

KINGS COUNTY AGRICULTURAL ADVISORY COMMITTEE

CHARLES DRAXLER – DAIRY INDUSTRY
JIM GREGORY – AG CHEMICALS & PETROLEUM
DIANE FRIEND – KINGS COUNTY FARM BUREAU

DON MILLS – WATER
BILL TOS – NUT CROPS
VACANT – SMALL FARMS

JOHNNY STARLING – AG PROCESSING
BOB PRYS – FEED/SEED & GRAIN
BRIAN POTTER – AG EQUIPMENT

SECRETARY: GREGORY GATZKA

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development Agency at (559) 852-2680 by 4:00 p.m. on the Monday prior to this meeting.

AGENDA

Thursday, October 10, 2013
12:00 P.M.

This meeting of the Agricultural Advisory Committee will be held in the AG Commissioner's Multi-Purpose Room, 680 N. Campus Drive, Hanford, California. **NOTE:** All attendees are invited to bring a lunch.

I. **CALL TO ORDER** – Chairperson

A. Roll Call of Ag Advisory Committee Members: *(Gregory Gatzka – Secretary)*

B. Unscheduled Comments:

Any person may address the Committee on any subject matter within the jurisdiction or responsibility of the Committee at the beginning of the meeting; or may elect to address the Committee on any agenda item at the time the item is called by the Chair, but before the matter is acted upon by the Committee. Unscheduled comments will be limited to five minutes.

II. **OLD BUSINESS**

None

III. **NEW BUSINESS:**

A. **SOLAR USE EASEMENTS** – Dan Kassik

Discussion of solar use easements and their relation to solar projects on agricultural lands and cancellation of Farmland Security Zone contracts.

1. Discussion

B. **UPDATE ON WATER/DROUGHT CONDITIONS IN KINGS COUNTY** - Don Mills

Discussion of the status of water/drought conditions in the state as they impact the County and local residents.

1. Discussion

IV. **MISCELLANEOUS**

A. Correspondence

B. Staff/Agency Updates

V. **ADJOURNMENT** –

The next regularly scheduled meeting is January 9, 2014.

Agenda backup information and any public records provided to the Ag Advisory Committee after the posting of the agenda for this meeting will be available for public review at Kings County Community Development Agency 1400 W. Lacey Blvd., Bldg. 6, Hanford CA, or can be viewed online at: www.countyofkings.com/planning/ag_adv_com.html .

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.

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.

Frequently Asked Questions Regarding the Implementation of Solar-Use Easements

1) WHAT IS THE MINIMUM LENGTH OF A SOLAR-USE EASEMENT?

The new law allows a landowner to petition a county for rescission of the landowner's Williamson Act contract if the parcel or parcels prove to be predominantly marginally productive or physically impaired for agricultural production, as long as the land is simultaneously enrolled in a solar-use easement agreement for a period of not less than 20 years, unless the landowner requests a 10-year agreement. However, since Power Purchase Agreements endure for a minimum of 20 years, landowners will likely request a minimum of a 20-year restriction.

2) WHAT LAND IS ELIGIBLE FOR A SOLAR-USE EASEMENT?

An eligible parcel must qualify as *marginally productive* or *physically impaired* for agricultural purposes.

- *Marginally productive farmland* means it consists 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 is physically impaired for agricultural purposes.
- *Physically impaired 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.

Generally, land designated by the Farmland Mapping and Monitoring Program as prime farmland, farmland of statewide importance, or unique farmland is not eligible for a Solar-Use Easement, except when the Department of Conservation, in consultation with the Department of Food and Agriculture, determines that the land is eligible due to existing circumstances that limit the use of the land for agricultural activities.

3) IS NONPRIME LAND AUTOMATICALLY ELIGIBLE FOR RESCISSION AS “MARGINALLY PRODUCTIVE OR PHYSICALLY IMPAIRED,” OR CAN A COUNTY DIFFERENTIATE BETWEEN PRODUCTIVE NONPRIME AGRICULTURAL LAND AND NONPRIME LAND WITH “SIGNIFICANTLY REDUCED” AGRICULTURAL PRODUCTIVITY?

Nonprime land is not automatically eligible for a contract rescission under SB 618. The county remains the ultimate policymaker on what land within its jurisdiction is eligible. A Williamson Act contract rescission and the simultaneous enrollment of the affected land into a Solar-Use Easement are subject to the agreement of the board of supervisors. If the county wants to differentiate between productive nonprime grazing land and marginally productive nonprime grazing land, it may do so. A county may also consider the protection of valuable open space and wildlife habitat areas that may qualify as marginally productive for livestock grazing as a higher priority than a Solar-Use Easement.

4) WHAT ARE SOME EXAMPLES OR POTENTIAL STANDARDS THAT WOULD QUALIFY AS “SIGNIFICANTLY REDUCED AGRICULTURAL PRODUCTIVITY?”

The law requires the applicant for a Solar-Use Easement to provide 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. Examples might include, but are not limited to, poor soil texture or structure, the presence of a clay-pan or hard-pan in the soil’s substrata that prevents water penetration, a perched water table, or alkali soil characteristics due to the presence of high soluble solids.

5) WHY WOULD AN APPLICANT REQUEST A PERPETUAL SOLAR-USE EASEMENT?

If absolutely certain the land will never be used for something else, an applicant may request a perpetual easement. Even though these new Solar-Use Easements are not perpetual conservation easements as defined by Civil Code section 815.1, by adopting SB 618 the Legislature created these new perpetual easement agreements. While it is legally possible to create a perpetual Solar-Use Easement, as a practical matter it may not make economic sense to choose a perpetual easement. The reason is that it would require the payment of the 12.5 percent termination fee to extinguish the easement agreement should the landowner ever wish to cease using the land for solar PV facility. Nonrenewal is not an option for perpetual easements because by definition they are forever. Most landowners should be directed to a term easement of 20 years with an option to convert to a self-renewing agreement in year 19. This approach would allow the easement to continue on a self-renewing basis indefinitely with only a one-year nonrenewal period.

Also, pursuant to Government Code section 51192.1, if a landowner ever terminates a perpetual easement, the land must be restored to the conditions that existed before the easement.

6) CAN A COUNTY WAIVE, REDUCE, OR DELAY THE PAYMENT OF THE EASEMENT TERMINATION FEE?

Yes, when the property is condemned or if the county determines that a proposed new use is in the public interest. The “change in use” provision allows the county to waive all or a portion of the termination fee and allows an extension in the time for making the payment. Any extension of time for the payment of the termination fee must not exceed the unexpired period of the easement had it not been terminated.

7) IS A POWER PURCHASE AGREEMENT (PPA) REQUIRED FOR THE CREATION OF A SOLAR-USE EASEMENT?

A PPA is not legally required, but conditioning the creation of a Solar-Use Easement on a PPA is generally a good idea. This is due to the fact that once a Solar-Use Easement is created, the landowner is obligated to use the land for “collection and distribution of solar energy for the generation of electricity.” A dilemma is created because a project proponent must have site control to obtain a PPA, but entering into a Solar-Use Easement (to demonstrate site control) would mandate use of the land for a solar PV facility regardless of whether a PPA was obtained. To resolve this Catch-22 situation, a term may be added to the easement agreement so the rescission of the Williamson Act contract and creation of the Solar-Use Easement occurs only upon the

project proponent entering into a PPA. If no PPA is entered into, then the rescission of the Williamson Act contract is never triggered and thus it remains in place.

8) CAN A LANDOWNER CONTINUE TO OPERATE A SOLAR PV FACILITY AFTER THE SOLAR-USE EASEMENT HAS BEEN EXTINGUISHED?

Generally, no. Government Code sections 51191.3, subdivision (c), and 51192.1 require a landowner to “restore the land that is subject to the easement to the conditions that existed before approval of the easement by the time the easement is extinguished.” This restoration requirement does not apply in situations where the county nonrenews the easement; however, nonrenewal by a county does not relieve the landowner from the surety bond requirement or the landowner's restoration obligation when the facility is ultimately decommissioned.



Code: Section:

[Up^](#)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001. - 57550.] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 1. CITIES AND COUNTIES [50001. - 52190.] (Division 1 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001. - 51298.5.] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 6.9. Solar-Use Easement [51190. - 51192.2.] (Chapter 6.9 added by Stats. 2011, Ch. 596, Sec. 8.)

ARTICLE 1. Definitions [51190. - 51190.] (Article 1 added by Stats. 2011, Ch. 596, Sec. 8.)

51190. As used in this chapter, the following terms have the following meanings:

(a) "City" means any city or city and county.

(b) "Landowner" includes a lessee or trustee, if the expiration of the lease or trust occurs at a time later than the expiration of the restriction of the use of the land to photovoltaic solar facilities or any extension of the restriction.

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

ARTICLE 2. General Provisions [51191. - 51191.8.] (Article 2 added by Stats. 2011, Ch. 596, Sec. 8.)

51191. (a) For purposes of this chapter, and for purposes of Chapter 7 (commencing with Section 51200), the Department of Conservation, in consultation with the Department of Food and Agriculture, upon a request from a city or county, may determine, based on substantial evidence, that a parcel or parcels is eligible for rescission under Section 51255.1 for placement into a solar-use easement if the following criteria are met:

(1) The land meets either of the following:

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

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

(2) The parcel or parcels are not located on lands designated as prime farmland, unique farmland, or farmland of statewide importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Natural Resources Agency, unless the Department of Conservation, in consultation with the

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

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2012, Ch. 330, Sec. 7. Effective January 1, 2013.)

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

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

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

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

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

(3) If deemed necessary by the city or county to ensure that decommissioning requirements are met, the provision for financial assurances, such as performance bonds, letters of credit, a corporate guarantee, or other securities to fund, upon the cessation of the solar photovoltaic use, the restoration of the land that is subject to the easement to the conditions that existed before the approval or acceptance of that easement by the time that the easement terminates.

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

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

(Amended by Stats. 2012, Ch. 330, Sec. 8. Effective January 1, 2013.)

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

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

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

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

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

51191.6. Upon the acceptance or approval of any instrument creating a solar-use easement, the clerk of the governing body shall record the instrument in the office of the county recorder and file a copy with the county assessor. After the easement is recorded, it shall impart notice to all persons under the recording laws of this state.

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

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

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

ARTICLE 3. Extinguishment of a Solar-Use Easement [51192. - 51192.2.] (Article 3 added by Stats. 2011, Ch. 596, Sec. 8.)

51192. (a) A solar-use easement may be extinguished on all or a portion of the parcel only by nonrenewal, termination, or by returning the land to its previous contract pursuant to Article 3 (commencing with Section 51240) of Chapter 7.

(b) (1) If either the landowner or the county or city desires in any year not to renew the solar-use easement on all or a portion of the parcel, that party shall serve written notice of nonrenewal of the easement upon the other party at least 90 days in advance of the annual renewal date of the solar-use easement. Unless written notice is served at least 90 days in advance of the renewal date, the solar-use easement shall be considered renewed as provided in Section 51191.2.

(2) Upon receipt by the owner of a notice from the county or city of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The county or city may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the county, city, or the landowner serves notice of intent in any year not to renew the solar-use easement, the existing solar-use easement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the solar-use easement, as the case may be.

(Added by Stats. 2011, Ch. 596, Sec. 8. Effective January 1, 2012.)

51192.1. In the case of a solar-use easement that is extinguished because of a notice of nonrenewal by the landowner or due to termination, the landowner shall restore the land that is subject to the easement to the conditions that existed before the approval of the easement by the time the easement is extinguished.

(Amended by Stats. 2012, Ch. 330, Sec. 9. Effective January 1, 2013.)

51192.2. (a) If all or a portion of the parcel held in a solar-use easement will no longer be used for the purposes outlined in the easement the landowner may petition the county or city to approve termination of the easement.

(b) Prior to any action by the county or city giving tentative approval to the termination of any easement, the county assessor of the county in which the land is located shall determine the current fair market value of the parcel or parcels to be terminated as though the parcel or parcels were free of the easement restriction. The assessor shall certify to the county or city the termination valuation of the parcel or parcels for the purpose of determining the termination fee. At the same time, the assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the parcel or parcels as though the parcel or parcels were free of the easement restriction and advise the parties, that upon their request, the assessor shall provide all information relevant to the valuation, excluding third-party information. If any information is confidential or otherwise protected from release, the department and the landowner shall hold it as confidential and return or destroy any protected information upon completion of all actions relating to valuation or termination of the easement on the property. The notice shall also advise the landowner and the department of the opportunity to request formal review from the assessor.

(c) Prior to giving tentative approval to the termination of any easement, the county or city shall determine and certify to the county auditor the amount of the termination fee that the landowner shall pay the county treasurer upon termination. That fee shall be an amount equal to 12 1/2 percent of the termination valuation of the property.

(d) If it finds that it is in the public interest to do so, the county or city may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the parcel or parcels and the parcel or parcels economic return to the landowner 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 which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which 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 shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the county or city is consistent with the policies of this chapter and that the county or city complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the county or city, the evidence in the record of the county or city, and any other evidence the secretary may receive concerning the termination, waiver, or extension of time.

(e) When termination fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (b) of Section 51203 or subdivision (d) of Section 51283.

(f) It is the intent of the Legislature that fees paid to terminate a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

(Amended by Stats. 2012, Ch. 330, Sec. 10. Effective January 1, 2013.)