

***GUIDANCE TO PUBLIC AGENCIES ON
SELECTED AGRICULTURAL ISSUES IN CALIFORNIA***

**RENEWABLE ENERGY FACILITIES ON AGRICULTURAL LAND
AND
LOSS OF FUNDING FOR LAND UNDER THE WILLIAMSON ACT**

**PREPARED BY THE AGRICULTURAL RESOURCES COMMITTEE
OF THE ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS (AEP)**

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EXECUTIVE SUMMARY

In April of 2011, Governor Brown signed SB 2X (Renewables Portfolio Standard) that requires a third of the state's electricity come from "green" or renewable sources by 2020. Many counties and cities in California are dealing with applications for "renewable energy facilities", mainly electrical generating plants using solar and wind power, on agricultural land. The recent bill stimulated the interest in entitling solar and wind energy facilities across California. As a group of environmental professionals, the Association of Environmental Professionals (AEP) supports sustainable energy expansion but suggests that public agencies strike a reasonable balance between the desire of the State to encourage the installation of renewable energy facilities, and the protection of important agricultural resources, namely prime agricultural land and land within agricultural preserves established under the Williamson Act (Gov. Code § 51200 *et seq.*). In general, sites that have important agricultural and other environmental resources (e.g., wetlands, listed species habitat, etc.) should have a thorough analysis of potential impacts and consideration of potential mitigation. This guidance paper outlines several methods of impact analysis and mitigation measures that local agencies may apply to renewable energy projects to help provide alternative energy while protecting important agricultural resources.

At present, the decision to convert agricultural land for purposes other than agriculture, including renewable energy facilities, is still the responsibility of local land use authorities (cities and counties) rather than the State. In general, energy projects on land with high value agricultural and other environmental resources should be carefully scrutinized in terms of evaluation of potential impacts and focused consideration of possible mitigation measures under the California Environmental Quality Act (CEQA).

Loss of state funding for the Williamson Act, a program implemented by local counties and cities across California, will likely accelerate conversion of agricultural land as the economy improves, depending on location and availability of utilities and services. County Assessors should be encouraged to set low assessed valuations on prime agricultural conservation easement to non-profit groups – this will encourage continued preservation of prime agricultural land. This guidance paper hopes to address general land use and environmental or CEQA considerations relative to the Williamson Act and not specific financial impacts on counties.

INTRODUCTION

Renewable Energy Facilities

In the last 2 years, many counties and cities in California have processed applications for “renewable energy facilities” on agricultural land. For the purposes of this report, we will address only electrical generating plants using photovoltaic (solar cell) and wind power. These jurisdictions are trying to strike a reasonable balance between the desire of the State to encourage the installation of renewable energy facilities, and the protection of important agricultural resources, namely prime agricultural land and land within agricultural preserves established through the Williamson Act.

It should be noted that the recent “flood” of applications for solar facilities on desert and agricultural lands may be slowing down because the investor-owned utilities (IOUs) are near the contract amount needed to meet the State’s 33 percent Renewable Power Supply (RPS) requirement. It is therefore likely that only a portion of the current applications will actually be approved and constructed.

For general energy facility siting guidance, the reader should refer to Chapter 5, Facility Siting and Permitting, in “The Law of Clean Energy: Efficiency and Renewables” (Gerrard 2011). For wind farm siting requirements on federal land, as well as general guidance, the reader should refer to the federal Department of the Interior’s “Wind Turbine Guidelines Advisory Committee” report and website (USDOJ 2008).

Williamson Act Funding

In 1965, the State Legislature passed the California Land Conservation Act, otherwise known as the Williamson Act (WA), to encourage private landowners to set aside or preserve prime or important agricultural land. In 1972, the Open Space Subvention Act amended the WA and established a mechanism to reimburse counties and cities for property tax revenues that are lost by establishing WA preserves (“subventions”). As of January 1, 2009, approximately 15 million acres were enrolled under the WA state-wide, which represents approximately half of California’s farmland, and nearly one-third of the state’s privately owned land. Because of this, the WA is considered one of California’s most important land preservation laws.

Since 2009, the State has restricted/reduced the allocation of tax reimbursements to counties and cities for their lost tax revenues. In 2011, the State Legislature is considering permanently eliminating WA funding as a cost savings measure to balance the State’s budget. Loss of State subventions would result in a loss of WA funding to counties and cities that had WA contracts, in some cases this could total millions of dollars in lost funding for counties in the Central Valley and elsewhere. Eventually these counties would receive some increased property tax revenues as the former WA land appreciated in value, but the revenue would not replace the immediate loss of current WA subventions. It would also not preserve important agricultural lands in the State.

BACKGROUND

Wind Facilities

Wind turbines can range in height, but are generally large towers ranging from 100 to 260 feet in height, with propeller-like blades that move in a circular pattern, when powered by wind currents. The rotating blades turn a generator that produces electricity. These turbines or towers are located together in what is called a “wind farm” typically in windy areas like ridgelines, mountain passes, foothills or flat open desert land (i.e., wherever it is windy most of the year). These wind farms are connected to the regional electric “grid” and generate electricity depending on the climatological characteristics of the area and corresponding wind currents. In general, a wind turbine typically generates from 0.25 to 2.5 megawatts based on its height, rotor swept area, and spacing. These characteristics are in turn dependant on site specific topography as well as wind direction, speed, and distribution.

These wind turbines can be separated by hundreds of feet, depending on their height and rotor diameter, and occupy a relatively small footprint within an overall project boundary (typically five percent or less of the site). They require some supporting site improvements including access roads and buildings for construction, operation, and maintenance activities, power collection lines, onsite transformer stations, as well as facilities for interconnection to the regional power, often including onsite and offsite radial transmission lines that may not become part of the distribution utility’s network (gen-tie lines).

Wind farms are relatively compatible with agricultural uses, and can operate along with agricultural production. However, one of the major environmental concerns surrounding wind power is the effect the wind turbines have on both bird (avian) and bat populations. These concerns first arose after a wind farm was built in California’s Altamont Pass in the 1980’s. This pass is both home to, and provides migration territory for, many sensitive birds including golden eagle, red-tailed hawk, and others. Wind turbines at Altamont Pass kill an estimated 880 to 1,300 birds of prey each year, including up to 116 golden eagles, 300 red-tailed hawks, 380 burrowing owls, and additional hundreds of other raptors including kestrels, falcons, vultures, and other owl species (CBD 2005). Further studies have noted that much of this is due to the location of the wind farm in a major avian migration corridor. Had the avian impact studies typically done today been done prior to wind farm development at Altamont, many of these negative consequences could have been known prior to deciding on a location. There are still many actions being undertaken at the Altamont site to mitigate avian impacts and avoid future collisions.

Solar Facilities

For the purposes of this report, the term “solar facilities” applies to large-scale photovoltaic (PV or solar cell) plants that generate electricity for offsite users. This report does not address dish collector systems also known as “concentrated photovoltaic” which are fundamentally different than PV solar cell arrays. Solar cells convert sunlight directly into electricity and are composed of layers of semiconductor materials like those in computer chips. There are currently two main types of PV technologies, flat-plate and thin film. The main differences are weight, cost, and thickness of

the cells. Both types of PV technologies require large arrays of flat metal panels that support the PV cells, typically arranged in long rows facing south, although some PV arrays are engineered to track the sun for more efficiency. For large (utility-scale) generating plants, hundreds of panels are interconnected to form a large system.

The metal panels that support PV arrays are most often mounted at or near ground level to facilitate maintenance and reduce wind load. Typical panel modules are 4 feet square, and are often arranged in arrays ranging from 8 to 16 feet high and 100 to 300 feet long. Panels are usually mounted on metal frames with poles set into the ground. There may be dozens or hundreds of panels in a single array. It is possible to construct these arrays on metal supports that raise them off the ground, in some cases high enough to allow people and vehicles to pass under them. They can also be distributed into several smaller collection units rather than in one single system. However, such modifications do raise the cost of constructing and maintaining the facility. Germany has a number of large-scale, ground-mounted solar installations in agricultural areas that are elevated, but the authors are unaware of any in California. The PV system also requires a connection to the electrical grid, as well as roads for maintenance vehicles and personnel.

Solar Regulations

Several sections of the California Government Code (CGC) and California Civil Code (CCC) included in Appendix A of this report are often cited by private applicants for solar energy generation systems as justification that their projects are appropriate in agricultural preserves (WA land). The primary one is CGC Section 51238 which states...“(a)(1) Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve. (2) No land occupied by gas, electric, water, communication, or agricultural laborer housing facilities shall be excluded from an agricultural preserve by reason of that use.”

In addition, CGC Section 65850.5 is often cited, which states...”It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems.” These and other related CGC and CCC sections are provided in Appendix A of this report for reference.

A complete reading of these sections, including the legislative history, indicates the original intent of the language was most likely to: (1) preclude restrictions on utility systems and improvements that serve the primary agricultural use of the land; (2) allow solar hot water or photovoltaic systems for domestic applications and where private groups such as homeowner associations (HOAs) would try to restrict an individual unit owner from installing a solar system on their home; and (3) allow farmers to install small solar energy facilities to power mainly onsite uses, as opposed to utility-scale electrical generating plants.

Therefore these codes, when taken in their entirety, do not control the siting of larger scale solar photovoltaic power generation facilities and what potential implications they would have on agricultural lands, especially on prime agricultural soils or on agricultural preserve (i.e., Williamson Act) land. On the other hand, this does not mean that solar PV energy plants are incompatible with WA land, nor does it follow that WA contracts must be cancelled to accommodate solar energy facilities. The potential impacts and benefits of both agricultural and energy production should be weighed before any actions is taken regarding WA cancellation. Even if the local agency determines that solar facilities are not compatible uses as a matter of law pursuant to CGC Section 51238, it should determine whether or not the solar facility being considered is a compatible use under CGC Section 51238(a)(1), and this should be done on a case-by-case basis.

It should also be noted that many jurisdictions have their own Williamson Act implementing rules or guidelines that should be consulted when evaluating renewable energy facilities. If these guidelines contain a list of compatible or allowed uses within WA preserves that includes “renewable energy facilities” (not just “electrical facilities”), then the decision-making process is much easier regarding utility scale electrical generating plants. An article with an alternative perspective on solar regulations in WA preserves is provided in Appendix B.

Prime Agricultural Land

Prime agricultural land is land with soils classified as prime by the federal Natural Resource Conservation Service (NRCS, formerly the U.S. Soil Conservation Service or SCS), typically those with SCS Class I through III soils. In addition, the California Resources Agency maintains the Farmland Mapping and Monitoring Program (FMMP) that identifies the location of “Prime Farmland”, “Farmland of State-Wide Importance”, “Unique Farmland”, “Farmland of Local Importance” throughout the State (for more information, see the state-wide FMMP maps at <http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx>).

The California Department of Conservation maintains the Land Evaluation and Site Assessment (LESA) Model that attempts to identify whether the loss of agricultural land is significant under CEQA. The State CEQA Guidelines, Appendix G (Environmental Checklist) suggests but does not require agencies to use the LESA Model to help determine the significance of the loss of agricultural land. In general, the LESA Model is skewed in favor of land that has more than 25 acres of SCS Class I and II soils, regardless of the other factors (surrounding uses, water availability, etc.). Therefore, AEP recommends that local agencies only use LESA Model results as a general guide to help determine the significance of agricultural resources, rather than the strict numerical thresholds included in the LESA Model Handbook.

An alternative to the WA is the State Farmland Security Zone program, however, it is also dependent on state funding which is uncertain at this time. Some local conservation groups are able to obtain conservation easements from private landowners, but this process requires the local County Tax Assessor to agree to assess the land at WA-like levels (i.e., as an agricultural preserve) or the easement has no value to the private landowner (see WA Property Assessment below).

WA Property Assessment

County Assessors follow the State Revenue and Taxation Code to assess the value of all taxable properties within their jurisdiction. Lands under WA contracts are considered “restricted” and their values are determined on the basis of the value of the agricultural commodities produced times the number of acres under production. In turn, the value of agricultural commodities is determined by state-wide annual/biannual studies of agricultural production in the state by the University of California. Properties that are under contract but not engaged in production, or attributable to some other non-agricultural use, are typically assigned an open space value. Residential structures and a home site are subject to WA restriction but do not receive a reduced valuation. These restrictions can reduce the assessed valuation of land under a WA contract to as little as 10 percent (90% reduction) of what would be its non-restricted assessment.

CEQA and Environmental Resources

The California Environmental Quality Act (CEQA), passed in 1970, provides a framework for evaluating the potential environmental impacts of proposed development against its societal and economic benefits. The first steps in the CEQA process are to identify whether CEQA applies to a project (i.e., it is not a “project” or it is exempt in some way). If a project is not exempt by statute or by qualifying for an exemption based on certain categories of projects (only one of which may apply to renewable energy projects), a local land use authority (city or county) prepares an Initial Study to identify potential impacts of the project. If all potential impacts of the project can be reduced to less than “significant” levels, the agency can process what is called a Negative Declaration (ND) or Mitigated Negative Declaration (MND). If not all the impacts are less than significant, the agency must prepare an Environmental Impact Report (EIR), a much more costly and time consuming process. So CEQA compliance can have a major effect on the timing and cost of installing new renewable energy facilities.

One of the main drawbacks to the current process is the determination of what is a significant impact to agricultural resources. For some agencies, any permanent loss of WA land or prime agricultural land is a significant impact, however, it is typically less clear how to deal with “temporary” (e.g., 20 years) loss of the use of prime agricultural land (prime soils not covered over and long-term use is not lost). Other jurisdictions consider anything less than permanent loss of prime soils to be less than significant, and CEQA gives local agencies the authority to establish the threshold for determining a significant impact. The severity of these impacts is often rooted in a Lead Agency’s General Plan policies or municipal code. One agency that has addressed this issue locally is Merced County. It has agricultural policies in its General Plan that refer to “productive” farmland which includes all four classes of agricultural soils mapped under the FMMP (see *Prime Agricultural Land* above), but mitigation is only required for the loss of Prime Farmland.

In addition to agricultural resources, local jurisdictions must balance development and private property rights with protecting environmental resources. Locating renewable energy facilities on agricultural land requires local planners to evaluate the potential impacts of that development on not only agricultural resources but a host of other environmental resources that these lands typically contain or support, such as wetlands, riparian (stream-side) vegetation, and historical

resources. It should also be noted that many jurisdictions are now preparing Climate Action Plans or similar plans that encourage renewable energy, which must also be balanced against the loss of agricultural uses over the short- and long-term.

Table A provides a method of evaluating the relative value of agricultural and other environmental resources when determining potential impacts of renewable energy facilities and representative mitigation that may be required for such projects (i.e., the higher the impact, the more mitigation).

Table A: Agricultural Land Value Considerations

Relative Value	Williamson Act Preserve?	Agricultural Resources	SCS Soils	Other CEQA Considerations
High	Yes and with more than 3 years if a Notice of Nonrenewal has been filed	Prime Farmland Farmland of State-Wide Importance Unique Farmland	Class I - III	wetlands or habitat for listed species, archaeological or historical sites, human occupation adjacent, etc. LESA Model significant
Moderate	Yes but with 3 years or less if a Notice of Nonrenewal has been filed No	Farmland of Local Importance Active farmland with water readily available Active farmland with no water readily available	Class IV or greater	riparian vegetation, habitat for sensitive species, human occupation in the immediate area, etc. LESA Model significant in 1 of 2 categories
Low	No	Non-prime farmland Fallow farmland	Class IV or greater	no major biological or other CEQA-related resources present, no human occupation nearby, contains steep slopes, etc. LESA Model not significant in either category

Loss of Williamson Act Funding

In 1965, the State Legislature passed the Williamson Act (WA) to encourage private landowners to set aside or preserve prime or important agricultural land. Land under agricultural production can have its annual assessed valuation for property tax calculation reduced by 90% if they agree to place their land under a WA contract for 10 years, renewable annually. It also establishes a mechanism to reimburse counties and cities for property tax revenues that are lost by participating in the WA. WA contracts between the local agency and landowners run for 10 years, meaning the land under a WA contract must be subject to the contract's restrictions for at least 10 years to receive the large annual tax break. A Notice of Nonrenewal must be filed in order to gradually wind down the WA contract, while cancelling a WA contract results in severe tax penalties to the landowner.

Since 2009, the State has restricted/reduced the allocation of tax reimbursements to counties and cities for their lost tax revenues. In 2011, the State Legislature is considering eliminating current and future funding for the WA. Loss of State funding would result in a loss of WA funding to counties and cities that had WA contracts, but they would receive some increased valuation tax in the future as the former WA land appreciated. In the meantime, it appears the state legislature intends for local counties to support WA lands themselves, and it is likely few will choose to do so since it represents thousands if not millions of property tax dollars lost by giving tax breaks to local property owners with no State pass-through. For example, the Solano County Board of Supervisors has already voted to not issue any more WA contracts, and Imperial County Board of Supervisors has voted to stop renewing WA contracts.

Loss of State funding could also accelerate conversion of agricultural land as the economy improves, depending on location and availability of utilities and services. At present, the individual County Assessor has some discretion how non-WA agricultural land is assessed for tax purposes. Agricultural activities in California have historically had small profit margins. If agricultural land is assessed at non-WA preserve rates (i.e., market rates based on development potential of the land), then farmers or ranchers may not make enough money to continue farming or ranching, and their properties either lie fallow or are at increased risk of being converted to some non-agricultural use. The purpose of the WA in 1965 was to address this issue.

Loss of WA funding could accelerate conversion of agricultural land depending on location and availability of utilities and services. Given the current economic times, there will probably not be a rush to convert agricultural land to urban or suburban uses if all WA state funding is removed, however, there may be additional pressure on these resources to convert as the economy recovers, especially on lands that have adequate potable water, are close to existing communities, and have relatively good access.

AEP GUIDANCE

Renewable Energy Facilities - General

Despite the varying perspectives on this issue, the AEP suggests that local cities and counties try to strike a reasonable balance between the desire of the State to encourage the installation of renewable energy facilities, and the protection of important agricultural resources, namely prime agricultural land and land within an agricultural preserve (i.e., Williamson Act)(WA). Some jurisdictions have already been wrestling with these issues, having adopted Climate Action Plans or similar documents that try to reduce greenhouse gas emissions (i.e., one strategy is to encourage more use of renewable energy).

For the purposes of this report, “prime” refers to those lands with soils categorized as prime (Class I – III) by the federal Natural Resource Conservation Service (NRCS), or soils classified as prime by the California Department of Conservation and shown on the Farmland Mapping and Monitoring Program (FMMP) maps maintained by the California Resources Agency. The FMMP program also designates “Farmland of State-Wide Importance” and “Locally Important Farmland”

throughout the State which may be considered less valuable in a CEQA sense compared to Prime Farmland.

To achieve this balance between energy and agricultural production, some jurisdictions have tried to apply their standard development review procedures to energy projects, including compliance with CEQA. Other jurisdictions have tried to address these facilities by changes or additions to their standard development review procedures (e.g., minor or major use permits), and/or modified their procedures to encourage placement of these facilities on the least productive agricultural land.

Each jurisdiction (i.e., city or county) should first evaluate its existing procedures relative to its established General Plan policies that deal with agricultural resources and land, especially those that address prime agricultural land or land under WA preserve. These are typically found in the Open Space and Conservation Element of the General Plan. AEP recommended each agency identify the relative value of agricultural land within its jurisdiction based on the table in the previous section. It may seem obvious, but it is also important to check if the jurisdiction has its own guidelines for WA activities which may address to some degree these proposed facilities.

In general, local agencies should have thresholds that acknowledge land with higher agricultural value, the more detailed the level of analysis of potential environmental impacts should be, and the greater potential there is for requiring mitigation measures. It is reasonable to conclude that small energy facilities on low value agricultural land could qualify for a Categorical Exemption (Class 4 – Minor Alterations to Land) under CEQA Guidelines Section 15304, if the land will eventually be restored to agriculture and unless any of the Exceptions identified in CEQA Guidelines Section 15300.2 apply. Larger facilities on more valuable agricultural land could require a Negative Declaration/Mitigated Negative Declaration (ND/MND) if the site contains important environmental resources that would be adversely affected by the facility. In some cases, a more detailed and costly Environmental Impact Report (EIR) may be needed if the facility affects a number of environmental resources or causes significant environmental impacts.

Counties and cities with large areas of agricultural land may want to assess the location and especially the quality of these lands to help identify less productive agricultural land that could support renewable energy facilities. They may also wish to discuss and select an appropriate local threshold of significance for loss of agricultural land under CEQA, so it will be clear to applicants with renewable energy projects in agricultural areas what the potential level of impact will be even before completing the development review process.

The determination of a significant impact or the appropriate CEQA document may also be affected by the duration of the project. For example, an applicant that agrees to a 25-year time limit with a restoration plan that is bonded, then the impact may be considered significant but mitigable as opposed to unavoidable, which would require an MND instead of an EIR. It is important to note that an MND has a lower level of proof for legal challenge compared to an EIR. The relative interest or risk of local stakeholder groups is also important to consider, and make sure they are notified and involved in the CEQA process.

At present, the decision to convert even prime agricultural land for purposes other than agriculture, including renewable energy facilities, is still the responsibility of local land use authorities (cities and counties) rather than the State.

It is important to consider the impacts of all the needed improvements such as roads, transmission lines and proximity to a grid connection, and onsite electrical equipment when evaluating the impacts of a renewable energy facility. The local agency should also inquire as to the timing and any restrictions that connecting to the energy grid would have (i.e., the “Cal ISO Process”).

In addition to knowing its own development review process requirements, the local agency should be aware of and discuss with the applicant the timing and processing implications of the Power Purchase Agreement for the proposed facility.

Wind Facilities - Specific

In general, wind facilities are arguably more compatible with agricultural land and uses than solar facilities since they would allow compatible agricultural production or grazing to continue around the wind turbines. The turbines can create other environmental impacts such as bird and bat deaths by collision, noise, and visual impacts when sited near human-occupied structures. Local jurisdictions should have CEQA thresholds that acknowledge greater impacts for wind farms on agricultural land that has Moderate to High value (see previous section), and more analysis of impacts and consideration of mitigation should be given than to wind farms on land with Low agricultural value.

Local jurisdictions can reasonably require bird migration and/or bat movement studies by qualified independent biologists to help identify the most appropriate locations for towers, even if the locations would reduce the overall efficiency of the facility. However, this location-negotiation process must balance the engineering needs of the wind farm with the potential loss of birds and bats, along with other possible environmental impacts. Guidance on specific types of studies is available from the federal Wind Turbine Guidelines Advisory Committee report (USDOJ 2008).

If wind farms are proposed within visual sight or approximately a quarter mile (closest tower) to residences, a “glare, shadow flicker, and blade glint” analysis should be performed by a qualified professional. Depending on proximity to residences, a noise study may also be required. It is also important to consider the impacts of all the needed improvements (roads, transmission lines, electrical equipment, etc.) when evaluating the direct and cumulative impacts of a wind facility.

The facility design and location process must balance the engineering needs of the wind farm with the substantial loss of prime agricultural soils or loss of significant agricultural production, as well as other possible environmental impacts. For land that has Moderate to High agricultural value, the agency should request the applicant consider the following: (1) locating the turbines on land with the least or lesser agricultural value, or where they create less other environmental impacts (e.g., bird and bat collisions); and (2) varying the height and spacing of the turbines to reduce number of turbines on High value agricultural land. Certainly cost of either option should be considered

during the project review stage, and may enter into the CEQA analysis relative to feasibility of mitigation.

If the primary long-term use of the land is to remain agriculture, the agency can require a Condition of Approval or request a Development Agreement to prepare and implement a Restoration Plan, similar to those used for mineral extraction projects, to restore the land to its original condition after a suitable permit period (maximum of 25-30 years). If the land will not remain in long-term agricultural use or designation, the agency may request a Restoration Plan that would be implemented by the facility owners upon project decommissioning whenever it occurs in the future.

It must always be remembered that the conversion of even prime agricultural land for any purpose, including wind energy facilities, is still the responsibility of the local agency, not the State.

The location of roads, drainage channels, and other energy-related improvements on the site should be carefully planned and constructed to minimize impacts and ability to restore the site in the future. For example, the agency should consider dirt roads instead of gravel to allow more effective restoration, however, this must be weighed against controlling dust from maintenance vehicles and not interfering with site access during the rainy season. In addition, irrigation ditches should not be filled in to maintain drainage/flood control and make restoration easier in the future.

Solar Facilities - Specific

The AEP Agricultural Resource Committee believes that CGC Section 51238 does not give solar facilities a vested right to be located on Williamson Act agricultural preserve land, receive exemptions under CEQA, or avoid responsibility to mitigate impacts of their projects. We believe the referenced code was intended to apply to onsite electrical facilities that support the primary land use of agriculture, and not large power plants that produce electricity for offsite uses (i.e., utility scale electrical generating plants), even if it is from “renewable” sources. This does not mean, however, that WA contracts must be automatically cancelled to locate a solar energy facility on WA land. A solar facility can be found to be a “compatible use” by the agency, although that may involve modification to the proposed facility in terms of location, design, or size.

AEP recommends that the potential impacts and benefits of both agricultural and energy production should be weighed before any actions is taken regarding WA cancellation. Even if the local agency determines that solar facilities are not compatible uses as a matter of law pursuant to CGC Section 51238, it should determine whether or not the solar facility being considered is a compatible use under CGC Section 51238(a)(1), and AEP recommends that this be done on a case-by-case basis.

In general, solar PV facilities have the potential to create greater impacts on existing agricultural land and uses compared to wind facilities, mainly due to their larger overall footprint and disturbance area resulting in (for most typical installations) not being able to farm the land under or around the panel arrays. Solar PV facilities on agricultural land that has Moderate to High value

(see previous section) should have a lower threshold of significance and more consideration of mitigation than facilities proposed on Low value lands.

The facility design and location process must balance the engineering needs of the solar facility with the potential loss of agricultural production or land (and other possible environmental impacts as well). For land that has Moderate to High agricultural value, the agency should request the applicant consider the following: (1) alternative sites, such as land with the least or lesser agricultural value or that creates less other environmental impacts; (2) locating panels on farm building roofs, non-farmed land, or along access roads first, rather than on the highest value agricultural land; (3) dividing the panel arrays into 2 or more smaller groups to help avoid higher value agricultural land; and (4) elevating and spacing the panels so that farm workers and vehicles can travel under them and the land can be jointly used for energy and agricultural production (e.g., crops, grazing, etc.). Certainly the cost of these options should be considered during the project review stage, and may enter into the CEQA analysis relative to feasibility of mitigation.

If a solar energy facility must be located exclusively on WA land, AEP recommends that the facility be conditioned to occupy no more than 25 percent of the entire property under WA contract, and permitted for no more than 25-30 years. That way the primary use of the land continues to be agriculture. The individual land use authority (city or county) would be responsible for establishing an appropriate joint use percentage.

If a solar facility is proposed within visual sight or approximately a quarter mile (closest panel array) to residences, a glare analysis should be performed by a qualified professional. In addition, larger facilities may require the preparation of visual simulations and an analysis of glare if the facility is close to suburban uses. The simulations may also indicate if the spacing or locations of the panels need to be adjusted to prevent birds from mistaking them for bodies of water. It is important to consider the impacts of all the needed improvements (roads, transmission lines, electrical equipment, etc.) when evaluating the impacts of a solar facility.

If the primary long-term use of the land is to remain agriculture, the agency can impose a Condition of Approval (COA) or request a Development Agreement that includes a Restoration Plan, similar to those for mineral extraction uses, to restore the land to its original condition after a suitable lease or use period (maximum of 25-30 years). If the land will not remain in long-term agricultural use or designation, the agency may still request a Restoration Plan that would be implemented by the facility owners upon project decommissioning.

It must always be remembered that the conversion of even prime agricultural land for any purpose, including solar energy facilities, is still the responsibility of the local agency, not the State.

The location of roads, transmission lines, drainage channels, and other energy-related improvements on the site should be carefully planned and constructed to minimize impacts and ability to restore the site in the future. For example, the agency should consider dirt roads instead of gravel to allow more effective restoration, however, this must be weighed against controlling dust from maintenance vehicles and not interfering with site access during the rainy season. In

addition, irrigation ditches should not be filled in to maintain drainage/flood control and make restoration easier in the future.

Loss of Williamson Act Funding

If possible, local jurisdictions should discuss with their County Assessor the possibility of setting assessed valuations on agricultural land under conservation easement to non-profit groups at levels equivalent to WA rates, to encourage continued preservation of prime agricultural land. Cities losing WA contract lands should also discuss this option with their County Assessor.

Local jurisdictions may want to identify those agricultural lands that would be under the most pressure to develop if the State permanently suspends the WA program (right now it is proposed to lose its funding for two years).

AEP AGRICULTURAL RESOURCES COMMITTEE

Kent Norton – LSA Associates, Inc. (Chair) kent.norton@lsa-assoc.com
Trevor Macenski – Michael Brandman Associates (Vice Chair) tmacenski@brandman.com
Ron Sisseem – EMC Planning Group, Inc.
Leann Taagepera – ECORP Consulting, Inc.
Monica Pereira – San Francisco Planning Department
Beth Moisan – Golder Associates, Inc.
Eric Pfuehler – East Bay Regional Park Department
Scott Morgan – State Office of Planning & Research

Document Review/Support Group

Alexander Fisch – Placer County
J. Fugelsang – Merced County
Patrick Lowe – Napa County
John Heiser – Tulare County
David Blackwell – Allen Matkins Attorneys
Phil Millenbah – Solar Land Partners

GLOSSARY

AEP	Association of Environmental Professionals
CCC	California Civil Code
CGC	California Government Code
CEQA	California Environmental Quality Act
COA	Condition of Approval
EIR	Environmental Impact Report
FMMP	Farmland Mapping and Monitoring Program
HOA	Home Owners Association
IOU	Investor-Owned Utilities
MND	Mitigated Negative Declaration
ND	Negative Declaration
NRCS	National Resource Conservation Service
PV	Photovoltaic (i.e., solar cells)
RPS	Renewable Power Supply
WA	Williamson Act

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- Interviews with various planners in Counties that have substantial agricultural resources. May-June 2011.
- U.S. Department of Energy (USDOE). "Wind Energy Guide for County Commissioners." 2010.
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WEBSITES

Calif. Energy Commission www.energy.ca.gov/wind/index.html

National Renewable Energy Laboratory www.nrel.gov/learning/re_wind.html

U.S. Fish and Wildlife Service www.fws.gov/windenergy

Wind Turbine Guidelines Advisory Committee
[http://www.fws.gov/habitatconservation/windpower/wind turbine advisory committee.html](http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html)

APPENDIX A ENERGY FACILITY REGULATIONS

California Government Code 51238

(a) (1) Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve.

(2) No land occupied by gas, electric, water, communication, or agricultural laborer housing facilities shall be excluded from an agricultural preserve by reason of that use.

(b) The board of supervisors may impose conditions on lands or land uses to be placed within preserves to permit and encourage compatible uses in conformity with Section 51238.1, particularly public outdoor recreational uses.

California Government Code 51238.1

(a) Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

(1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

(2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

(3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use. In evaluating compatibility a board or council shall consider the impacts on noncontracted lands in the agricultural preserve or preserves.

(b) A board or council may include in its compatible use rules or ordinance conditional uses which, without conditions or mitigations, would not be in compliance with this section. These conditional uses shall conform to the principles of compatibility set forth in subdivision (a) or, for nonprime lands only, satisfy the requirements of subdivision (c).

(c) In applying the criteria pursuant to subdivision (a), the board or council may approve a use on nonprime land which, because of onsite or offsite impacts, would not be in compliance with paragraphs (1) and (2) of subdivision (a), provided the use is approved pursuant to a conditional use permit that shall set forth findings, based on substantial evidence in the record, demonstrating the following:

(1) Conditions have been required for, or incorporated into, the use that mitigate or avoid those onsite and offsite impacts so as to make the use consistent with the principles set forth in

paragraphs (1) and (2) of subdivision (a) to the greatest extent possible while maintaining the purpose of the use.

(2) The productive capability of the subject land has been considered as well as the extent to which the use may displace or impair agricultural operations.

(3) The use is consistent with the purposes of this chapter to preserve agricultural and open-space land or supports the continuation of agricultural uses, as defined in Section 51205, or the use or conservation of natural resources, on the subject parcel or on other parcels in the agricultural preserve. The use of mineral resources shall comply with Section 51238.2.

(4) The use does not include a residential subdivision. For the purposes of this section, a board or council may define nonprime land as land not defined as "prime agricultural land" pursuant to subdivision (c) of Section 51201 or as land not classified as "agricultural land" pursuant to subdivision (a) of Section 21060.1 of the Public Resources Code. Nothing in this section shall be construed to overrule, rescind, or modify the requirements contained in Sections 51230 and 51238 related to noncontracted lands within agricultural preserves.

California Government Code Section 65850.5

(a)The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b)A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c)A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d)The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e)Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f)(1)A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2)A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g)The following definitions apply to this section:

(1)"A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2)"Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3)A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

California Civil Code Section 714

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in subdivision (j) of Section 1351, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) (1) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(2) For an approving entity that is a homeowners' association, as defined in subdivision (a) of Section 1351, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

California Civil Code Section 801.5

(a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system. As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

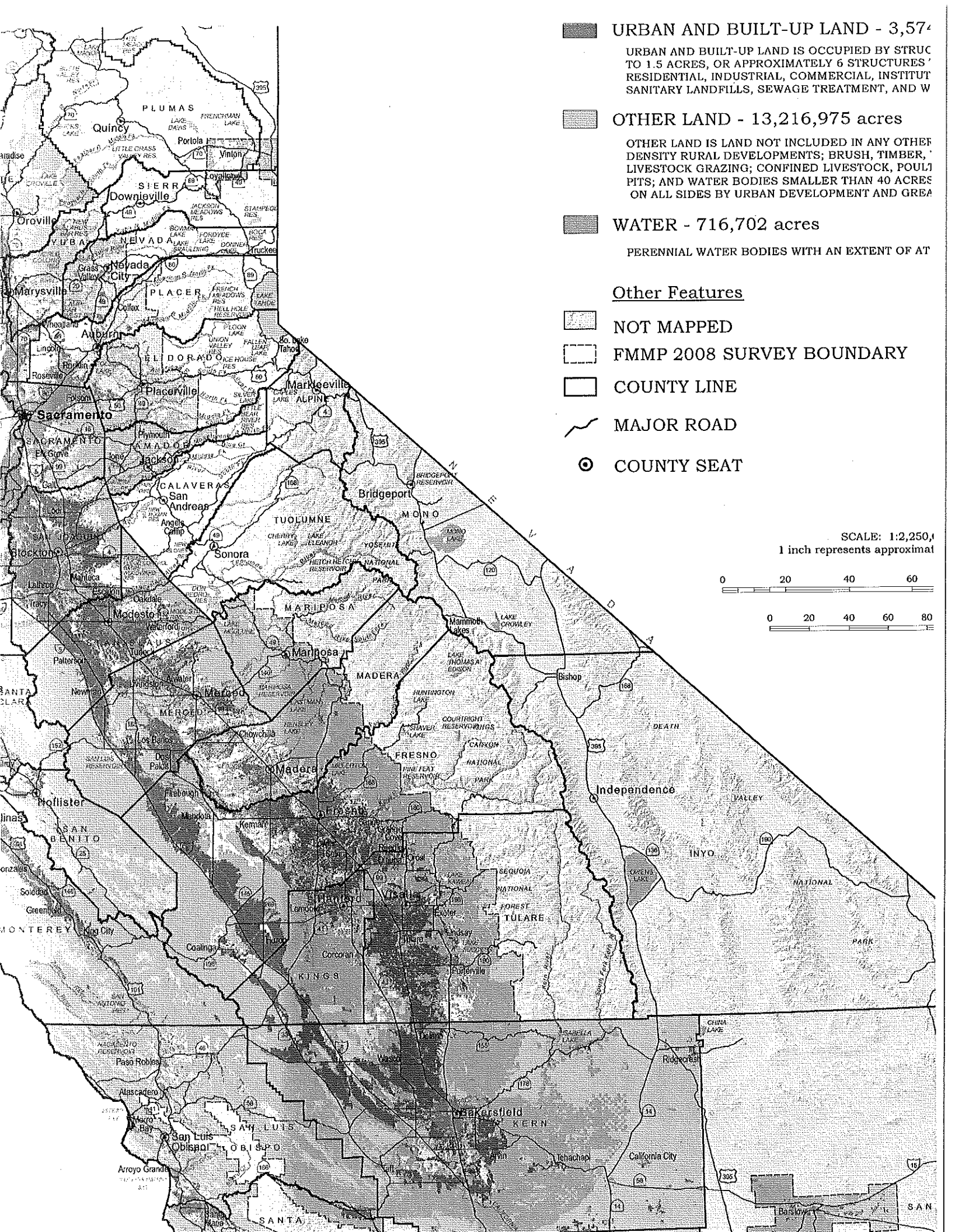
(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

**APPENDIX B
SUPPORTING MATERIALS**



URBAN AND BUILT-UP LAND - 3,574

URBAN AND BUILT-UP LAND IS OCCUPIED BY STRUCTURES TO 1.5 ACRES, OR APPROXIMATELY 6 STRUCTURES' RESIDENTIAL, INDUSTRIAL, COMMERCIAL, INSTITUTIONAL, SANITARY LANDFILLS, SEWAGE TREATMENT, AND WASTEWATER TREATMENT PLANTS.






OTHER LAND - 13,216,975 acres

OTHER LAND IS LAND NOT INCLUDED IN ANY OTHER DENSITY RURAL DEVELOPMENTS; BRUSH, TIMBER, LIVESTOCK GRAZING; CONFINED LIVESTOCK, POULTRY, AND WATER BODIES SMALLER THAN 40 ACRES ON ALL SIDES BY URBAN DEVELOPMENT AND GREENBELT DEVELOPMENT.

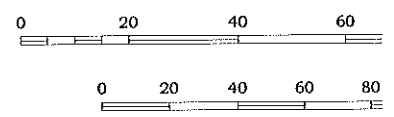
WATER - 716,702 acres

PERENNIAL WATER BODIES WITH AN EXTENT OF AT LEAST 40 ACRES.

Other Features

-  NOT MAPPED
-  FMMP 2008 SURVEY BOUNDARY
-  COUNTY LINE
-  MAJOR ROAD
-  COUNTY SEAT

SCALE: 1:2,250,
1 inch represents approximately 1.875 miles





MEMORANDUM

Date: June 7, 2011
To: Kent Norton
From: Beth Moisan
cc: Ag Issues AEP Ad Hoc Group Members
RE: FRESNO COUNTY

Contact: Twanda Mtunga, Development Services Division and John Adams, Policy Planning Fresno County Department of Public Works and Planning

Williamson Act Termination

1. What is your current understanding of the status of the WA and how do you receive updates/communications on the status?

Keep in contact with other counties and Department of Conservation.

2. What are the primary implications of WA termination for the County (i.e. economic, land use planning, resource management)?

Have not received subvention funds since 2007 and has not approved new WA contracts since 2008. Automatic renewals continue.

Staff has not been given direction from the Board as to whether or not they will initiate non-renewal process. Currently this is under consideration.

3. How is the issue being addressed by decision makers, if at all?

See #2 above. The staff under direction from decision makers are doing initial research regarding noticing property owners regarding non-renewal of WA contracts.

Staff directs applicants to look for land non prime land for RE projects.

Staff has gotten direction from Board to obtain additional information to allow staff to make findings on RE projects. The supplemental information document is called 9 Points and asked for supplemental information regarding water rights, farming history etc. A formal policy for RE projects has not been developed. The 9 Points originally only applied to Williamson Act lands but board now requires for this for all agricultural lands.

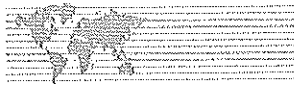
4. What are the responses of contract holders and landowners desiring to enter into contracts?

The County is not accepting any new WA contracts.

5. What action has the County taken or contemplates taking in response to loss of subvention funds?

County will not renew WA contracts.

6. Do you have any recommendations for other planners, local agency officials for managing issues related to WA termination?



MEMORANDUM

Renewable Energy Projects on Agricultural Land

1. What is the County's current process for considering commercial RE projects where power would be sold to utilities (not used on the site where the energy is being generated)?

The County is requesting cancellation of the WA contract on these lands. County has not adopted policy or guidelines for siting RE projects to date aside from 9 Points listed above. Projects would have to meet conditions of land use requirements pursuant to the County's General Plan.

2. What do the County's Williamson Act guidelines allow or not allow in terms of energy related compatible/non-compatible uses on lands subject to Williamson Act (ag preserve vs. contracted lands)?"

Part of the problem is that County's Williamson Act Guidelines do not list power generation projects as a use that is compatible with its agricultural reserve, which encompasses all unincorporated lands other than areas of urban development concentration.

Removal from the WA lands is considered a potentially significant impact.

On certain solar project within the county, the Planning Department has seen mitigation requirements such as ag easement at a ratio of 1:1 as a basis for supporting the County's ability to adopt a statement of overriding consideration.

3. What are the current attitudes of local stakeholders (farm, environmental, decision maker, etc. interests) about such projects and how if at all are those attitudes shaping the County's approach to such projects?

Haven't taken any RE projects to the Board of supervisors yet.

4. Has the County developed any specific guidance for energy generation projects in general or for such projects on ag land in particular?

None to date, other than the 9 points mentioned above. Originally 9 Points only applied to WA lands but now the county applies it to all RE projects on ag lands.

5. What do you see as the County's biggest challenges in terms of considering and processing RE projects in general? Any recommendations for other practitioners?

Fresno deals with this issue on a case-by-case basis - no consistent approach for processing these projects



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
ALAN WEAVER, DIRECTOR

CANCELLATION OF A WILLIAMSON ACT CONTRACT

The California Land Conservation Act (Williamson Act) was enacted in 1965. The purpose of the Williamson Act Program is to preserve agricultural and open space lands by discouraging premature and unnecessary conversion to urban uses. The Williamson Act provides for private property owners to contract with Fresno County if they wish to voluntarily restrict their land to agricultural and open space uses.

A request for full or partial Contract cancellation must meet legal requirements contained in Government Code Section 51280 et. seq. The partial cancellation of the Contract **may only be permitted** when the following Findings can be made by the Fresno County Board of Supervisors (Board):

In order to find that the cancellation is in the public interest, the board/council must find:

- (1) that other public concerns substantially outweigh the objectives of the Williamson Act; and,
- (2) that there is no proximate, noncontracted land which is both available and suitable for the proposed use, or, that development of the contracted land would provide more contiguous patterns of urban development (GC §51282(c)).

The uneconomic character of an existing agricultural use shall not by itself be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put (GC §51282(b)).

In addition to the above Findings that must be found to exist, the Board will also consider all comments offered by the California Department of Conservation (DOC) and the recommendation from the Fresno County Agricultural Land Conservation Committee (ALCC). The DOC is responsible for interpretation of the Williamson Act and enforcement of Williamson Act provisions and restrictions, and the ALCC is advisory to the Board on Contract cancellation matters.

The applicant shall provide:

- A completed application for cancellation (or partial cancellation). Staff will provide you with the application form;
- Written discussion relating to the Public Interest Findings;
- A copy of the recorded Grant Deed with the legal description of the property that is subject to the Contract;
- A legal description for that portion of the property that is proposed to be removed from the Contract if a partial cancellation is requested, and

- The Filing Fee, which is currently **\$3,290.00**.

In addition to the above application materials, per the California Environmental Quality Act (CEQA), your project must be reviewed to determine potential environmental impacts from the proposed Williamson Act cancellation. Prior to submitting an application, you should discuss your project with Policy Planning staff, who will then determine what level of environmental review will be required and what additional application materials and fees will be required.

If the cancellation request is approved, a Certificate of Tentative Cancellation is recorded. The Certificate of Tentative Cancellation will cite all Conditions that must be satisfied in order for the Certificate of Cancellation to be recorded. One Condition of Approval will require that the Cancellation Fee, determined by the County Assessor and equal to **12.5%** of the fair market value of the property, be paid in full within one year from the date that the Certificate of Tentative Cancellation is recorded. If the Fee is not paid within that time frame, the Fee shall be recomputed by the County Assessor. The full Cancellation Fee is forwarded to the State of California.

Please be advised that the decision of the Cancellation request is made by the Board of Supervisors at a public hearing. The foregoing information pertains only to regulations and procedures that apply to Williamson Act Contracts. The proposal must also adhere to all applicable codes, rules, ordinances, and requirements. For Zoning Ordinance requirements, please contact the Department's Zoning and Permit Assistance at (559) 600-4540. For information regarding land division requirements, please contact the Development Engineering Unit at (559) 600-4022.

If the mapping application is subsequently approved, the approval letter and any required map will contain the following note:

Land Uses and Divisions are restricted under Williamson Act Contract No. _____ (Contract), entered into between the landowner and Fresno County, in accordance with the California Land Conservation Act (Act).

To ensure continued compliance with the limitations of the Contract and the Act, any use, or proposed or future improvement, including any residential use proposed under this or a future application, must be related to the primary use of the land for agricultural purposes and must be in compliance with all local codes, uniform rules, and ordinances.

Failure to adhere to the terms of the Contract and applicable Government Code Sections, including Section 51200 et seq. and also Section 66474 et. seq., may be determined to constitute a Material Breach, as described in the Government Code at Section 51250 et. seq., resulting in removal of structures or the levying of a penalty equal to 25 percent of the fair market value of the parcels created and the structures found to be in Material Breach.

Please be advised that any residential structure subsequently proposed for construction on any of the resulting parcels must be incidental to the agricultural use of that parcel, and approval of a Building Permit may be subject to guidelines in effect at the time of

the determination. Such guidelines may require factual specificity necessary to be provided for staff to determine that the residential structure is incidental to the commercial agricultural use of the Contracted land. Further, even if the County subsequently approves a Building Permit for a residential structure that exceeds 2,500 square feet on the basis that it is incidental to the agricultural use, the owners may be subject to substantial penalties if the approval is thereafter challenged and found invalid or void. If it is determined that the structure is not incidental to the agricultural use, or otherwise constitutes a Material Breach of the Contract, the owners may be subject to the penalties provided in Government Code Section 51250 resulting in removal of the structure(s) or the levying of a penalty equal to 25% of the unrestricted fair market value of the land plus 25% of the value of the improvements constituting the Material Breach.

If you have any questions regarding any information in this handout, please contact the Policy Planning Unit at (559) 600-4022.

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TECHNICAL MEMORANDUM

Date: June 20, 2011

To: Kent Norton

Company: Golder Associates

From: Beth Moisan

RE: WILLIAMSON ACT IN IMPERIAL COUNTY

On June 17 and 20, 2011, Golder staff spoke with Patricia Valenzuela and Angelina Havens of the Imperial County Planning Department. Angelina is the primary Williamson Act contact for the County. The information received during these calls is summarized below:

In February 2010, the Imperial County Board of Supervisors directed the Planning Department to non-renew all existing Williamson Act contracts and to decline all future Williamson Act applications. At the time, landowners had the opportunity to protest this action by the Board, and many protests were submitted (more detail on these protests can be obtained from the County Clerk). The Planning Commission had the sense that there was a lot of support for the Williamson Act by property owners who had acquired their property relatively recently. The Farm Bureau¹ asked the Board to re-visit this decision, and in October 2010 the Board did so, and re-affirmed their previous decision to non-renew all Williamson Act contracts.

The non-renewal of Williamson Act contracts in Imperial County was spurred by the loss of subvention funds. Canceling a Williamson Act contract is a two-step process, so non-renewed contracts are still valid through the end of their contract period unless canceled by the property owner prior to the end date.

Shortly thereafter, the Planning Commission determined that the development of commercial solar energy facilities (where power would be sold to utilities) should be considered a temporary use and temporary conversion of agricultural land, with development of a reclamation plan and bonding for such reclamation required. The County does not have an official policy on whether the removal of land from agricultural use is considered a significant impact under CEQA; however Angelina Havens stated that the decision by the Planning Commission that solar energy facilities be considered a temporary use suggests that this would not be considered a significant impact. There are several applications for solar development involving Williamson Act lands in with the County at this time, but none of them have moved forward yet. These applications are all for Conditional Use Permits and are requiring the development of an EIR.

¹ The Farm Bureau in Imperial County is noticed on projects that involve cancellation of Williamson Act contracts or the removal of land from Agricultural Reserves, but does not have decision-making authority. The Farm Bureau receives the same notice that is sent to the public and to other interested agencies, but does not have the ability to stop a project.

williamsonactstatusmemo_06202011

Golder Associates Inc.
9 Monroe Parkway, Suite 270
Lake Oswego, OR 97035 USA

Tel: (503) 607-1820 Fax: (503) 607-1825 www.golder.com



The only renewable energy uses the County considers compatible with Williamson Act lands are geothermal well pads and geothermal pipelines that skirt the edges of agricultural fields. Solar energy is not considered compatible with Williamson Act lands, per the California Department of Conservation's direction to the County.

Patricia Valenzuela had previously told Golder to follow the CSOLAR Imperial Solar South application process to learn what will be required for new solar energy facilities on agricultural land in terms of reclamation planning and financial assurances. This application was approved by the Planning Commission at the May 25, 2011 meeting; however, the Commission directed staff to follow up with the applicant to develop a reclamation plan and a proposal for financial assurance, to come back to the Planning Commission for approval at a future time. The applicant is currently developing a proposal, which is expected to be submitted to the County within the next three weeks for staff review. Patricia suggested that we follow up with her again in a few weeks in order to continue to follow this issue.

The Williamson Act: Siting Implications For California Projects

Legislation designed to protect agricultural land has prompted many regulators to pursue costly action regarding solar facilities.

■ David H. Blackwell & Michael Patrick Durkee

The Williamson Act, enacted to protect agricultural land from premature urban development through contracts between the local government and landowners, applies to half of all agricultural land and nearly one-third of all privately held land in California. Consequently, developers of solar farms, which are often sited in California's rural areas, are encountering these Williamson Act contracts. This article addresses whether solar farms could be considered a "compatible use" under the Williamson Act.

For years, regulators and energy providers have ignored Section 51238(a)(1) of the act, which provides that electric facilities are statutorily recognized compatible uses. As a result, energy providers have historically arranged for the "cancellation" of Williamson Act contracts, believing that this complicated and costly process was a prerequisite to building energy facilities throughout California.

We believe that this often-repeated approach of ignoring the express provisions in the Williamson Act is misguided, and that electric facility projects - whether traditional or renewable in nature - should be rec-

ognized as compatible uses, as the legislature intended.

Thus, when siting a solar project on Williamson Act lands, it is erroneous to automatically assume that contract cancellation is required or that a case-by-case review regarding an energy project's compatibility pursuant to Section 51238.1 is necessary.

When the Williamson Act was adopted in 1965, California's need for renewable sources of energy was not part of the legislative process. The world has obviously changed during the last 45 years, and recent federal and state mandates have pushed renewable energy to the forefront.

There now exists a tension between two laudable but competing goals: the preservation of agricultural land and setting aside land for the production of clean energy. If state and local agencies continue to apply the Williamson Act in a manner that frustrates the siting of renewable energy projects on agricultural lands, then legislative action may be necessary to reflect this new paradigm.

Establishing agricultural preserves

Before the Williamson Act, the California Constitution required that individual property-tax assessments be made according to the market value of the assessed property. As a re-

sult, the county assessor was required to consider the highest and best use to which the property was naturally adapted, and could not limit consideration only to the property's present use.

Therefore, agricultural lands adjoining urban areas could be subject to higher property assessments and taxes, thereby forcing agricultural landowners to discontinue farming and sell or convert their land to urban development.

The Williamson Act was adopted to address this problem. "The Williamson Act is a legislative effort to



David H.
Blackwell

preserve open space and agricultural land through discouraging premature urbanization and, at the same time, to prevent persons

owning agricultural and/or open lands near urban areas from being forced to pay real property taxes based on the greater value of that land for commercial or urban residential use - a factor which would force most landowners to prematurely develop," states *Honey Springs Homeowners Association v. Board of Supervisors* (1984) 157 Cal.App.3d 1122, 1130.

The act empowers local governments to establish agricultural preserves consisting of lands devoted to agricultural uses and other compatible uses. Preserves are "established for the purpose of defining the boundaries of those areas within which the city or county will be willing to enter into contracts pursuant to this act."

The act authorizes local governments to adopt rules and restrictions governing the administration of agricultural preserves and to ensure that the land within the preserve is maintained for agricultural, open space or

other compatible uses. Local rules regarding compatible uses must be consistent with the principles set forth in Section 51238.1, discussed in detail below.

Once an agricultural preserve is established, the local agency may offer to owners of agricultural land within the preserve the opportunity to enter into annually renewable Williamson Act contracts that restrict the land to agricultural uses and compatible uses for at least 10 years. The contract "may provide for restrictions, terms and conditions, including payments and fees, more restrictive than or in addition to those required by" the act.

Every contract must exclude uses that are not agricultural and that are not compatible with agricultural uses, and this exclusion must remain in effect for the duration of the contract.

History of compatible uses

As initially chaptered in 1965, the Williamson Act allowed the city or county to determine what was a compatible use, but it also provided that the following were recognized as compatible uses by statute: "the erection, construction, alteration or maintenance of gas, electric, water or communication utility facilities, unless the governing board makes a finding after notice and hearing that any or all such facilities are not a compatible use."

At the same time, the legislature defined "agricultural preserve" to mean "an area devoted to agricultural and compatible uses as designated by a city or county." In 1978, A.B.1625 removed "compatible uses" from the "agricultural preserve" definition, thereby requiring that agricultural preserves be established solely on the basis of the agricultural, open space or recreational use of the land in question, and not based upon a compatible use.



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The apparent concern was that some jurisdictions were establishing agricultural preserves on properties where only a compatible use, as defined by the jurisdiction, was occurring. A.B.1625 provided that once a proper agricultural preserve was established, in addition to the legislatively defined compatible uses, the city or county could then enumerate the compatible uses that would be permitted within the preserve.

Thus, compatible uses were allowed to exist within a preserve but could not serve as the basis for the formation of the preserve.

Apparently, there was a concern that cities and counties were allowing compatible uses beyond those identified in the act that some believed were not consistent with the agricultural and open-space preservation goals of the act. In response, in 1994, the legislature adopted A.B.2663, which required that if a city or county allows compatible uses in an agricultural preserve beyond those expressly identified by the act, those uses normally must be consistent with the three principles of compatibility enumerated in Williamson Act Section 51238.1 (added by A.B.2663, and explained in more detail below).

In 1969, A.B.1178 modified the "compatible use" definition of Section 51201(e) and renumbered it to new Section 51238: "Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration or maintenance of gas, electric, water or communication utility facilities are hereby determined to be compatible uses within any agricultural preserve. No land occupied by gas, electric, water or communication utility facilities shall be excluded from an agricultural preserve by reason of said use."

In 1991 and 1992, the California Department of Conservation introduced legislation that would have re-

placed Section 51238 with provisions that would require a local agency to submit any draft adopted or amended compatible-use ordinance to the department for review and comment regarding its compliance with new principles of compatibility set forth in new Section 51238.1.

Notwithstanding these limitations, proposed new Section 51238.2 essentially replicated the statutorily enumerated compatible uses from 1969's A.B.1178, thereby underscoring the department's recognition that the statutorily enumerated compatible uses, such as electric facilities, were not subject to any principles of compatibility.

Also noteworthy is that during the amendment process, there was an attempt to limit Section 51238 to facilities related to the transmission of gas, electric, water and communication services, but that attempt was withdrawn, and there remains no qualifier that the uses in Section 51238 be limited to transmission facilities. Both bills died on Nov. 30, 1992.

Current guidance

A.B.2663 went through six versions before it was signed into law in 1994, and it established the current relevant provisions of compatible-use law, including the three principles of compatibility in new Section 51238.1. Each version of the bill contained a provision maintaining the statutory compatible-use status of electrical facilities. The last amended version of A.B.2663 also introduced the separate compatibility standards for non-prime lands - a compromise that made the passage of the bill possible.

In addition, the final bill included uncodified intent language (Section 8) stating that "the goal of preserving the maximum amount of non-prime agricultural land can be met by allowing other compatible uses, in compliance with Section 51238.1(c)... that sustain the economic viability of these lands while maintaining their open-space quality."

In 1999, A.B.1505 renumbered the subparagraphs of Section 51238 into (a)(1), (a)(2), and (b), reflecting its current structure.

Application of the act's Current Compatible Use Provisions to Electric Facilities Section 51201(e) expressly recognizes that a compatible use may be either established (1) by a city or county, so long as it meets the act's compatible-use parameters; or (2) by the act itself, including agricultural, open-space or recreational uses, and those uses identified in Section 51238(a)(1), which identifies electric facilities as statutory compatible uses.

As reflected in the legislative history, statutory compatible uses such as electric facilities are separate from, and are not subject to, the separate "principles of compatibility" set forth in Section 51238.1.

An interesting issue arises if the city council or county board of supervisors determines at a noticed public hearing that electric facilities are not "by law" compatible uses, as provided in Section 51238(a)(1). We are unaware of any local legislative body that has made such a determination. Therefore, there is no case study available regarding the character of such an action.

If the local body determined that all electric facilities were prohibited and, therefore, expressly not compatible uses, then one might assume that the local agency would then refuse to apply the principles of compatibility to an individual electric facility project. Even if that local agency applied the principles of compatibility, it is unlikely that the agency would determine that the project was compatible.

The legality of a local agency's categorical prohibition against electric facilities is dubious in light of the Williamson Act's express recognition of electric facilities as compatible uses since the inception of the act. The better practice, assuming that the local agency made the "contrary finding" to accepting electric facilities as

"by law" compatible uses, is to provide the agency with the ability to review new applications on a case-by-case basis while applying the principles of compatibility to that application.

This provides the local government with the necessary flexibility to consider and approve projects that the agency determines are compatible with the Williamson Act and beneficial to the community.

Conclusions

Under Section 51238.1, the typical analysis is to first determine if the use is consistent with the three principles of compatibility set forth in subsection (a) of Section 51238.1. If so, that ends the inquiry.

If the use does not satisfy subsection (a), the next level of analysis is to determine whether conditions could be imposed on the use in order to make it comply, as provided in subsection (b).

If the use cannot be considered a compatible use after applying subsections (a) and (b), and if the use is located on non-prime land, then the final step in the analysis is to determine whether or not the use complies with the requirements of subsection (c). Compatibility determinations pursuant to Section 51238.1 must be made on a case-by-case basis.

Electric facilities, including solar projects, should be recognized as statutory compatible uses. Despite the act's clear recognition of electric facilities as compatible uses, state and local agencies have historically ignored Section 51238 and have focused, if at all, on the separate compatibility requirements of Section 51238.1.

Concerned that the facility may displace existing agricultural activities, the agencies have usually determined that the use is not compatible with the act, and have required that the Williamson Act contract be canceled as to that area of the contracted property covered by the proposed development.

Knowing this, many energy de-

velopers have initiated cancellation proceedings without further inquiry. Cancellation is not a simple process, and it should only be used for extraordinary situations. It requires that specific findings be made by the board of supervisors following a noticed public hearing, and involves an increasingly complex process for determining the unrestricted value of the property at issue, upon which the contracting owner must pay 12.5% of that value to the state general fund.

Instead of continuing the unwarranted practice of avoiding Section 51238, state and local agencies should follow the letter of the law. If those agencies refuse to do so, a legislative remedy may be necessary, including amending the act to expressly define electric facilities (not defined in the act) to include solar power facilities, and to limit a local agency's ability to prohibit the construction of electric facilities on Williamson Act property.

Preservation of agricultural land still remains an important statewide goal, but the realities of the current environmental and economic climate require that the production of renewable energy facilities not play a subservient role.

Some counties are seeking ways to remove themselves from the act, as the budget crisis has severely reduced state subvention payments to local agencies for administering the act. These local agencies may see a brighter future through increased renewable energy development, and should take the steps necessary to make it a reality. ❧

David H. Blackwell is a partner in Allen Matkins' Walnut Creek, Calif., office, where he practices real estate law with an emphasis on land-use entitlements and litigation. He can be reached at dblackwell@allenmatkins.com. Michael Patrick Durkee is co-chair of Allen Matkins' California land-use practice, where he focuses on land use, elections and local government law. He can be reached at mdurkee@allenmatkins.com.
