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TO COUNTY ASSESSORS:

**WILLIAMSON ACT CONTRACT CANCELLATION FOR  
SOLAR USE EASEMENT**

Under the Williamson Act, landowners may enter into contracts with participating cities and counties to restrict their lands to agricultural or open-space uses. The contract must be for a minimum term of 10 years, and contracts are automatically renewed each year unless other action is taken (i.e., nonrenewal of the contract or immediate cancellation of the contract). In exchange for entering into these contracts, the land and any living improvements (trees and vines) are valued according to their income earning ability. The valuation is based on a statutory formula, outlined in Revenue and Taxation Code (RTC) section 423, that capitalizes the income the land is capable of producing from its agricultural use.

Until January 1, 2020, property owners and counties or cities that are parties to a Williamson Act contract may mutually agree to rescind the contract on parcels of land meeting certain criteria and simultaneously enter into a solar-use easement.<sup>1</sup>

The solar-use easement serves to restrict the use of the land to either:

- 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
- Other alternative renewable energy facilities

Under Government Code (GC) section 51190(c), a solar-use easement will not allow any land located in the easement to be used for any other use allowed in commercial, industrial, or residential zones. A solar-use easement will contain a covenant with the county or city, running with the land, either in perpetuity or for a term of years, that the landowner cannot construct or allow the construction of improvements except those for which the right is expressly reserved in the instrument provided that those reservations would be consistent with the purposes of the solar-use easement and compatible with the sole use of the property for solar photovoltaic facilities.

<sup>1</sup> Government Code sections 51190 through 51192.2 and 51255.1.

The Department of Conservation, in consultation with the Department of Food and Agriculture, determines whether parcels are eligible for rescission from a Williamson Act contract and placement into a solar-use easement. To be eligible, a parcel must meet either of the following:

- 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.
- 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.

In addition, a parcel cannot be 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,<sup>2</sup> unless the Department of Conservation, in consultation with the Department of Food and Agriculture and based on information provided by the landowner, determines that circumstances exist that limit the use of the parcel for agricultural activities.

Prior to the county board of supervisors or city council agreeing to mutually rescind a contract, the county assessor must determine the fair market value of land as though free of the easement restriction for purposes of determining the rescission fee. The rescission fee is 10 percent for property in the Williamson Act or farmland security zone.<sup>3</sup> The assessor must certify to the board or council the fair market valuation of the land for the purpose of determining the rescission fee. At the same time, the assessor is to send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction and advise the parties that, upon request, the assessor will provide information relevant to the valuation, excluding third-party information.

The execution and acceptance of a deed or other instrument creating a solar-use easement constitutes a dedication to the public of the use of lands for solar photovoltaic use.<sup>4</sup> Upon the acceptance or approval of a document creating a solar-use easement, GC section 51191.6 requires the clerk of the governing body to record the document with the county recorder and provide the assessor with a copy of the solar-use easement. Once a solar-use easement is entered into, GC section 51191.7 requires that parcels subject to a solar-use easement are to be assessed according to RTC section 402.1 during the term of the easement. RTC section 402.1(a)(9) provides that a solar-use easement is an enforceable land use restriction and that the assessor must consider its effect upon the value of the land for assessment purposes.

The creation of the solar-use easement does not result in a reduction to the base year value of the land. This is because most easements do not meet the change in ownership test in RTC section 60 and therefore remain taxable to the property owner. An exception occurs when

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<sup>2</sup> The Farmland Mapping and Monitoring Program (<http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx>) is part of the Department of Conservation, which is under the California Natural Resources Agency.

<sup>3</sup> GC section 51255.1(c).

<sup>4</sup> GC section 51191.2.

the language contained in the grant of the easement effectively transfers an interest "substantially equivalent to the value of the fee," thus giving rise to a change in ownership under section 60. However, a solar-use easement would need to be considered when determining the legally permissible highest and best use of the property or for appraisal purposes for annual lien date valuation.

Thus, in practical application, property under a solar-use easement will be assessed at the lower of two values as of each lien date:

- Current fair market value as impacted by the easement (RTC sections 110 and 402.1)
- Factored base year value (RTC section 110.1)

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. 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 will remain in effect for the balance of the period remaining since the original execution or the last renewal of the solar-use easement.

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. Prior to any action by the county or city giving tentative approval to the termination of any easement, the assessor is to determine the fair market value of a parcel as though free of the easement restriction for purposes of determining a solar-use easement termination fee. The termination fee is 12.5 percent of the property's then fair market value.<sup>5</sup> The assessor must certify to the county or city the value of the parcel or parcels for the purpose of determining the termination fee. At the same time, the assessor is to 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 will provide all information relevant to the valuation, excluding third-party information.

If you have any questions regarding the valuation of these solar-use easements, please contact our County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee  
Deputy Director  
Property Tax Department

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<sup>5</sup> GC section 51192.2(b) and (c).