



News & Publications

Solar-Use Easements Are Back!

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As most solar developers in California know, development on agricultural land can be difficult if the land is under a Williamson Act or Farm Security Zone (“FSZ”) contract that limits uses to agricultural and other compatible activities in return for a lower property tax.[1] Williamson Act and FSZ cancellation, if allowed, is quite expensive.[2] Beginning in January 2023, Williamson Act and FSZ contract rescission will once again be allowed to enable establishment of solar-use easements in California. As a result, solar energy developers will soon have another tool at their disposal to develop projects on agricultural land currently under Williamson Act or FSZ contract. While this tool is discretionary with the local agency, it can encourage an otherwise recalcitrant agency to allow solar energy project development on land subject to a Williamson Act or FSZ contract in a manner that is less expensive and potentially less controversial.[3]

A solar-use easement is a right or interest in land held by a local government that restricts use of the land to photovoltaic solar energy facilities and other incidental or subordinate agricultural uses, open-space uses, or other alternative renewable energy facilities.[4] Solar-use easements were originally created by the California legislature in 2011 to encourage solar energy development on marginal and impaired farmland. Unfortunately, the law allowing rescission of Williamson Act and FSZ contracts in order to enter into solar-use easements sunset in 2020. On September 18, 2022, Governor Newsom signed SB 1489, re-enacting Government Code section 51255.1 as part of this year’s local government omnibus bill.

To qualify for a solar-use easement, the Department of Conservation (“DOC”), in consultation with the Department of Food and Agriculture and at the request of a city or county, must determine that soil

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conditions significantly limit agricultural productivity on the land in question.[5] Unless the DOC determines that the land's agricultural value is limited due to issues related to soil quality, water quality, and water availability, the land also must not be designated as prime farmland, unique farmland, or farmland of statewide importance by the State's Farmland Mapping and Monitoring Program.[6]

If DOC determines that the land in question qualifies for a solar-use easement, the local government and landowner may choose to rescind the Williamson Act or FSZ contract encumbering the land to simultaneously enter into a solar-use easement.[7] To approve a solar energy project on land under a solar-use easement, the local agency must require implementation of a management plan addressing soil management, impacts on adjacent agriculture, and restoration of the land to its prior condition upon termination of the easement.[8]

Renewable energy developers have long wrestled with the challenges of developing solar projects on land under Williamson Act or FSZ contract. While not without limitations, solar-use easements preserve the agricultural value of land and therefore may create a potential development pathway in jurisdictions where contract cancellation is not a viable option due to policy prohibitions regarding the permanent loss of agricultural land. Solar energy developers may also benefit from reduced contract rescission fees, which are half as much as contract cancellation fees.[9]

If you have questions about solar-use easements and how they might facilitate development of your project, please contact the authors of this alert or any of Cox Castle's renewable energy attorneys.

[1] A Williamson Act contract is an agreement between a city or county and landowner under which uses of the land under contract are restricted to agriculture or ag-compatible activities. In exchange, the landowner pays reduced property taxes. (California Government Code § 51243.) The contracts have a minimum term of ten years, automatically renew annually, and may only be cancelled if certain findings can be made. A Farmland Security Zone contract is similar to a Williamson Act contract, but the minimum term is twenty years and the required FSZ cancellation findings are more restrictive than those required to cancel a Williamson Act contract. (See Government Code §§ 51296-51297.4.)

[2] Williamson Act contract cancellation fees are set at 12.5% of the fair market value of the land as though it were free of the contractual restriction (FMV) and FSZ cancellation fees set at 25% of FMV. (Government Code §§ 51283, 51297.)

[3] Contract rescission fees are half as much as cancellation fees, with Williamson Act contract rescission fees set at 6.25% of FMV and FSZ rescission fees set at 12.5% of FMV. (SB 1489, § 11 [reenacting Government Code section 51255.1]; see footnote 2 above regarding contract cancellation fees.)

[4] Government Code § 51190.

[5] Government Code § 51191(a).

[6] *Id.* The DOC is prohibited from changing the property's Farmland Mapping and Monitoring Program designation based solely on its irrigation status.



[7] See SB 1489, § 11 (reenacting Government Code section 51255.1).

[8] Government Code § 51191(c).

[9] See footnote 3 above.