DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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April 4, 2008

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08-AFC-1	
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VIA EMAIL cmeyer@energy.state.ca.us
Christopher Meyer, Project Manager
California Energy Commission
1516 9th Street, MS-15
Sacramento, CA 95814

SUBJECT: AVENAL POWER CENTER, LLC (AVENAL POWER) – APPLICATION FOR CERTIFICATION (08-AFC-1)

Dear Mr. Meyer:

Thank you for requesting comment from the Department of Conservation (Department) in the above referenced Application for Certification (AFC). The Department monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs.

The proposed project seeks to construct a 600-megawatt merchant power plant in the City of Avenal (Kings County) to provide electrical reliability for local and Central Valley loads. The project is located on a 25-acre portion of an approximately 148-acre parcel (APN 036-170-035) in the northeast corner of the City of Avenal in an agricultural region, approximately two miles east of Interstate 5.

The AFC notes that the project site is designated as Prime Farmland. Therefore, the Department recommends that the finalized AFC address the following items to provide a comprehensive discussion of potential impacts of the project on agricultural land and activities:

Agricultural Setting of the Project

The AFC should describe the project setting in terms of the actual and potential agricultural productivity of the land. The Kings County Important Farmland Map, available from the Department, defines farmland according to soil attributes and land use, and can be used for this purpose. The Department also recommends that the following information be included in the AFC:

- Location and extent of Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and other types of farmland in and adjacent to the project area.

- Current and past agricultural use of the project area. Include data on the types of crops grown, and crop yields and farmgate sales values.

To help describe the full agricultural resource value of the soils on the site, the Department recommends the use of economic multipliers to assess the total contribution of the site's potential or actual agricultural production to the local, regional and state economies. Two sources of economic multipliers can be found at the University of California Cooperative Extension Service and the United States Department of Agriculture (USDA).

Project Impacts on Agricultural Land

- Type, amount, and location of farmland conversion **directly** resulting from the project.
- Type, amount and location of farmland conversion **indirectly** resulting (as growth-inducement) from the project especially since the project is a significant departure from current land use designations for the site.
- Impacts on current and future agricultural operations; including increased traffic and pollution, potential diminished productivity, and threatened food safety, which may increase pressure on neighboring agricultural parcels to convert to non-agricultural uses.
- Incremental project impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project as well as impacts from past, current and probable future projects.

Under California Code of Regulations Section 15064.7, impacts on agricultural resources may also be both quantified and qualified by use of established thresholds of significance. The Department has developed a California version of the USDA Land Evaluation and Site Assessment (LESA) Model. The California LESA model is a semi-quantitative rating system for establishing the environmental significance of project-specific impacts on farmland. The model may also be used to rate the relative value of alternative project sites. The LESA Model is available at:

http://www.consrv.ca.gov/DLRP/qh_lesa.htm

Williamson Act Lands

A project is deemed to be of statewide, regional or area-wide significance if it will result in cancellation of a Williamson Act contract for a parcel of 100 or more acres (California Code of Regulations Section 15206(b)(3)). Since lands under Williamson Act contract exist within the project area, the Department recommends the following information be included in the AFC:

- A map detailing the location of agricultural preserves and contracted land within each preserve. The AFC should also tabulate the number of Williamson Act acres, according to land type (e.g., prime or non-prime agricultural land), which may be impacted directly or indirectly by the project.
- A discussion of Williamson Act contracts that may be terminated in order to accommodate the project. The AFC should evaluate potential impacts on nearby Williamson Act-contracted properties resulting from project-specific contract terminations. Termination of a Williamson Act contract could have growth-inducing impacts, creating an incentive to shift to more intensive land uses, such as urban development.

As a general rule, land should be withdrawn from Williamson Act contract through the nine-year nonrenewal process. The California Supreme Court reiterated that cancellation is allowed "only in the most extraordinary circumstances." *Sierra Club*, 28 Cal.3d at 853.

Under Government Code Section 51282, the city or county must make specific findings, supported by sufficient evidence, when approving a request for tentative cancellation. The Department recommends that a discussion of the findings be included in the AFC. A notice of hearing to approve the tentative cancellation and a copy of the landowner's petition must be mailed to the Director of the Department at least ten (10) business days prior to the hearing. Notice must be mailed to:

Bridgett Luther, Director
Department of Conservation
Division of Land Resource Protection
801 K Street MS 18-01
Sacramento, CA 95814-3528

Mitigation Measures and Alternatives

The AFC should consider feasible alternatives to the project's location or configuration that would lessen or avoid farmland conversion impacts. Although direct conversion of agricultural land is often an unavoidable impact under California Environmental Quality Act (CEQA) analysis, mitigation measures must be considered.

The Department recommends the purchase of agricultural conservation easements on agricultural land of at least equal quality and acreage, to mitigate development impacts resulting in loss of agricultural land. When a Williamson Act contract is terminated, or growth-inducing or cumulative agricultural impacts are involved, as would occur here, we recommend this ratio be increased to 2:1 or greater.

The loss of agricultural land represents a permanent reduction in the State's agricultural land resources. Agricultural conservation easements protect a portion of those remaining resources and lessen project impacts in accordance with CEQA Guideline section 15370. We highlight this measure because of its growing acceptance and use by lead agencies as mitigation under CEQA. The purchase of agricultural easements does not obviate the requirement to make the necessary findings for cancellation of a Williamson Act contract.

Mitigation via agricultural conservation easements can be implemented through at least two alternative approaches: (1) direct purchase of easements, or (2) donation of mitigation fees to a local, regional or statewide organization or agency whose purpose includes acquisition and stewardship of agricultural conservation easements. Conversion of agricultural land is deemed an impact of at least regional significance. The search for suitable replacement lands may be conducted regionally or statewide, and should not be limited strictly to lands within the project's surrounding area.

Other forms of mitigation may be found appropriate for this project, including:

- Directing a mitigation fee to invest in supporting the commercial viability of the remaining agricultural land in the project area, county or region through a mitigation bank that invests in agricultural infrastructure, water supplies, marketing, etc.

The Department has available by request a compilation report, listing approximately thirty "conservation tools" that may be used to conserve or mitigate project impacts on agricultural land.

Thank you for giving us the opportunity to comment on this AFC. If you have questions regarding our comments, or require technical assistance or information on agricultural land conservation, please contact Tom Tandoc, Environmental Planner at (916) 323-4160.

Sincerely,

Brian Leahy

Brian Leahy
Assistant Director