.) Maps²
 - 1) Location map of project site (including individual fields, if applicable)
 - 2) Current farmland designation map (i.e. Prime, Unique, etc).

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

It is recommended that the soil test should include the following:

- a.) Name, employer, date of licensure, and contact information (phone, email, mailing address) of Certified Professional Soil Scientist (CPSS) or Certified Professional Soil Classifier (CPSC) selected.³
- b.) Map showing soil sample sites on the project site.⁴
→ Please note, that the Department of Conservation will use NRCS' digital soil survey data (SSURGO) as a reference for site soil classifications.

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

It is recommended that the water availability analysis should include the following:

¹ More information on agricultural management practices and soil health can be found at:

<http://soils.usda.gov/sqi/management/management.html> and
[http://soils.usda.gov/sqi/management/files/21st century soil health tech doc.pdf](http://soils.usda.gov/sqi/management/files/21st%20century%20soil%20health%20tech%20doc.pdf).

² All maps may be submitted in either paper or electronic (GIS) format.

³ Please note that the Department of Conservation recommends that soil tests should be conducted by a Certified Professional Soil Scientist (CPSS) or Certified Professional Soil Classifier (CPSC). A list of certified professional soil scientists can be found at: <https://portal.sciencesocieties.org/BuyersGuide/ProfessionalSearch.aspx?Token=>.

⁴ For more information about recommended soil sampling tests and techniques, please refer to the USDA Soil Quality Test Kit Guidelines: http://www.soils.usda.gov/sqi/assessment/test_kit.html.

- a.) Surface water source(s) – Number of acre feet delivered and applied for each of the last six years
- b.) Groundwater characterization - Well depth, amount applied, and groundwater level fluctuation over last six years (saline aquifer depths, if applicable)
- c.) Description of dry farming activity, if applicable

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

It is recommended that the water quality analysis should include the following:

- a.) Qualitative description of surface water source(s), focused on chemical content with potential to impact agricultural productivity.⁵
- b.) Qualitative description of groundwater, focused on chemical content with potential to impact agricultural productivity.
- c.) Description of water source blending, pre-treatment, and/or other techniques used to mitigate water quality issues, if applicable.

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

It is recommended that the crop and yield information should include the following:

- a.) At a minimum, annual cropping history and yields over the last six years, accompanied by a map of affected fields.
- b.) Supporting information in the form of crop insurance or disaster assistance approvals, if applicable.

6. The landowner shall provide the Department of Conservation with a proposed management plan describing how the soil will be managed during the life of the easement, how impacts to adjacent agricultural operations will be minimized, how the land will be restored to its previous general condition, as it existed at the time of project approval, upon the termination of the easement. If the Department of Conservation determines, in consultation with the Department of Food and Agriculture, pursuant to subdivision (a), that lands are subject to this section, the city or county shall require implementation of the management plan, which shall include any recommendations provided by the Department of Conservation, as part of any project approval.

It is recommended that the management plan should include the following:

- a.) Owner, Operator, and Agent
 - 1) Contact information (name, address, phone, email) for project applicant, property owner(s), operator, and agent of process.
- b.) Location
 - 1) Brief description (including legal) of the extent of the lands involved in the project, including project location, acreage involved, access route, and location map.
- c.) Area Description

⁵ Reference information regarding the impact of various constituents on crop productivity can be found at: http://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/search.shtml.

- 1) Current condition of project site and surrounding areas, including existing area land use, soils, and farmland designation information.

d.) Project Description

- 1) Describe project, time frame (start date, life of operation, etc), and projected energy production.

e.) Soil Management

- 1) Describe how construction activities (i.e. grading depth, removal technique(s), etc.) may affect the current condition of the site's soils.
- 2) Describe how soil will be managed during the life of the project (i.e. removed soil storage and protection, concurrent grazing activities, irrigation, maintenance activities, etc).
- 3) Describe how removal activities (once the project has reached its end-life) may affect the current condition of the site's soils.

f.) Impact Minimization

- 1) Describe any impacts to adjacent agricultural operations (i.e. growth inducing, land use, noise, etc)
- 2) Describe how above impacts, if any, will be minimized (i.e. property buffers, limiting hours of operation, etc).

g.) Restoration

- 1) Describe the procedures used to restore the project site to its previous general condition (i.e. regrading, revegetation, storage and ultimate removal of any structures and equipment, etc).
- 2) If revegetation is proposed, describe the procedures that will be employed, including:
 - i. A baseline study documenting the vegetative density, cover, and species richness of the site.
 - ii. Test plots to be employed
 - iii. Proposed revegetation mix
 - iv. Planting schedule
 - v. Irrigation
 - vi. Protective measure(s) for the revegetation area(s)
 - vii. Monitoring
 - Maintenance and weeding
 - Planting and seeding inspection
 - Data collection and reporting
 - Replanting contingency
 - viii. Success of vegetation
 - For non-prime Farmland (e.g. grazing land), success of revegetation may be achieved when the revegetation restores the site to its previous condition (i.e. consistent with the measurements taken in the subsection g.)(1) baseline study above).
 - For Important Farmland, success of restoration may be achieved when the productive capability of the restored area is equivalent to or exceeds, for two equivalent crop years, that of the previous agricultural

condition or any similar crop production in the region, as determined by an agricultural consultant.⁶

- A point intercept method may be used to monitor progress toward the applicable revegetation standards.

- Annual monitoring of the restored areas should be conducted to track revegetation success. Success may be measured by quantitative standards for cover, density, and species richness.

- 3) Describe the procedures used to restore the project site to its previous general condition in regards to building, structure, and equipment removal.

Section 51191.3(c)

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

It is recommended that any performance bond or other security instrument should:

- a.) Be made payable to the city or county in which the project is located.
- b.) 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.
- c.) Be reviewed annually by the city or county and include an amount that may be adjusted annually to account for any changes in the estimated cost of restoration activities and inflation.
- d.) Include a detailed, itemized estimate of restoration costs, including costs associated with, but not limited to:
 - i. Grading
 - ii. Revegetation, including monitoring
 - iii. Labor, including supervision
 - iv. Equipment
 - v. Mobilization/transportation
 - vi. Removal of buildings, structures, and equipment
 - vii. Soil tests
 - viii. Fencing
 - ix. Liability insurance

⁶ Important Farmland includes Prime Farmland, Unique Farmland, or Farmland of Statewide Importance.

MEMO



CALIFORNIA
FARM BUREAU
FEDERATION

DATE: FEBRUARY 14, 2012
TO: ALL CALIFORNIA COUNTY SUPERVISORS
FROM: JOHN R. GAMPER AND JACK RICE, ESQ.
SUBJECT: OFFER OF LEGAL ASSISTANCE AND DOCUMENTS

Protecting our state's farmland is a top priority of the California Farm Bureau Federation, and for generations the Williamson Act has helped to conserve our agricultural resources and protect our nation's food security. The enactment of SB 618 (Chapter 596, Statutes of 2011) on January 1, 2012, strengthens this farmland protection program by providing a significant incentive to encourage solar photovoltaic developers to locate their energy facilities on the least productive soils or land that is physically impaired.

In an effort to assist counties in the implementation of this important change in law, Farm Bureau's Governmental Affairs and Legal Services divisions have drafted a sample Solar-Use Easement Agreement and Model Resolution. These documents, along with a Summary Explanation of the new law, an implementation Checklist and a list of Frequently Asked Questions, are intended to serve as the legal foundation for your county's participation in this important new program.

By creating an alternative method for exiting a Williamson Act contract with the simultaneous creation of a Solar-Use Easement Agreement on marginally productive or physically impaired land, the Legislature sought to protect the integrity of the Williamson Act as well as our most productive agricultural land from conversion to utility-scale electrical power generation facilities. Many rural California counties are experiencing the equivalent of a 21st century land rush, as utility companies and independent solar developers seek entitlements to site solar PV projects, many of which are proposed on our most productive soils. As the global population grows relentlessly, protecting our food supply must become a much higher priority. SB 618 was intended to ensure that a short-term focus on renewable energy objectives would not come at the unnecessary expense of farmland needed to sustain a reliable food supply.

We hope your county will seriously consider the consequences of allowing prime farmland to be converted to utility-scale solar development when there are hundreds of thousands of acres of salt-impacted or drainage-impaired land that are available and suitable for this industrial land use.

It is our hope that the linked documents will assist you and your staff to implement the new law in an efficient and cost-effective manner.

cc: County Counsel
County Planning Director
County Farm Bureau

REPLACING A WILLIAMSON ACT CONTRACT WITH A SOLAR-USE EASEMENT

INTRODUCTION

REQUIREMENTS FOR A WILLIAMSON ACT CONTRACT RESCISSION

TERMS OF A SOLAR-USE EASEMENT

RESTORATION AND SURETY BOND REQUIREMENTS

EXTINGUISHING A SOLAR-USE EASEMENT

CONCLUSION

In an effort to balance the protection of California's agricultural economy and the nation's food security with the need for renewable-energy production--specifically, solar photovoltaic (PV) electrical energy--the Legislature approved Senate Bill 618 by Senator Lois Wolk (Chapter 596, Statutes of 2011). This law, which took effect on January 1, 2012, was approved overwhelmingly in the Assembly 77 to 0 and 35 to 1 in the Senate after being approved in four policy committees and two fiscal committees without a single no vote.

INTRODUCTION

The California Land Conservation Act of 1965, popularly known as the Williamson Act, provides for long-term conservation of agricultural land, open space, and wildlife habitat through the implementation of a contract that restricts land uses on encumbered properties to agricultural, open space, or compatible uses. In return for the enforceable restriction, the land's property tax valuation is based on its agricultural income instead of its speculative value. The Williamson Act has served as the state's most important farmland protection law for nearly half a century.

Farm Bureau watched with dismay as a growing number of electrical power generation projects were proposed on prime farmland in exclusive agricultural zones, including agricultural preserves, and on land restricted by Williamson Act contracts. Thankfully, both the Legislature in its enactment and the courts in their interpretation of the Williamson Act have established the importance of California agriculture to the state and the nation, as well as the fact that its preservation is essential due to the growing worldwide population and its ever-increasing demand for food. The adoption in 1994 of the principles of compatibility in Government Code (GC) section 51238.1 and a landmark 1981 California Supreme Court decision (*Sierra Club v. City of Hayward*) on contract cancellations advanced California's public policy to assure compliance with the enforceable restriction requirement in Article XIII Section 8 of the California Constitution.

SB 618 provides new protection to the integrity of the Williamson Act while providing incentives to renewable-energy developers to focus on the state's least productive lands. The new law allows a landowner to petition a county for a rescission of the landowner's Williamson Act contract if the affected land is predominately marginally productive or physically impaired for agricultural production, as long as the land is simultaneously enrolled in a Solar-Use Easement agreement for at least 20 years, unless the landowner requests a shorter period of at least 10 years. (GC § 51191.2.) Upon rescission of the Williamson Act contract, the affected land exits the land conservation program, and no further tax relief under the Williamson Act is granted.

However, the significant benefit of the rescission process is that the landowner avoids the otherwise applicable nine- or 19-year nonrenewal period.

REQUIREMENTS FOR A WILLIAMSON ACT CONTRACT RESCISSION

The application for contract rescission is not subject to the California Environmental Quality Act (CEQA), although a solar PV project would require environmental review. To verify that the land is truly marginally productive or physically impaired, the applicant must provide to the county the following information that must then also be provided to the Department of Conservation:

- A written narrative demonstrating that even under the best currently available management practices, continued agricultural practices would be substantially limited due to the soil's reduced agricultural productivity from chemical or physical limitations.
- A recent soil test demonstrating that the characteristics of the soil significantly reduce its agricultural productivity.
- An analysis of water availability demonstrating the insufficiency of water supplies for continued agricultural production.
- An analysis of water quality demonstrating that continued agricultural production would, under the best currently available management practices, be significantly reduced.
- Crop and yield information for the past six years.

The landowner must also provide the Department of Conservation with a proposed management plan describing how the soil will be managed during the life of the easement, how impacts to adjacent agricultural operations will be minimized, and how the land will be restored to its previous general condition, as it existed at the time of project approval, upon the termination of the easement. Also, if the Department of Conservation determines that the land is indeed predominantly marginal or physically impaired, the county must implement the management plan and include in its project approval any recommendations provided by the Department of Conservation.

A Solar-Use Easement agreement is effective upon its acceptance or approval by a resolution of the county's Board of Supervisors. The landowner must pay to the county a rescission fee based on the land's current market value of either 6.25 percent for a standard Williamson Act contract or 12.5 percent for land covered by a Farmland Security Zone contract. The county must forward the fee to the State Controller in the manner similar to a Williamson Act contract cancellation penalty fee. (GC § 51255.1, subd. (c).)

TERMS OF A SOLAR-USE EASEMENT

Even though SB 618 uses the term "Solar-Use Easement," these enforceable restrictions are not conservation easements as defined in Civil Code section 815.1, in that there is no loss or transfer of any of the existing property rights in perpetuity. Since no party or governmental entity receives any of the proverbial sticks in the bundle of property-right sticks associated with the land, this land-use restriction is more like a solar land-use contract than an easement. Furthermore, as there is little or no property tax relief associated with these solar land-use

agreements, and since the 10- or 20-year minimum-term agreement can be converted to a self-renewing agreement on the anniversary date of its acceptance (or any other annual date specified in the agreement), there is absolutely no incentive to sign or agree to a perpetual deed restriction. (GC § 51191.2.)

A Solar-Use Easement agreement may also include restrictions, conditions, or covenants that the county deems necessary or desirable to restrict the land's use to solar PV facilities. For example, a local government may require mitigation measures on the land used for the solar development, or on land around the facility. The latter mitigation requirements may be in addition to a required management plan imposed by the Department of Conservation.

RESTORATION AND SURETY BOND REQUIREMENTS

For term and self-renewing easements, a county must include a requirement that the landowner post a performance bond or other securities to fund the restoration of the land to the conditions that existed before the approval or acceptance of the easement by the time the easement is extinguished. (GC § 51191.3, subd. (c).) The county should consult with the Department of Conservation for its advice on the appropriate financial instruments to ensure restoration.

EXTINGUISHING A SOLAR-USE EASEMENT

A Solar-Use Easement may be extinguished on all or a portion of the land by immediate termination, nonrenewal, or petitioning the county to return the land to its previous Williamson Act contract.

Immediate termination of all or a portion of the land subject to a Solar-Use Easement requires a petition by the landowner to the county. While no specific findings must be made, a 12.5 percent termination fee is required. The method for determining the specific dollar amount of the fee, the timing of the payment and its deposit in the State General Fund is identical to that required for a Williamson Act cancellation. There is, however, much greater flexibility for waiving all or a portion of the fee both by the county and the Secretary of the California Natural Resources Agency. No fee is required if the land is condemned and taken for a public improvement. (GC § 51292.2.)

Nonrenewal of a Solar-Use Easement is also similar to that of a Williamson Act contract, although the length of the nonrenewal period can be as short as one year. For example, an easement with a 20-year term could be nonrenewed in year 19 of the agreement. A 20-year-term easement could also be converted to a self-renewing agreement in year 19 and allowed to run several more years before later nonrenewal. In both of these examples, the nonrenewal period would be for only one year.

Nonrenewal may be initiated by either party to the easement agreement. Written notice of the nonrenewal request must be provided at least 90 days before the anniversary of a term easement or the annual renewal date of a self-renewing easement. A landowner may protest a nonrenewal notice given by the county, and the county may withdraw the notice of nonrenewal before the renewal date. In all likelihood this issue is moot since there is no significant property tax

advantage due to the presence of the easement, nor is there any requirement to abandon the solar facility and restore the land when a Solar-Use Easement is nonrenewed by the county. Thus, the landowner may continue to operate the solar PV facility without the Solar-Use Easement. (GC § 51192, subds. (b) and (c).)

If, however, the landowner initiates the nonrenewal process or seeks immediate termination of the Solar-Use Easement, then the landowner must, before the easement is extinguished, restore the land to the condition that existed before the easement was approved. (GC § 51192.1.)

CONCLUSION

The proper implementation of SB 618's provisions will take significant pressure off prime farmland that is subject to Williamson Act contracts, thus protecting the integrity of the farmland conservation program and helping to ensure our nation's food security. An owner of land that qualifies as marginally productive or physically impaired may apply for the immediate rescission of a Williamson Act contract if the landowner agrees to simultaneously enter into a Solar-Use Easement agreement. The benefits to the landowner are the elimination of the nonrenewal period of nine or 19 years, no need to mitigate for the principles of compatibility if the land is considered nonprime and meets other eligibility requirements, and a significant reduction in the risk of litigation for violation of Williamson Act cancellation provisions. The cost of a contract rescission under this program is one-half the amount of a cancellation, if the county can make judicially sustainable findings under GC section 51282.

CHECKLIST FOR THE CREATION OF A SOLAR-USE EASEMENT

Eligibility

- *Determination* – For land to be eligible for a Solar-Use Easement, the Department of Conservation (DOC) must determine that the land meets the following two requirements showing that the land is marginally productive or physically impaired:
 - o *Eligibility Requirements:*
 - *Requirement 1* – The land must either:
 - Consist predominantly of soils with significantly reduced agricultural productivity for agricultural activities due to chemical or physical limitations, topography, drainage, flooding, adverse soil conditions, or other physical reasons;
 - OR
 - Have severely adverse soil conditions that are detrimental to continued agricultural activities and production. Examples of severely adverse soil conditions include contamination by salts or selenium, or other naturally occurring contaminants.
 - *Requirement 2* – The land is not among lands designated on Farmland Mapping and Monitoring Program maps as prime farmland, unique farmland, or farmland of statewide importance.
 - HOWEVER, land designated as prime farmland, unique farmland, or farmland of statewide importance may still qualify for a Solar-Use Easement if DOC determines that eligibility factors exist that limit the use of the land for agricultural activities.
 - For the purpose of Solar-Use Easement eligibility, important farmland designations may not be changed solely due to irrigation status.
 - o *Factors* – In making its determination, DOC considers the following information that landowners must provide to the extent applicable:
 - A written narrative demonstrating that even under the best currently available management practices, continued agricultural practices would be substantially limited due to the soil's reduced agricultural productivity from chemical or physical limitations.
 - A recent soil test demonstrating that the characteristics of the soil significantly reduce its agricultural productivity.
 - An analysis of water availability demonstrating the insufficiency of water supplies for continued agricultural production.
 - An analysis of water quality demonstrating that continued agricultural production would, under the best currently available management practices, be significantly reduced.
 - Crop and yield information for the past six years.

Nature of Easement/Agreement

- *Term:* (GC § 51191.2.)
 - o Perpetuity
 - o Term of Years – not less than 20 years unless a shorter term is requested by landowner
 - Only the landowner can request a term of less than 20 years with a minimum of 10 years.
 - At end of the term, the easement is extinguished.
 - The easement may provide that at the end of the term, or on another date, the easement may be converted to a self-renewing easement whereby each year on a specified date a year is added to the term, unless a notice of nonrenewal has been served.
 - o Self-Renewing – not less than 20 years unless a shorter term is requested by landowner
 - Only the landowner can request a term of less than 20 years with a minimum of 10 years.
 - Each year on the anniversary date of the easement, or another date acceptable to the parties, another year is added to the term of the easement unless a notice of nonrenewal has been served.
- *Conditions:* (GC § 51191.3.)
 - o Mandatory:
 - Restrictions, conditions, or covenants necessary to restrict use of land to PV solar facilities. (GC § 51191.3, subd. (a).)
 - Surety Bond (required for term-of-years and self-renewing easements). (GC § 51191.3, subd. (c).)
 - Soil and Restoration Management Plan: (GC § 51191, subd. (c).)
 - How the soil will be managed during the life of the easement.
 - How impacts to adjacent agricultural operations will be minimized.
 - How the land will be restored to its previous general condition, as it existed when the project was approved, upon the termination of the easement.
 - o Optional: (GC § 51191.3, subd. (b).)
 - Onsite Mitigation
 - Offsite Mitigation
 - Surety Bond (County can determine whether to require a surety bond for perpetual easements. Surety Bond required for term and self-renewing easements – see above.)
 - Provision for necessary amendments. (Note: This is optional but highly recommended.)
 - o Practical Considerations
 - Once a Solar-Use Easement is formed, the landowner is obligated to use the land for “collection and distribution of solar energy for the generation of electricity.” Because a project proponent must have site control in order to obtain a power purchase agreement (PPA), but entering into a Solar-Use Easement (to demonstrate site control) would mandate use of the land for a solar facility regardless of whether a PPA was obtained, a dilemma is created. To resolve this issue, a term may be added to the easement agreement so the rescission of the Williamson Act contract and creation of the Solar-Use Easement only occurs upon the project proponent receiving an acceptable PPA. If no acceptable PPA is obtained, then the conversion is never

triggered and the Williamson Act remains in place.

- *Extinguishment:* (Article 3 commencing with GC § 51192.)
 - o A perpetual and term Solar-Use Easement may be extinguished on all or a portion of the parcel(s) only by immediate termination or by returning the land to coverage under a Williamson Act contract.
 - Termination – Prior to any action by the county to tentatively approve the termination of a Solar-Use Easement, the county assessor must determine the current fair market value of the affected parcel(s) as though the parcel(s) were free of the easement restriction.
 - This appraisal shall be used to determine and certify to the county auditor the amount of the termination fee that the landowner must pay the county treasurer upon termination. That fee shall be an amount equal to 12.5 percent of the termination valuation of the property.
 - The county may waive all or a portion of the termination fee if it finds that it is in the public interest to do so, and it may extend the time for making the payment or a portion of the payment for a period of time not to exceed the unexpired period of the easement, had it not been terminated, if both of the following occur:
 - (1) The termination is caused by an involuntary transfer or change in the use of the land, and the land is not immediately suitable, nor will it be immediately used, for a purpose that produces a greater economic return to the owner.
 - (2) The waiver or extension of time is approved by the Secretary of the Natural Resources Agency. The secretary must approve a waiver or extension of time if (a) doing so is consistent with the policies of the Solar-Use Easement law and (b) the county complied with statutory Solar-Use Easement extinguishment provisions.
 - Termination fees must be transmitted to the State Controller, similar to Williamson Act contract cancellation penalty fees.
 - o A self-renewing Solar-Use Easement may be extinguished on all or a portion of the parcel(s) by nonrenewal, immediate termination, or returning the land to its previous Williamson Act contract.
 - Nonrenewal – Either the landowner or the county may serve a written notice of nonrenewal on all or a portion of the parcel(s) subject to the easement.
 - The notice must be given at least 90 days before the annual renewal date.
 - A notice of nonrenewal given by the county may be protested by the landowner, and the county may withdraw the notice before the renewal date. The landowner is required to restore the land subject to the easement--i.e., remove the solar panels and restore the land to its previous condition—upon extinguishment of the easement only when the landowner requests nonrenewal or immediate termination. If the county requests nonrenewal of the easement, the landowner may continue to operate the facility after the solar-use easement is extinguished.

PROCESS

- Step 1:** Submit to county an application requesting a Solar-Use Easement Conversion Agreement (GC § 51191.1.). The application should include:
- Request that the county request an Eligibility Determination from DOC (GC § 51191.)
 - Request that the County Assessor conduct a fair market value (FMV) determination (GC § 51255.1, subd. (c)(1).)
 - Information for submission to DOC:
 - Eligibility Criteria (GC § 51191, subd. (b).)
 - Soil and Restoration Management Plan (GC § 51191, subd. (c).)
 - Any applicable fee to DOC (GC § 51191, subd. (e).)
 - Information regarding Surety Bond if required. (Plan for amount and where it will be held etc.) (GC § 51191.3, subd. (c).)
- Step 2:** County requests determination from DOC. (GC § 51191, subd. (a).)
- Step 3:** DOC consults with CDFA and makes Eligibility Determination. (GC § 51191.)
- Step 4:** If necessary, amend instrument to include recommendations regarding the Soil and Restoration Management Plan provided by DOC in Step 3. (GC § 51191, subd. (c).)
- Step 5:** County Assessor certifies to the Board of Supervisors the FMV of the land and sends notice of that certification to the landowner and DOC. (GC § 51255.1, subd. (c)(1).)
- Step 6:** Board of Supervisors determines and certifies to the County Auditor the amount of the rescission fee (6.25 percent of FMV if Williamson Act Contract; 12.5 percent of FMV if FSZ contract) (GC § 51255.1, subd. (c)(2).)
- Step 7:** County adopts resolution accepting or approving the instrument (GC § 51191.4.)
- Step 8:** Applicant provides County with notice that an enforceable power purchase agreement has been obtained, pays rescission fee to the County Treasurer (GC § 51255.1, subd. (c)(2).), and provides County with any necessary financial assurance (GC § 51191.3, subd. (c) and § 51191.3, subd. (b)(3).).
- Step 9:** Rescission fee is transmitted to the State Controller. (GC § 51192.2, subd. (e).)
- Step 10:** Recordation of Instrument by Clerk of Board of Supervisors. (GC § 51191.6.)