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California Energy Commission
DOCKETED
08-AFC-8A
TN 71273
JUN 12 2013

KERN COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Planning Commission

STAFF REPORT

Date: June 13, 2013

FILE: Cancellation #13-01, Map #120
S.D.: #4 - Couch

TITLE: Cancellation of Land Use Restrictions, Land Conservation Act, Agricultural Preserve No. 3 (Zoning Map No. 120) and Contract Amending Land Use Contract

PROPOSAL: Cancellation of an approximate 72-acre portion of an existing Williamson Act Land Use Contract within Agricultural Preserve 3

APPLICANT: Hydrogen Energy International, LLC by Manatt, Phelps, and Phillips, LLP (PP12328)

PROJECT SIZE: Approximately 72 acres

LOCATION: West of Tupman Road, south of Adohr Road, west of Interstate 5, northwest of Tupman area

GENERAL PLAN DESIGNATION: 8.1 (Intensive Agriculture)

SURROUNDING LAND USE/ZONING: North, East, and West - Irrigated crops/A (Exclusive Agriculture); South - Irrigated crops and Westside Canal/A

PROJECT ANALYSIS: Do to an advertising error regarding the publication of the required hearing notice ten (10) days prior to this hearing; your Commission cannot legally take any action regarding this project tonight. However, in the interest of public involvement and input, Staff is recommending that your Commission take public testimony and then continue this project until June 27, 2013, to ensure all advertising requirements are met.

The project before your Commission is a request to the cancel an approximate 72-acre portion of a 168-acre Williamson Act Land Use Contract that was recorded on February 28, 1969, in Book 4250, Page 496 of Official Records. This petition for cancellation is being sought by Hydrogen Energy International, LLC. This cancellation before your Commission is a component of the Hydrogen Energy California (HECA) project being considered by the California Energy Commission (CEC). The HECA project, Docket No. 08-AFC-8A, being processed by the CEC would authorize a 300 megawatts (MW) "integrated gasification combined cycle" power plant that is known as the "Hydrogen Energy California (HECA) project."

Today, your Commission is considering the Williamson Act Land Use Contract cancellation component of the HECA project only; as Kern County does not have jurisdiction over the project as a whole. The CEC is acting as the Lead Agency in processing the power plant component of the application because the California Government Code stipulates that they act as the Lead Agency for all thermal electric power plants and related facilities that are 50 MW or larger. The application process used by the CEC has been certified by California Resources Agency as meeting all requirements of a certified regulatory program. Once an application is submitted to the CEC, the Agency prepares a Preliminary Staff Assessment and presents it to the applicant, interveners, organizations, agencies and other interested parties for comment. The Final Staff Assessment and corresponding environmental review documents are then prepared by CEC staff and the project is presented to the CEC Commission for review and decision. Although CEC has jurisdiction over the project as a whole, State law requires that the project be consistent with all local rules and regulations. A portion of the project site is located on land currently under the

Williamson Act Land Use program. The proposed facility if approved and implemented by the project applicant is not consistent with the provision of the program and, therefore, requires a cancellation of the existing Williamson Act Land Use Contract by Kern County.

The 72-acre cancellation area is located on Assessor's Parcel Number 159-040-02; approximately ten miles west of the City of Bakersfield and 1.5 miles northwest of Tupman in western Kern County. The site is designated 8.1 (Intensive Agriculture) by the Kern County General Plan and is zoned A (Exclusive Agriculture).

Overview of Full HECA Project (Background)

The proposed HECA project, which is subject to CEC jurisdiction as noted above, would produce 300 MW of energy by gasifying a fuel blend consisting of 75 percent coal, 25 percent petroleum coke (petcoke), and brackish water to produce synthesis gas (syngas). The syngas produced via an on-site gasification process would then be purified into hydrogen fuel and carbon dioxide (CO_2). The fuel would be used to generate the 300 MW of low-carbon base load electricity in a combined cycle power block; and would also be used for the on-site production of agricultural fertilizers in an on-site integrated "manufacturing complex." The extracted CO_2 would be sent via pipeline for use in an enhanced oil recovery process in the adjacent Elk Hills Oil Field. Leftover solids from the gasification process would require disposal at offsite landfills. As proposed, the facility will produce low-carbon base load electricity by capturing carbon dioxide (CO_2) and transporting it for enhanced oil recovery and CO_2 sequestration.

The applicant, Hydrogen Energy International, LLC, owned by SCS Energy, LLC, currently has an amended application (application for Certification 08-AFC-8A) pending before the State of California Energy Commission to seek approval of the project.

HECA Project Statistics

APNs	Project Acreage[1]	General Plan Designation	Zone District	Williamson Act	WALUC Cancellation
HECA Project Area: 159-040-16 (678 acres) 159-040-18 (33 acres) 159-040-02 (73 acres)	**HECA Project Area:** 453 acres	8.1 (Intensive Agriculture)	A (Exclusive Agriculture)	Active WA Contract Prime Farmland Agricultural Preserve 3	491 acres approved 6/29/10 71.5 acres still needed
Addl. Control Area: 159-040-17 (4 acres) 159-190-09 (315 acres)	**Control Area:** 653 acres				

[1] Total acreage of project area is all or a portion of the project APNs.

HECA Project History

The HECA project application has undergone several revisions since it was initially submitted to the CEC in 2008. For reference by your Commission, the major project revisions were as follows:

- July 2008: Original application submitted to the CEC by Hydrogen Energy International, LLC, which was jointly owned by BP Alternative Energy North America and Rio Tinto Hydrogen Energy, LLC. The application was for a 250 MW "integrated gasification combine cycle power generating facility" with 100 MW from natural gas generated peaking power, to be located on a 473-acre site.

- May 2009: Revised application submitted to the CEC to eliminate auxiliary combustion turbine generator. Applicant-stated purpose of revision was to reduce project's PM_{10}, $PM_{2.5}$, and greenhouse gas emissions.

- 2010: Application submitted to Kern County for cancellation of a 491-acre portion of a Williamson Act Land Use Contract that was recorded on February 26, 1971 (separate from current request).

- June 29, 2010: Kern County Board of Supervisors approved cancellation of 491-acre portion of Williamson Act Land Use Contract (Resolution 2010-168).

- May 2012: Revised application submitted to CEC which included the following key changes: (1) Added a *manufacturing complex* to produce "one million tons per year of low carbon nitrogen-based products (including urea, urea ammonium nitrate and anhydrous ammonia) to be used in agricultural, transportation, and industrial applications;" (2) Revised the project boundary and layout; (3) Identified two alternatives for transportation of coal feedstock to the project site, including: (a) A five-mile-long new industrial railroad spur that will connect to the existing San Joaquin Valley Railroad/Buttonwillow Railroad line, or (b) A 27-mile-long truck transport route via existing roads from an existing coal transloading facility northeast of the project site (Wasco).

- December 2012: In June 2012, the Kern County Planning and Community Development Department noted that certain components of the new "manufacturing complex" would require industrial zoning and General Plan designations. The Planning Department submitted written comments to the CEC and the applicant which stated the manufacture of any products, other than agricultural fertilizers, would necessitate the need for industrial designations. Therefore, in December, 2012 the applicant submitted a letter stating that HECA would revise the project to restrict the production of "nitrogen-based products" (including urea, urea ammonium nitrate, and anhydrous ammonia) to manufactured products for the purpose of "fertilizer manufacture and storage for agricultural use only."

- December 20, 2012: Current application submitted to Kern County for cancellation of approximately 72-acre portion of Williamson Act contract.

Current HECA Project Summary (2012/2013)

The HECA project is a 300 MW integrated gasification combined cycle electrical power plant that includes an integrated "manufacturing complex" that will produce fertilizer to be used for agricultural uses. HECA would gasify solid feedstocks consisting of coal and petcoke to produce hydrogen fuel for the power plant, CO_2 for export to the adjacent Elk Hills Oil Field, and fertilizer for agricultural purposes. Because it produces multiple products, HECA is sometimes referred to as a "polygeneration" project. HECA would produce:

- 300 MW of low-carbon base load electrical power;
- Low-carbon nitrogen-based products, including fertilizer for agricultural purposes;
- CO_2 for use in enhanced oil recovery processes at the adjacent Elk Hills Oilfield.

According to the application submitted to the CEC (full version available at www.energy.ca.gov/sitingcases/hydrogenenergy/index.html) the HECA project would be a first of its kind, a State of the Art facility that would produce electricity and other useful products for California, and that would have dramatically lower carbon emissions compared to traditional power plant facilities. The applicant states HECA would generate fewer emissions and have a lower carbon footprint than other traditional coal-burning power plants because HECA will capture 90 percent of the carbon dioxide (CO_2) from its processes and transport that CO_2 to the adjacent Elk Hills Oil Field where it will be used for enhanced oil recovery and simultaneously stored in secure geologic formations within the Earth (known as sequestration).

Electrical power generated by this project would be distributed to the grid through interconnection with the Pacific Gas and Electric Company's Midway Substation.

U.S. Department of Energy Funding

The U.S. Department of Energy is providing financial assistance to HECA under the Clean Coal Power Initiative (CCPI) Round 3, along with private capital cost sharing, to demonstrate an advanced coal-based generating plant that co-produces electricity and low-carbon nitrogen-based products. CCPI was established, in part, to demonstrate the commercial viability of next generation technologies that will capture CO_2 emissions and either sequester those emissions or beneficially reuse them. Once demonstrated, the technologies can be readily considered in the commercial marketplace by the electric power industry.

Kern County Comments on the HECA Project

Although the CEC is the permitting Agency for the HECA Project as a whole, Kern County has an ongoing opportunity to provide formal comments to the CEC to recommend mitigation measures for the HECA project, beyond the County's current consideration of just the Williamson Act Land Use Contract cancellation. As such, the Kern County Planning and Community Development Department Staff has been coordinating meetings since 2010 between HECA staff, CEC staff, and County Departments to review the HECA project and the project has been reviewed by the necessary County Departments and the County Administrative Office for impacts on public services, roads, and Kern County.

The comments received from County Departments and stakeholders were presented to the Kern County Board of Supervisors on February 26, 2013. At that hearing, the Board took action to authorize the Director of the Kern County Planning and Community Development Department to prepare and mail formal written comments to the CEC. Therefore, a letter dated March 6, 2013, (attached) was sent to the CEC which included requests for additional information on the HECA project, a list of the specific mitigation measures requested by County Departments to address potential impacts of the project in Kern County, and a statement that Kern County does not support the use of eminent domain for acquisition of any rail lines or other infrastructure related to the HECA project.

Staff notes that the Board also directed Staff to bring the project back before the Board once outstanding issues and concerns of the Kern County Roads Department had been addressed by the applicant/HECA. That issue is pending as a revised traffic study had been submitted by the project applicant to the Roads Department for review and comment.

Current Status of California Energy Commission (CEC) Review

Since Kern County's March 6, 2013, letter, the CEC has continued work on preparation of a "Staff Assessment," which is the CEC's equivalent CEQA review of the HECA project. The first step is to prepare and release a Preliminary Staff Assessment, which was tentatively scheduled for release on May 17, 2013, but has not yet been released as of the preparation of this report. The next step will be to release of a Final Staff Assessment and is anticipated in the late summer of 2013. After preparation by CEC staff, the Final Staff Assessment will be provided to the CEC Commissioners assigned to this project who will then use the information to reach a decision on the project. Then the full CEC considers the project.

A memorandum was recently released by CEC staff on April 30, 2013, titled "Staff Status Report Number 7" (attached). In that memo, CEC staff states that they are continuing to work to meet the revised HECA Committee schedule for the Preliminary Staff Assessment/Draft Environmental Impact Study joint document.

Cancellation of Williamson Act Land Use Contract

As noted above, in 2010, the Board of Supervisors approved cancellation of a 491-acre portion of a Williamson Act Land Use Contract that covered a portion of the HECA project site (Cancellation 10-1, Map 120; approved June 29, 2010; Resolution 2010-168). However, the applicant revised the project boundaries during project design in 2012. Therefore, the applicant is now requesting cancellation of an additional 72 acres of land under contract in order to facilitate the revised project as currently presented to the CEC for processing. The project site is bound by Adohr Road to the north, Tupman Road to the east, an irrigation canal to the south, and the Dairy Road right-of-way to the west.

The 72-acre site is currently being farmed with row crops and is under an active Williamson Act Land Use Contract. Construction of the project would require cancellation of the contract; and this matter is subject to the jurisdiction of your Commission and the Board of Supervisors. The previous 491-acre cancellation approval was contingent upon the applicant's payment of the cancellation fee and was not to become effective until the CEC issued a permit based on its review of CEC project, Docket No. 08-AFC-8. Since that 2010 decision, the applicant has not yet paid the cancellation fees and, therefore, the 491-acre portion of the contract is still active.

As noted above, the applicant has requested a cancellation of the remaining portion of the Williamson Act Land Use Contract that currently encumbers the project site and totals approximately 72 acres. The contract was recorded in 1969 by previous property owners, Lawrence and Margaret Scarrone.

Section 51282 of the California Government Code states your Commission may recommend a tentative approval for cancellation of a contract only if one of the following findings can be made:

(1) That the cancellation is consistent with the purposes of Chapter 7 (i.e., the Williamson Act); or,

(2) That cancellation is in the public interest.

The options for cancellation can be explained as follows:

Option 1: In order for your Commission to make the findings associated with Option 1, the applicant would have to demonstrate the following:

1. The cancellation is for land on which a notice of nonrenewal has been served.
2. The cancellation is not likely to result in the removal of adjacent lands from agricultural use.
3. The cancellation is for an alternative use which is consistent with the applicable provisions of the City or County General Plan.
4. The cancellation will not result in discontiguous patterns of urban development.
5. There is no proximate, noncontracted land which is both available and suitable for the proposed use or the development of the contracted land would provide more contiguous patterns of urban development (Government Code Section 41282(b)).

Option 2: In order for your Commission to make the findings associated with Option 2, the applicant would have to demonstrate the following:

1. The other public concerns substantially outweigh the objectives of Chapter 7; and
2. There is no proximate noncontracted land which is both available and suitable for the contracted land would provide more continuous patters of urban development of the proximate noncontracted land.

The applicant states that approval of this project would be in the public interest and would, therefore, be consistent with the second finding (Option 2) as listed in Section 51282 of the Government Code. Therefore, the applicant must offer adequate justification for your Commission to make the findings for public interest, as listed above under Option 2.

Applicant's Justification for Contract Cancellation per Option 2

As noted above, the site includes approximately 72 acres of land remaining under a Williamson Act Land Use Contract. The applicant filed a petition for cancellation of the contract (attached) noting that the cancellation would be in the public interest. The cancellation is an option under the limited circumstances and conditions set forth in Government Code Section 51280 et seq. In such cases, landowners may petition for land use contract cancellation. The Board of Supervisors may grant tentative cancellation only if it makes the required statutory findings as outlined above.

The applicant has provided the following information summarized to support the conclusion that public concerns substantially outweigh the objectives of the Williamson Act (Government Code Section 51282c(1):

Public Concerns. Regarding the first finding, the applicant states that public concerns of energy supply, energy security, global climate change, water supply, hydrogen infrastructure, fertilizer supply, and the economy substantially outweigh the objectives of the Williamson Act. The HECA project would demonstrate a first of its kind combination of proven technologies at commercial scale that can provide base load low-carbon power that will make an essential contribution to addressing each of these public concerns and provide numerous public benefits at the local State, regional, national, and global levels. As such, the findings set forth in Government Code Section 51282(c)(1) is satisfied, as detailed below.

- **Supplying Low-Carbon electricity** – The project would provide approximately 300 MW of base load low-carbon generating capacity to power more than 160,000 homes. The CEC estimates that the State will need to add more than 9,000 MW of capacity between 2008 and 2018 to meet demand.

- **Capturing Greenhouse Gas Emissions** – The project would prevent the release of more than three million tons per year of greenhouse gases to the atmosphere by sequestering them underground. Existing conventional power plants release carbon dioxide into the atmosphere, rather than capturing and sequestering it. The project will employ a State of the Art emission control technology to achieve near zero sulfur emissions and avoid flaring during steady-state operations. This will help the State to meet its important greenhouse gas reduction targets as established by Assembly Bill (AB) 32, AB 1925, and Senate Bill (SB) 1368.

- **Water Supply and Agricultural Production** – The project would conserve fresh water sources by using brackish groundwater for its water needs; supplied by Buena Vista Water Storage District. Project consumption of the sources is expected to benefit local agriculture by removing salts from the groundwater sourcing the Buena Vista Water Storage District which will result in an improved groundwater quality.

- **Protecting Energy Security and Domestic Energy Supplies** – The project would conserve domestic energy supplies by using petcoke, a local energy source that is currently exported overseas for fuel. Conservation of this domestic energy supply will enhance energy security and will also reduce stress on the United States natural gas supplies by using petcoke to generate electricity. Petcoke is a by-product from the oil refining process and is abundantly available. In addition, the project will produce additional energy from existing California oilfields by injecting CO_2 for enhanced oil recovery which could increase field reserves by up to 25 percent.

- **Promoting Hydrogen Infrastructure** – The project would increase the supply of hydrogen available to support the State's goal of energy independence as expressed in California Executive Order S-7-04 which mandates the development of a hydrogen infrastructure and hydrogen transportation in California.

- **Stimulating the Local and California Economy** – The project would boost the local and California economy with an estimated 1,500 jobs associated with construction and approximately 100 permanent positions associated with project operations. In addition, estimated indirect and induced effects of construction that will occur within Kern County could result in more than 4,000 jobs, representing a long-term economic benefit to Kern County.

Proximate Noncontracted Land. Regarding the second finding, the applicant states there is no proximate noncontracted land which is both available and suitable for the proposed use and; therefore, the finding set forth in Government Code Section 51282(c)(2) is satisfied.

The applicant asserts that the project site was selected based upon the available land, proximity to a carbon dioxide storage reservoir and the existing natural gas transportation, electric transmission, and brackish groundwater supply infrastructure that could support the proposed 300 MW of base load low-carbon power generation. The site was also selected for its reasonable proximity to Interstate 5, State Route 58, State Route 119, and Stockdale Highway.

With regard to availability, the applicant maintains that virtually all land in the proximity of the project site is either under Williamson Act Land Use Contracts or in the Tule Elk Reserve State Park; therefore, making it unavailable for the proposed project.

With regard to suitability, the applicant states there are no alternative sites that meet the highly specific site selection requirements of the project discussed above. Prior to selecting the project site, HECA, LLC, submitted its initial Application for Certification (08-AFC-8) to the CEC on July 30, 2008, which proposed the project on an adjacent site. HECA, LLC, subsequently decided to move the project when it discovered the existence of previously undisclosed sensitive biological resources at the prior site. As a result, HECA, LLC, was required to conduct an alternative site analysis to identify an alternative site for the project, which ultimately identified the general area of the currently proposed site. In the process, several possible alternative sites in the vicinity of the unincorporated communities of Buttonwillow and Tupman were considered. However, the alternative sites were rejected for various reasons, including topography, distance from the proposed carbon dioxide custody transfer point, lengths of linear facilities, sensitive environmental receptors, and/or land availability. In addition, each of these sites (with one exception), like the project site, were contracted under the Williamson Act.

The applicant concludes that no alternative sites were identified on either contracted or noncontracted land were both available and suitable for the project. As such, the finding set forth in Government Code Section 51282(c)(2) that "there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put" is satisfied.

Comments from the State Department of Conservation

The State Department of Conservation (DOC) received the cancellation petition on February 8, 2013, and responded on April 26, 2013, with an analysis of the ability for the project to meet the required findings for cancellation, as detailed below.

With regard to public concerns, the DOC believes the term "public" and "interest" refer to the interest of the public as a whole in the value of the land for open space and agricultural use. Though the interests of local and regional communities involved are also important, no decision

regarding the public interest can be based exclusively on the local benefit of the proposed project. The DOC notes the 71.56-acre site under contract is designated Prime Farmland per the 2010 Kern County Important Farmland Map and that data from County Staff indicates that the site has had an active agriculturally productive history including cotton, wheat, and onions. Current 2012 Farmland Mapping and Monitoring Program (FMMP) imagery data indicates irrigated vegetation. Together with the supplied cropping history, the data would indicate that the land is still agriculturally productive.

With regard to suitability and proximate available parcels, the DOC concludes that there are no alternative sites that meet the highly specific site selection requirements of the project discussed above. The DOC notes that as a part of their application process with the CEC, HECA was required to conduct an alternative site analysis to identify an alternative site for the project, which ultimately identified the general area of the currently proposed site. In the process, several possible alternative sites in the vicinity of the unincorporated communities of Buttonwillow and Tupman were considered. However, the alternative sites were rejected for various reasons, including topography, distance from the proposed carbon dioxide custody transfer point, lengths of linear facilities, sensitive environmental receptors, and/or land availability. In addition, each of these sites (with one exception), like the project site, were contracted under the Williamson Act.

The DOC noted in the County's deliberations, it must be shown that agricultural and open space objectives, which are protected by the Williamson Act, are substantially outweighed by other public concerns before the cancellation can be deemed "in the public interest."

Staff Analysis of Request for Williamson Act Land Use Contract Cancellation

Farmland valuation is estimated using a number of variables, such as the applicable water purveyor and the types of crops cultivated. With the proposed cancellation of the Williamson Act Land Use Contract, the Kern County Tax Assessor's Office reassessed the land value for this portion of the HECA project property (approximately 72 acres of prime farmland) at $644,040. Staff notes that property is assessed at 1.2 percent of the land value for tax purposes. The land revaluation greatly increases the amount of property taxes paid to the County annually when compared to the taxes paid on property under a land use contract. Taxes on the site would amount to about $7,728 per year. Over an estimated 25 to 30 year lifetime for a facility, the County would realize combined property tax revenue of between $0.19 million and $0.23 million. Your Commission should note that there is no property tax discount or reduction in valuation given to land that is under a conservation easement or deed restriction.

It should also be noted that since 2009, the State no longer provides subvention reimbursements to the County to administer land under Williamson Act. In previous years, the County on average received approximately $4.6 million in subvention funds, which to date equates to a loss of about $18.4 million.

As noted above, the DOC has presented analysis and recommendations for the cancellation petition based on whether both sets of findings could be made by the Board of Supervisors and the DOC does not agree the cancellation is warranted. However, Staff has reviewed the proximate, noncontracted parcels analysis, and the request with regard to conformance with State and local requirements of the Agricultural Preserve Program for cancellation in the public interest, and confirms the project complies with all noted provisions. The analysis of proximate parcels supports justification for supporting the cancellation request based on the required public benefit findings.

The Kern County Assessor's Office has reviewed this request and has calculated the required cancellation fees based upon the site's fair market value. If ultimately approved by the Board of Supervisors, this cancellation will not become effective until the applicant has submitted the required fee of $80,505.00 to the Clerk of the Board.

The proposed project does not include a zone change to a nonagricultural zoned district, and would remain zoned A. In the future, the land could revert back into agricultural production if determined by the property owner. Activities proposed on the site is not anticipated to result in the conversion of other farmland on adjacent or nearby properties to non-farmland uses.

Additionally, the proposed project would improve water quality and free up water for other farming by lowering the brackish water table and allowing better water from east of the project site to penetrate the area. For operations, the proposed project is estimated to use 7,500 acre feet of brackish water per year.

The project will demonstrate a first of a kind combination of proven technologies at commercial scale that can provide base load low-carbon power that will make an essential contribution to addressing each of these concerns. The applicant states the project will advance public interest on a variety of levels, including: increasing energy supplies, energy security, increase in water supply for agricultural use; creation of hydrogen infrastructure; combat global climate change by reducing use of fossil fuels; and creation of jobs; thereby increasing economic stability in the region.

The project has been awarded federal funds by the U.S. Department of Energy and the study of the project has the financial support of Southern California Edison Company.

Staff concludes the project will assist in providing economic stability for the region by providing increased property tax revenues and a stable source of high paying jobs. Additionally, given that the public concerns that will be addressed by the project, Staff concludes there is substantial evidence to support the findings set forth in Government Code Section 51282(c)(1) that "other public concerns substantially outweigh the objects of the Williamson Act Land Use Contract."

Planning Department Conclusion and Recommendation

Regarding the conversion of agricultural farmland for the proposed hydrogen energy facility development, the project does not include a zone change to a nonagricultural zoned district, and would remain zoned A. Therefore, if the project is not approved, the cancellation is invalid and the land could continue agricultural production as determined by the property owner.

The proposed project would increase fresh water supplies for other farming near the site by using brackish water for operations on the site, thereby lowering the brackish water table and allowing better quality water from east of the project site to penetrate the area. For operations, the proposed project is estimated to use 7,500 acre feet of brackish water per year.

Additionally, the project would generate approximately 2,461 temporary construction jobs (over a period of 49 months) and 200 permanent operational jobs.

It is Staff's opinion there is adequate justification for your Commission to find the public interests will be furthered by the implementation of the project outweigh the objectives of preserving the site for agricultural use under the Williamson Act Land Use Contract. The siting of facilities to provide an alternative low-carbon source of power will protect the health and safety of the State's expanding population. The project site will not be converted to urban use; therefore, approval of this request should not affect urban development patterns.

Staff has reviewed the request with regard to conformance with State and local requirements of the Agricultural Preserve Program and confirms that the project complies with all noted provisions. Staff notes the CEC is the Lead Agency (for licensing thermal power plants 50 MW and larger) under the California Environmental Quality Act (CEQA) and has a certified regulatory program under CEQA. Under its certified program, the CEC is exempt from having to prepare an Environmental Impact Report (EIR). Its certified program, however, does require environmental analysis of the project, including an analysis of alternatives and mitigation measures to minimize any significant adverse effect the project may have on the environment.

Staff notes the project will result in the loss of approximately 72 acres of Prime Agricultural land. Therefore, Staff recommends that the project, if approved by the CEC, include appropriate mitigation for loss of Prime Agricultural land at a 1:1 ratio as required by CEQA, and with mitigation occurring in Kern County.

For the purposes of complying with CEQA, Staff is utilizing Section 15271, in your Commission's consideration of the cancellation request. Section 15271 is an exemption for certified State regulatory programs which states in part:

"CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or Negative Declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resource Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission.
(2) The Public Utilities Commission.
(3) The City or County in which the power plant and related facility would be located."

The Kern County Assessor's Office has reviewed this request and has calculated the required cancellation fee based upon the site's fair market value (attached). This cancellation will not become effective until the applicant has submitted the required cancellation fee of $80,505 to the Clerk of the Board.

As previously stated above, your Commission cannot legally take action on this project this evening and Staff is recommending that your Commission take public testimony and then continue the project to the June 27, 2013, Planning Commission hearing. At that time, Staff will be recommending approval of the proposed Williamson Act cancellation request. It is Staff's opinion your Commission will be able to make the findings necessary to recommend the petition for early cancellation of the Williamson Act Land Use Contract as requested by the project proponent and the project as a whole would substantially outweigh the objectives of the Williamson Act. As such, the finding set forth in Government Code Section 51282(c)(1) will be prepared.

PUBLIC INQUIRY OR CORRESPONDENCE: Kern County Assessor's Office, State Department of Conservation

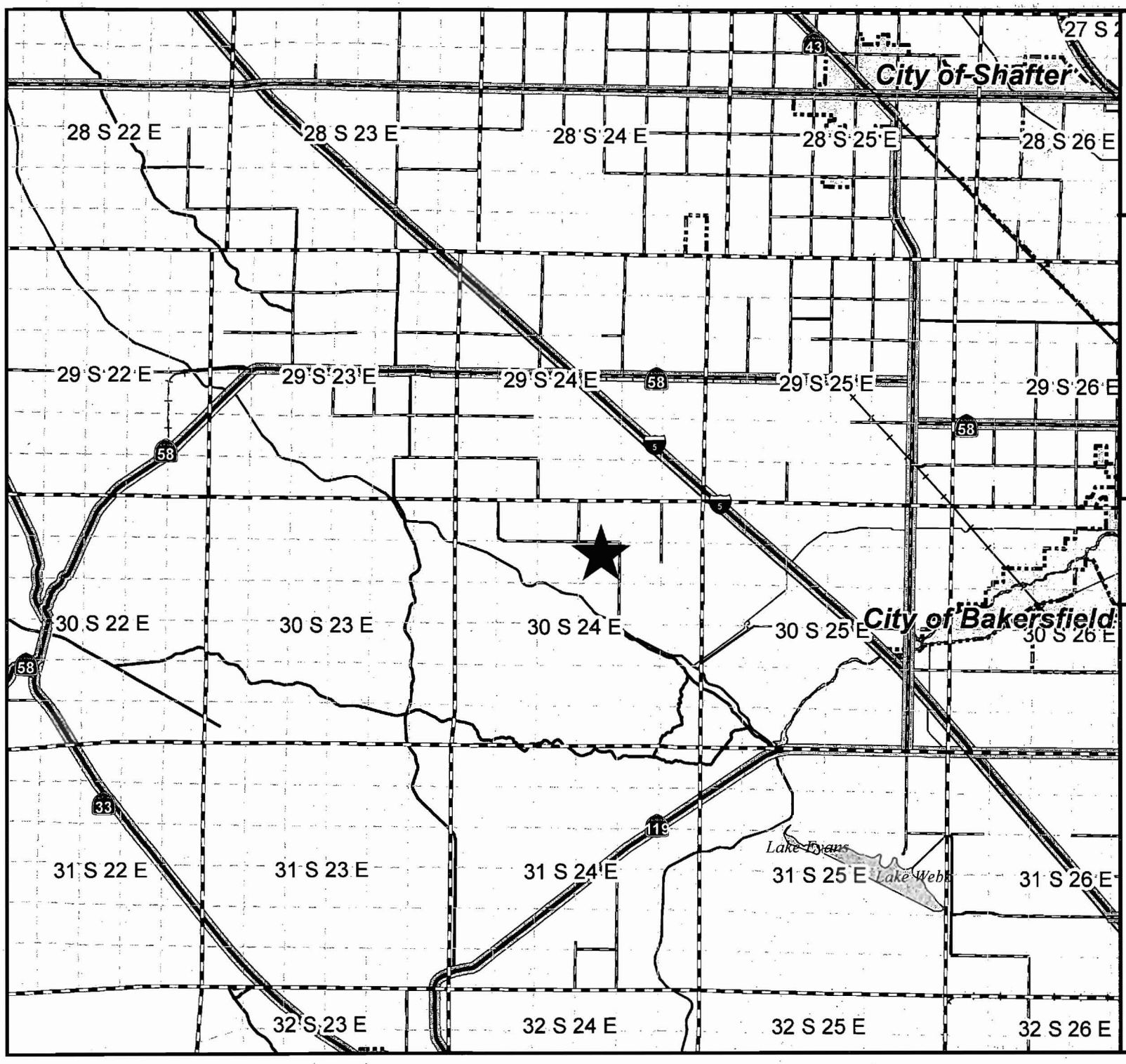
CEQA ACTION: Special Situation, Section 15271

DEPARTMENT RECOMMENDATION: Receive public testimony and continue to June 27, 2013

CMM:JKM:sc

Attachments

Maps



Williamson Act Contract Cancellation No. 13-01

Hydrogen Energy International LLC.
by
Manatt, Phelps, & Phillips LP

In assosiation with the Hydrogen Energy California (HECA) Project by SCS Energy (CEC Docket No. 08-AFC-8A

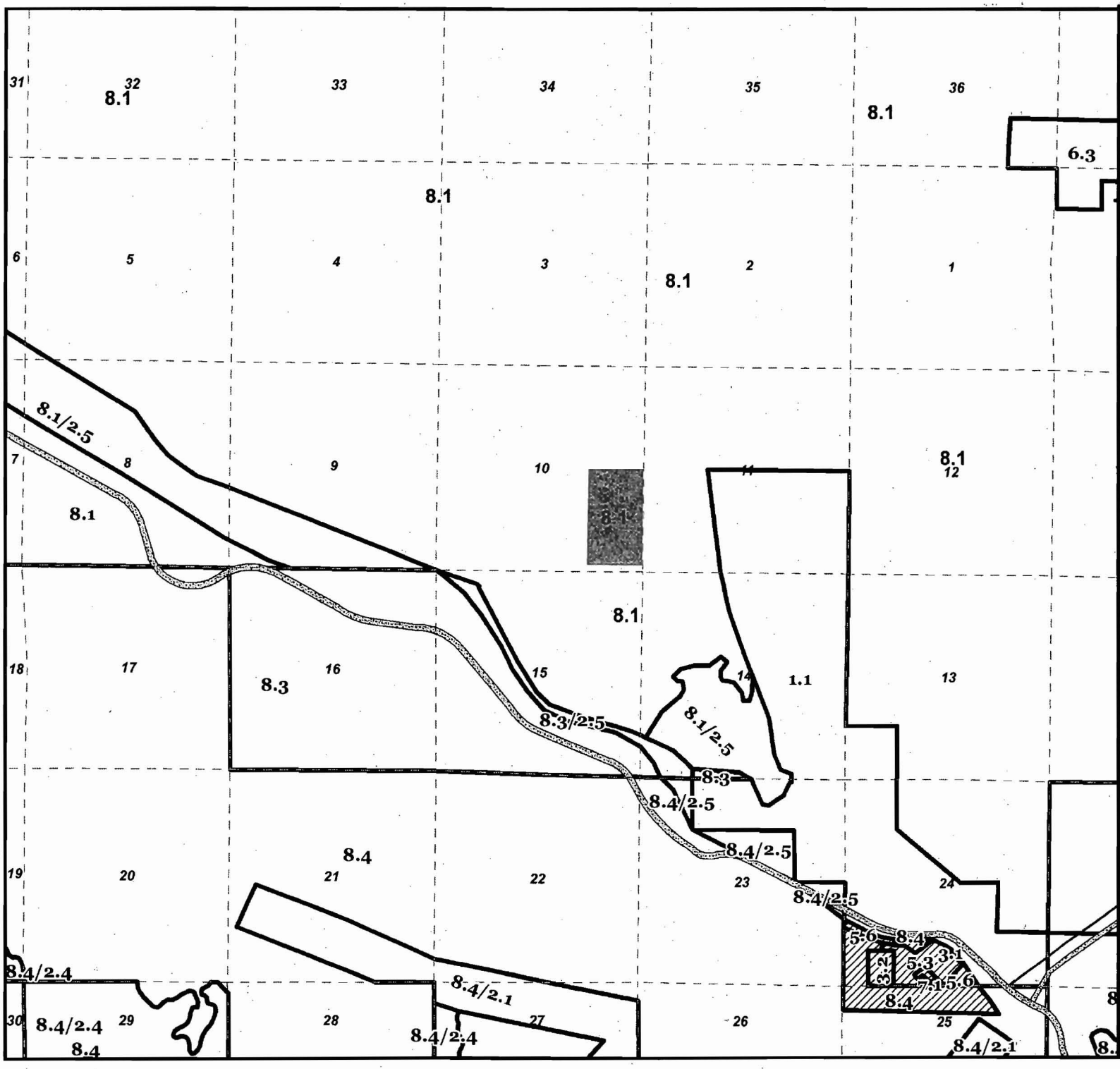
- Figure 1 - Vicinity Map

Legend

- Township/Range
- Sections
- railroad
- KernHwys
- water bodies
- City Limits
- Project Site

0 1 2 3 Miles

Kern County
Planning & Community
Development Department



Williamson Act Contract Cancellation No. 13-01

Hydrogen Energy International LLC. by Manatt, Phelps, & Phillips LP

In assosiation with the Hydrogen Energy California (HECA) Project by SCS Energy (CEC Docket No. 08-AFC-8A

- Figure 2 - Existing General Plan

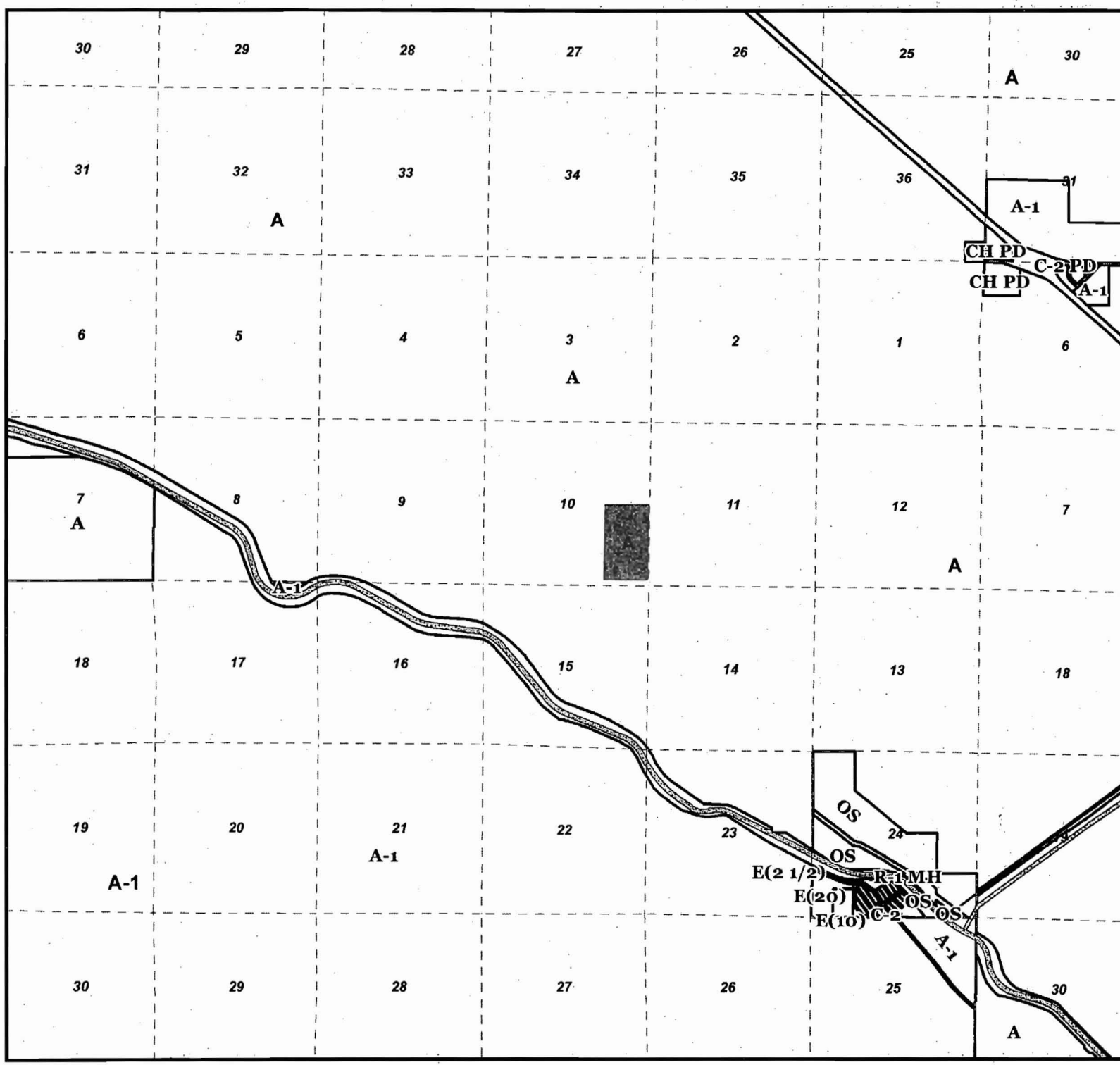
Legend

- WA Cancellation Area
- Sections
- Canal
- Tupman Specific Plan
- General Plan Boundaries

1.1 State And Federal Land
2.1 Seismic Hazard
2.4 Steep Slope
2.5 Flood Hazard
3.2 Educational Facilities
5.3 10 Units/Net Acre
5.6 2.5 Gross Acres/Unit
7.1 Light Industrial
8.1 Intensive Ag (Min. 20- Acre)
8.2 Resource Reserve (Min. 20- Or 80- Acre)
8.3 Extensive Ag (Min. 20- Or 80-Acre Parcel)
8.4 Mineral And Petroleum (Min. 5-Acre)
8.5 Resource Mgmt (Min. 20- Or 80-Acre)

0 0.3 0.6 0.9 Miles

Kern County
Planning & Community
Development Department



Williamson Act Contract Cancellation No. 13-01

Hydrogen Energy International LLC.
by
Manatt, Phelps, & Phillips LP

In assosiation with the
Hydrogen Energy California (HECA)
Project by SCS Energy
(CEC Docket No. 08-AFC-8A

- Figure 3 - Existing Zoning

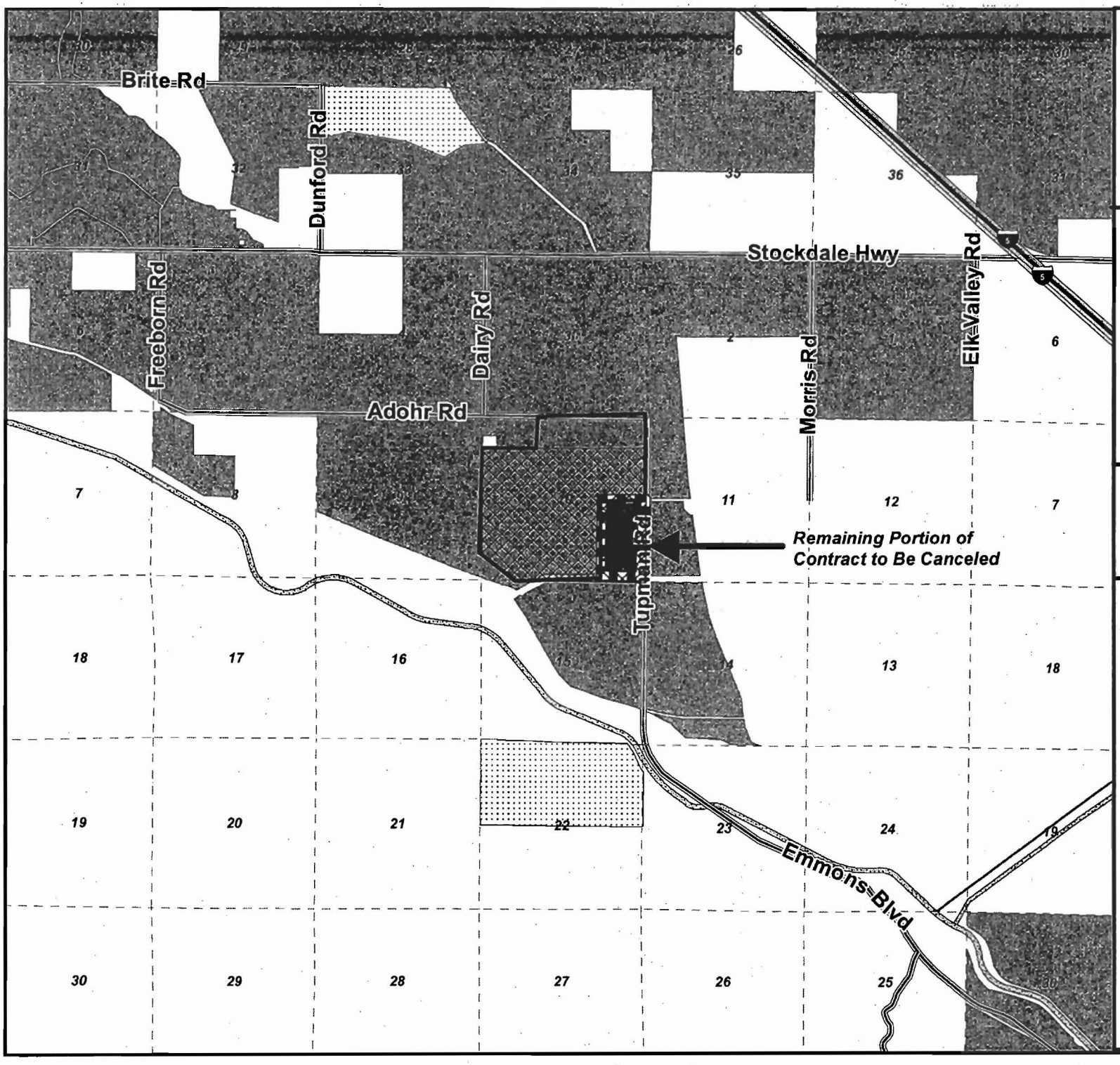
Legend

- WA Cancellation Area
- Sections
- Canal
- City Limits

A - Exclusive Agriculture
A-1 - Limited Agriculture
OS - Open Space
E(x) - Estate (x acres)
R-1- Single Family Residential
CH - Highway Commercial
C-2 - General Commercial
MH - Mobilehome Comb
PD - Precise Development Comb

0 0.4 0.8 1.2 Miles

Kern County
Planning & Community
Development Department



Williamson Act Contract Cancellation No. 13-01

Hydrogen Energy International LLC. by Manatt, Phelps, & Phillips LP

In assosiation with the Hydrogen Energy California (HECA) Project by SCS Energy (CEC Docket No. 08-AFC-8A

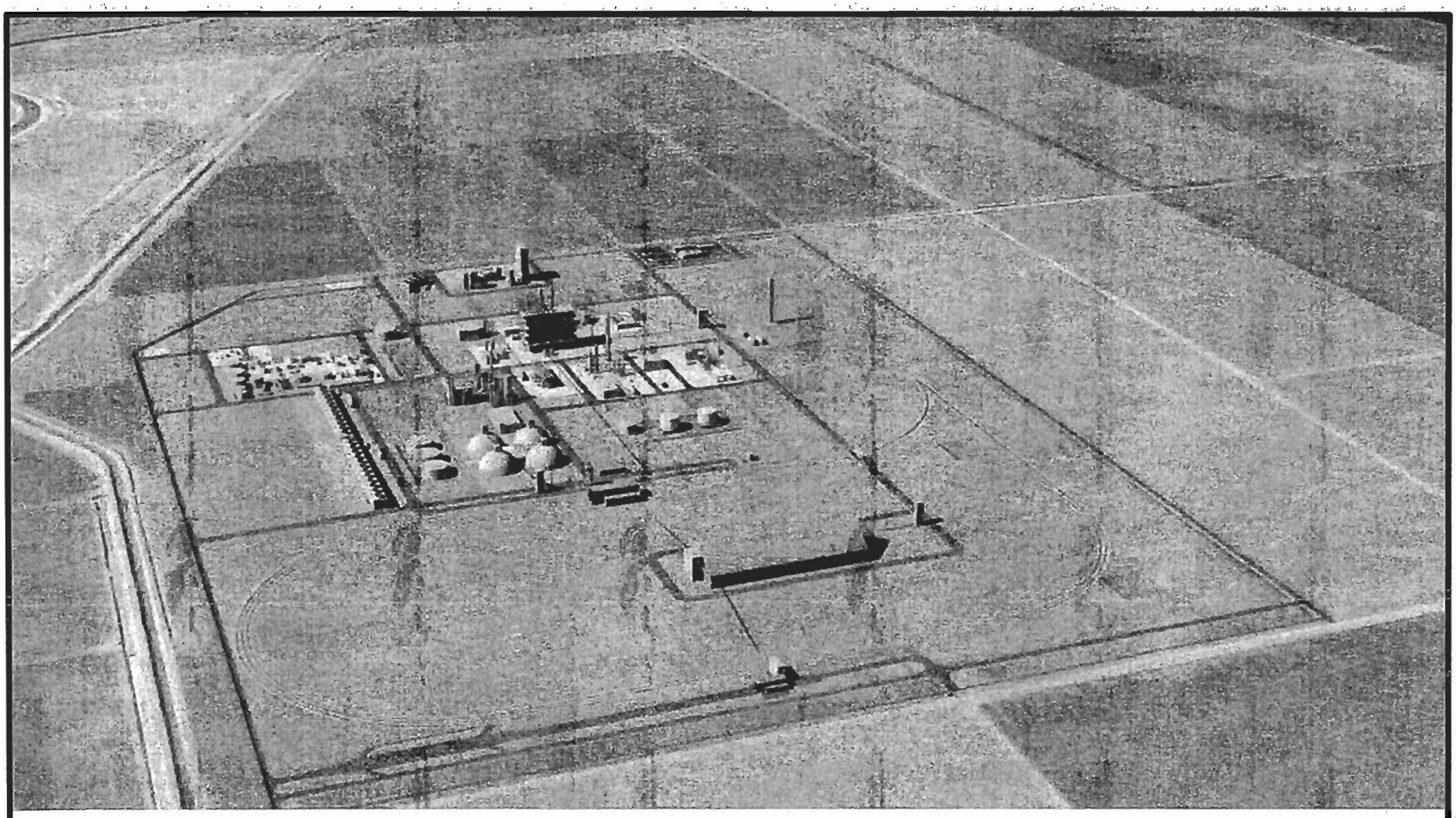
- Figure 4 - Wiiliamson Act Cancellation

Legend

- WA Cancellation Area
- Sections
- railroad
- KernHwys
- Canal
- City Limits
- Active Williamson Act
- NonRenewal Williamson Act
- HECA Project Site
- Portion of WA Contract Previously Canceled per Resolution 2010-168

0 0.4 0.8 1.2 Miles

Kern County Planning & Community Development Department



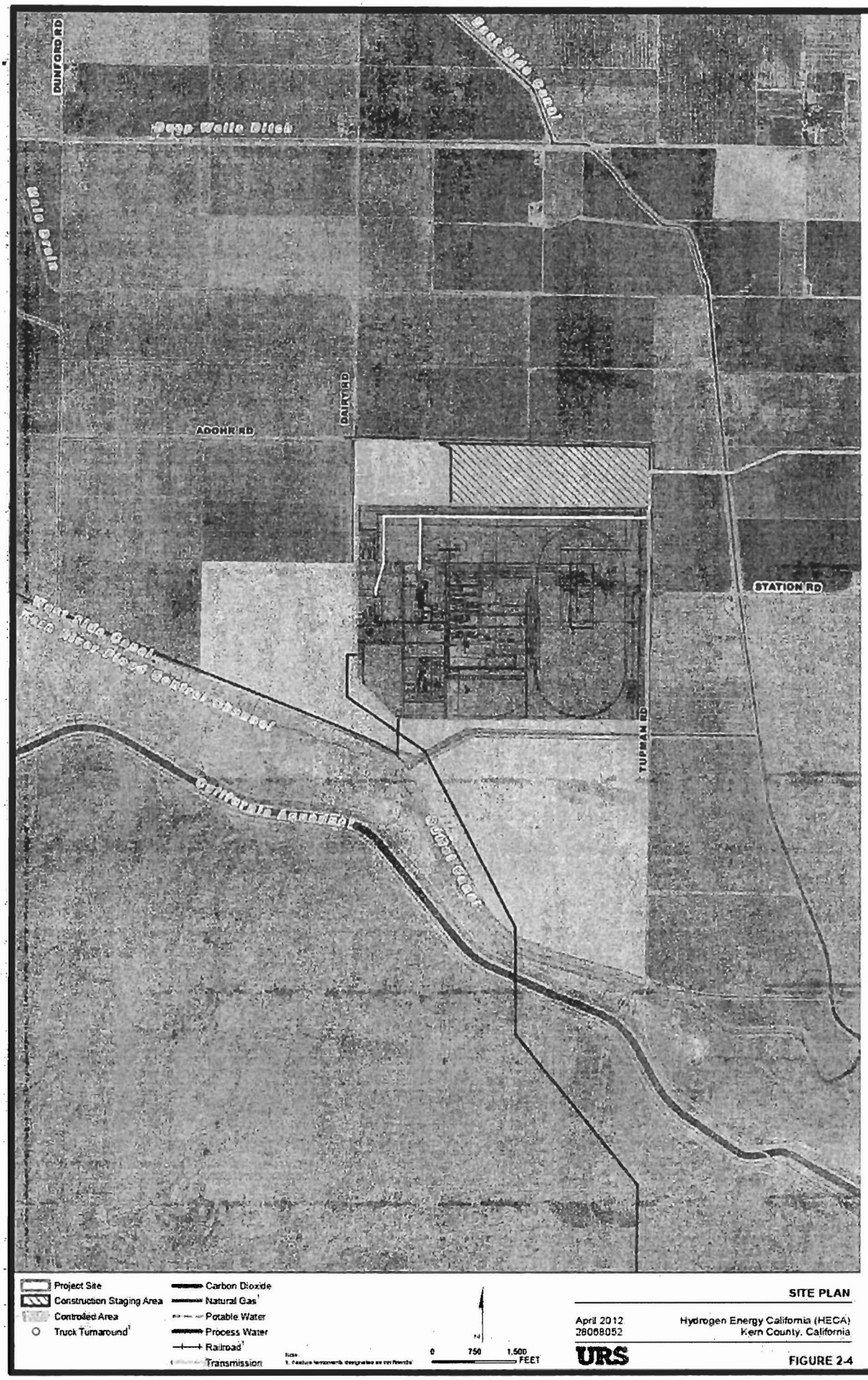
California Energy Commission (CEC) Application CEC Docket No. 08-AFC-8A

Hydrogen Energy California Project (HECA) by Hydrogen Energy International LLC

- Figure 5a -

Site Plan

(Rendering by Applicant)

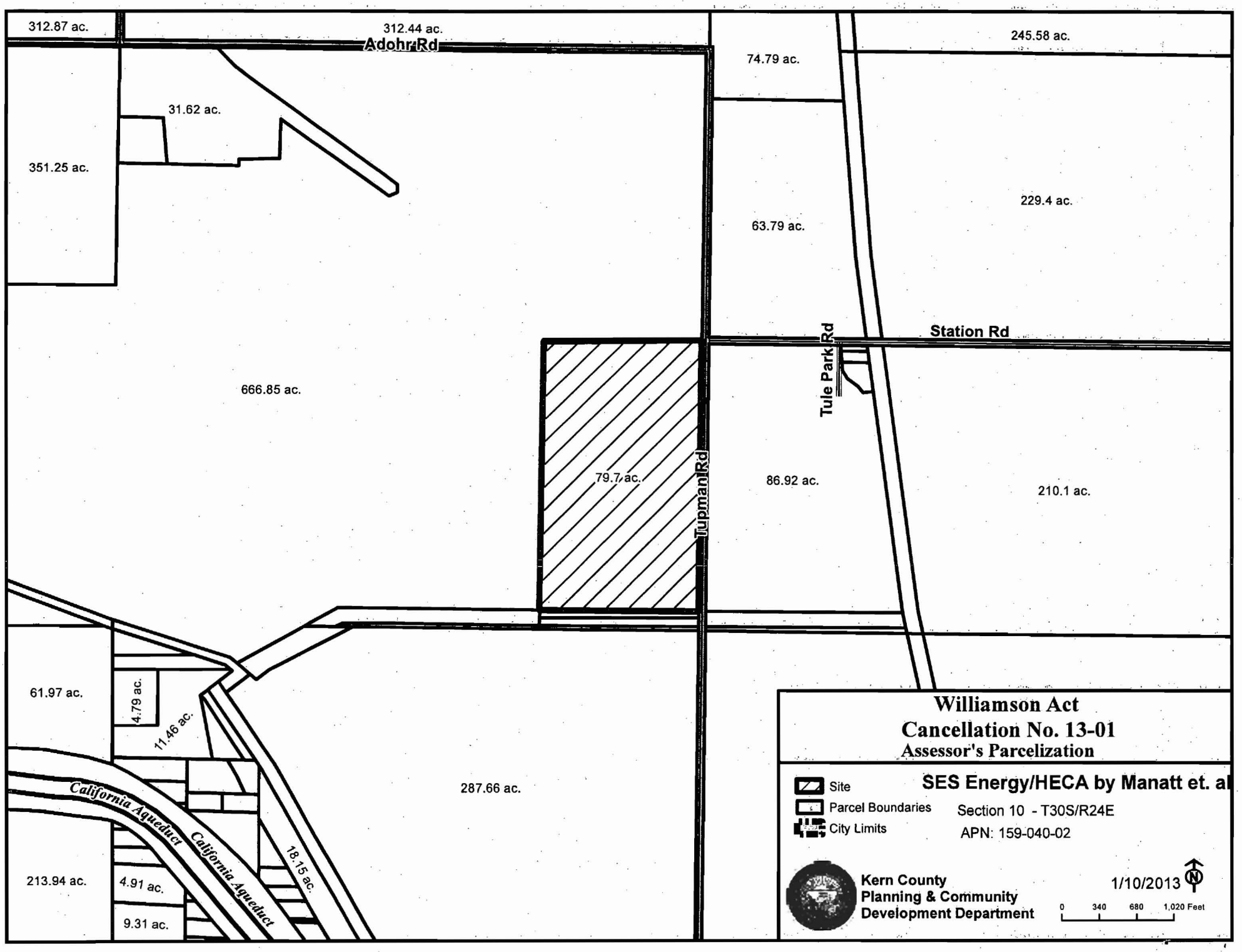


California Energy Commission (CEC) Application CEC Docket No. 08-AFC-8A

Hydrogen Energy California Project (HECA) by Hydrogen Energy International LLC

- Figure 5b - Site Plan

(Rendering by Applicant)


312.87 ac.
312.44 ac.
Adohr Rd
245.58 ac.
74.79 ac.
31.62 ac.
351.25 ac.
229.4 ac.
63.79 ac.
Station Rd
Tule Park Rd
666.85 ac.
79.7 ac.
Tupman Rd
86.92 ac.
210.1 ac.
61.97 ac.
4.79 ac.
11.46 ac.
287.66 ac.
California Aqueduct
California Aqueduct
18.15 ac.
213.94 ac.
4.91 ac.
9.31 ac.
Williamson Act
Cancellation No. 13-01
Assessor's Parcelization
Site
Parcel Boundaries
City Limits
SES Energy/HECA by Manatt et. al
Section 10 - T30S/R24E
APN: 159-040-02
Kern County
Planning & Community
Development Department
1/10/2013
0 340 680 1,020 Feet

Public Comments

NATURAL RESOURCES AGENCY EDMUND G. BROWN JR., GOVERNOR

DEPARTMENT OF CONSERVATION

MANAGING CALIFORNIA'S WORKING LANDS

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • **FAX** 916 / 327-3430 • **TDD** 916 / 324-2555 • **WEBSITE** CONSERVATION.CA.GOV

April 26, 2013

Ms. Patricia Thomsen, Planner 2
Kern County Planning & Community Development Department
2700 M Street, Suite 100
Bakersfield, CA 93301-2323

SUBJECT: HECA BY MANATT ET. AL – CANCELLATION OF LAND CONSERVATION ACT NO. 13-01; APN 159-040-02

Dear Ms. Thomsen:

The Department of Conservation (Department) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act. The Department has reviewed the cancellation petition submitted by the Kern County Community Development Department (County) and offers the following recommendations.

PROJECT DESCRIPTION

The project, as proposed, would gasify blends of petroleum coke (25 %) and coal (75%) to produce hydrogen to fuel a combustion turbine operating in combined cycle mode. The gasification component would produce 180 million standard cubic feet per day (MMSCFD) of hydrogen to feed a 400 megawatt gross, 288 MW net combined cycle plant providing California with dispatchable baseload power to the grid. The gasification component would also capture approximately 130 MMSCFD of carbon dioxide (or approximately 90 percent) which would be transported and used for enhanced oil recovery and sequestration (storage) in the Elk Hills Oil Field Unit. The HECA project would also produce approximately 1 million tons of fertilizer for domestic use.

The original project design included the cancellation of approximately 491 acres of adjacent Williamson Act contract land, which was tentatively approved by the Kern County Board of Supervisors on June 29, 2010 (Resolution 2010-168). Because of problems with habitat for endangered species in the original location for the project, the company retracted the original design. In September 2011, the applicant modified the design which included a change to the project boundaries. A portion of the new proposed project site is encumbered by the remaining Williamson Act contract. To accommodate the project the applicant is submitting a petition to cancel the Williamson Act contract on the residual 71.56 acres of land.

REQUIRED CANCELLATION FINDINGS

The requirements necessary for cancellation of Williamson Act contracts are outlined in Government Code Section 51282, which the County must document to justify the cancellation through a set of findings. Based on the County's request, the project is being processed under the public interest findings outlined below in the Department's comments.

DEPARTMENT COMMENTS ON PUBLIC INTEREST CANCELLATION FINDINGS

a. Other Public Concerns Substantially Outweigh The Objectives Of The Williamson Act:

The Department believes that the terms "public" and "interest" refer to the interest of the public as a whole in the value of the land for open space and agricultural use. Though the interests of the local and regional communities involved are also important, no decision regarding the public interest can be based exclusively on the local benefit of the proposed project.

The 71.56 acre site under contract is designated Prime Farmland per the 2010 Kern County Important Farmland Map. Data from county staff indicates that the site has had an active agriculturally productive history including cotton, wheat, and onions. Current 2012 Farmland Mapping and Monitoring Program (FMMP) imagery data indicates irrigated vegetation. Together with the supplied cropping history, the data would indicate that the land is still agriculturally productive.

After a review of the agricultural data, and a search for Farmland Mapping and Monitoring Program (FMMP) data denoting circumstances that might limit the use of the parcel for agricultural activities, the Department did not find substantial evidence that would support the opinion that the land is unsuitable for agricultural production.

Given the agricultural productivity of the site in question, a decision regarding the quality of this land and cancellation of this contract should be viewed relative to the need for this type of project. In the County's deliberations, it must be shown that agricultural and open space objectives, which are protected by the Act, are substantially outweighed by other public concerns before the cancellation can be deemed "in the public interest."[1]

b. There Is No Available And Suitable Proximate Non-Contracted Land For The Use Proposed On The Contracted Land:

With regard to suitability, as concluded in the 2012 and 2009 Revised Applications for Certification (AFC) for the project filed with the California Energy Commission (CEC), there are no alternative sites that meet the highly specific site selection requirements of the project discussed above. Prior to selecting the project site, HECA LLC submitted its initial AFC (08-AFC-8) to the CEC on July 30, 2008, which proposed the Project on an adjacent site. HECA LLC subsequently decided to move the project when it discovered the existence of previously undisclosed sensitive biological resources at the prior site. As a result, HECA LLC was required to conduct an alternative site analysis to identify an alternative site for the project, which ultimately identified the general area of the currently

[1] *Sierra Club v. Hayward (1981) 28 Cal 3d 840, 171 Cal Rptr 619, 623 P2d 180, 1981 Cal LEXIS 117,* superseded by statute as stated in *Friends of East Willits Valley v. County of Mendocino (2002, Cal App 1st Dist) 101 Cal App 4th 191, 123 Cal Rptr 2d 708, 2002 Cal App LEXIS 4509.*

proposed site. In the process, several possible alternative sites in the vicinity of the unincorporated communities of Buttonwillow and Tupman were considered. However, the alternative sites were rejected for various reasons, including topography, distance from the proposed carbon dioxide custody transfer point, lengths of linear facilities, sensitive environmental receptors and/or land availability. In addition, each of these sites (with one exception), like the project site, were contracted under the Williamson Act.

CANCELLATION FINDINGS CONCLUSIONS

Because the previous site considered for tentative cancellation was Prime, irrigated, and agriculturally productive farmland, the landowner may want to consider, that if a portion of the adjacent land under contract is no longer needed for the project, and it still meets the requirements of the Williamson Act, that the tentative cancellation is officially removed from that portion per §51283.4(c) with a Certificate of Withdrawal of Tentative Approval of a Cancellation of Contract.

Thank you for the opportunity to provide comments on the proposed cancellation. Please provide our office with a copy of the Notice of the Public Hearing and any staff reports on this matter ten (10) working days before the hearing and a copy of the published notice of the Board's decision within 30 days of any tentative cancellation pursuant to GC section 51284.

Within 30 days of the landowner, satisfying the conditions and contingencies required in a Certificate of Tentative Cancellation, and payment of the required fee, the Board will record a Certificate of Cancellation for the contract. The county treasurer is required to send the cancellation fee to State Controller within 30 days of recordation of Certificate of Cancellation and a copy of the Certificate of Cancellation to the DOC. If you have any questions concerning our comments, please contact Meri Meraz, Associate Environmental Planner at (916) 445-9411 or at mmeraz@conservation.ca.gov.

Sincerely,

Molly A Penberth

Molly A Penberth, Manager
Division of Land Resource Protection
Conservation Support Unit

COUNTY OF KERN
DEVELOPMENT SERVICES AGENCY
ROADS DEPARTMENT
Office Memorandum

To: Lorelei Oviatt, Director
Planning and Community Development Department
Attn: Janice Mayes, Planner 2

May 17, 2013

From: Warren D. Maxwell, Transportation Development Engineer
Roads Department

Subject: 7-2.1 Cancellation #13-01, Map 120 (West side of Tupman Road, south of Adohr Road)

This Department has reviewed the subject project and has no comment.

Thank you for the opportunity to comment on this project. If you have any questions or comment, please contact Brian Blacklock of this Department.

Kern County Comment Letter (March 6, 2013)
to the California Energy Commission (CEC)

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Lorelei H. Oviatt, AICP, Director
2700 "M" STREET, SUITE 100
BAKERSFIELD, CA 93301-2323
Phone: (661) 862-8600
FAX: (661) 862-8601 TTY Relay 1-800-735-2929
E-Mail: planning@co.kern.ca.us
Web Address: www.co.kern.ca.us/planning

DEVELOPMENT SERVICES AGENCY

Planning and Community Development
Engineering, Surveying and Permit Services
Roads Department

March 6, 2013

File: Hydrogen Energy, California (HECA)
Zone Map No. 120

California Energy Commission
Attn: Robert Worl, Project Manager
1516 9th Street, MS-15
Sacramento, CA 95814-5512

RE: Hydrogen Energy California – Amended Application for Certification (08-AFC-8A)
Presentation of specific Kern County Comments and recommended Mitigation Measures to address potential impacts of the proposed HECA Project located within Kern County.

California Energy Commission Representatives:

Kern County is in receipt of the notice from the California Energy Commission, dated May 15, 2012, requesting Agency participation in the review of the amended application submitted to the California Energy Commission (CEC) on May 2, 2012 for the Hydrogen Energy California (HECA) Project. The County appreciates this opportunity to participate in the review of this project. As noted in our July 12, 2012 letter, Kern County staff has worked with the CEC in the past to coordinate information on a variety of renewable energy projects, including large power plants, and will continue participate in review of this project. As such, we have developed a procedure for the effective management of this coordination role.

Throughout the review coordination process for the HECA Project, the Kern County Planning and Community Development Department (PCDD) has acted as the clearinghouse for all County communications with the CEC. In order to facilitate this County coordination effort, the PCDD has coordinated internally with other County Departments to compile the County's comments and recommended mitigation measures related to this project. During that process, the PCDD facilitated numerous meetings among County staff, the applicant, affected stake-holders, and local decision-makers to discuss the types of mitigation measures that would be needed to address the potential impacts of the HECA Project, should the CEC ultimately approve construction of HECA within Kern County. As a result of that process, the PCDD received numerous written comments and recommended mitigation measures from County Departments, as well as specific inquiries from local stakeholders and decision-makers.

The comments received from Kern County Departments and stakeholders were presented to the Kern County Board of Supervisors on February 26, 2013. The purpose of the presentation was to seek direction and authorization from the Board to forward the comments and recommended mitigation measures to the CEC. The Board took action to authorize the Director of the PCDD to prepare and mail formal written comments to the CEC. Therefore, this letter includes requests for additional information on the HECA project, a listing of the specific mitigation measures requested by the Kern County Departments to address potential impacts of the HECA Project in Kern County (see Attachment 1), and reiterates that Kern County does not support the use of eminent domain for acquisition of any rail lines or other infrastructure related to the HECA Project. **The full video transcript of the Board hearing is incorporated into this letter by reference and can be found at the following web-link: http://www.co.kern.ca.us/bos/AgendaMinutesVideo.aspx.**

Kern County's specific comments related to the HECA Project are listed below. Data Request and Mitigation Measures are listed within the text with supporting information; and are also listed comprehensively in one table at the end of this letter (Attachment 1).

KERN COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT (PCDD)

(As of February 26, 2013)

1. Land Use Compatibility. This Department has several concerns related to the land use compatibility of the revised project application, as it was submitted to the CEC in May 2012.

   Specifically, the "manufacturing complex" component of the HECA Project, as described in the official May 2012 application package, is a chemical-plant type facility that is not compatible with the existing agricultural general plan designation and zoning that is at the HECA site. The May 2012 application describes the "manufacturing complex" as a facility that will produce products (including urea, urea ammonium nitrate [UAN], anhydrous ammonia, etc.) that will be used for transportation and industrial applications. These types of industrial uses are not permitted in the agriculturally designated areas within Kern County.

   While the Kern County Zoning Ordinance (section 19.12.030.A) lists "fertilizer manufacture and storage for agricultural use only" as a conditionally permitted use in the A District, the project described in the May 2012 application is a "chemical plant" that would require industrial general plan designations and zoning.

   To address this concern, the PCDD sent letters to the applicant and to the CEC in June and July of 2012 indicating that the chemical plant component of the project would require a General Plan Amendment and Zone Changes.

   In response to the concerns raised by the PCDD, the applicant submitted a letter to the PCDD dated December 20, 2012 which indicated that HECA would revise the project to restrict production of "nitrogen-based products" (including urea, urea ammonium nitrate (UAN) and anhydrous ammonia) to manufactured products for the purpose of "fertilizer manufacture and storage for agricultural use only." It appears that the applicant also referred to this letter in their response to CEC Data Request #A103 related to this topic.

   While this change addresses the concerns raised by the PCDD, Staff notes that this restriction should also be made a mitigation measure and/or condition of any project approval by the CEC.

   Therefore, the PCDD recommends that the project, if approved by the CEC, include Mitigation Measure(s) to restrict the items produced on site and in the Manufacturing Complex to "fertilizer manufacture and storage for agricultural use only" per Section 19.12.030.A of the Kern County Zoning Ordinance.

   The PCDD also notes the following information that may be relevant:

Applicable Kern County Zoning Ordinance Information

Specific Listed Use	Zone District	Ordinance Section
"Electrical power generating plant"	A (CUP)	19.12.030.G
"Fertilizer manufacture and storage for agricultural use only"	A (CUP)	19.12.030.A.2
"Transmission lines and supporting towers, poles, and underground facilities for gas, water, electricity, telephone, or telegraph service owned and operated by a public utility company or other company under the jurisdiction of the California Public Utilities Commission pursuant to Section 19.08.090 of this title"	A	19.12.020.D
"Liquid fuel storage tanks, above ground, for dispensing purposes"	A	19.12.020.F
"Chemical blending or Manufacture"	M-2 (CUP)	19.38.030.D.1
"Chemical blending or Manufacture"	M-3	19.40.020.E
"Chemical storage when accessory to a permitted use"	M-2	19.38.020.E.2
"Chemical storage"	M-3	19.40.020.E.2

2. Mitigation for Loss of Agricultural Lands. The PCDD notes that the project will result in the loss of more than 400-acres of Prime agricultural land. The applicant's presentation that the loss of more than 400-acres of Prime farmland is "not significant" and therefore requires no mitigation is incorrect. All Kern County projects, for which an EIR is prepared, requires that the loss of prime, unique or farmland of statewide importance be mitigated at a ratio of 1:1, as required by CEQA. Such mitigation involves the acquisition of agricultural easements on similar quality land and Staff is recommending that the replacement easements be located in Kern County. Even with this mitigation, Staff notes the determination regarding the significance of the loss of prime farmland is based on the findings of the Kern County General Plan EIR and other County-prepared EIRs in the valley; and that the loss of 400+ acres of Prime farmland is both project and cumulatively significant.

   a. ***Therefore, the PCDD recommends that the project, if approved by the CEC, include appropriate Mitigation Measures for loss of prime agricultural land at a 1 to 1 ratio as required by CEQA, and with mitigation lands to occur within Kern County.***

   b. ***The Kern County Board of Supervisors also notes that the CEC's CEQA Evaluation should review alternative sites for the project that do not contain Prime Agricultural Farmland.***

   Additionally, the PCDD notes that, in response to the Kern County Farm Bureau's presentation at the February 26, 2013 Board hearing, the Board of Supervisors directed inclusion of the Farm Bureau's concerns within this comment letter. Therefore, a letter dated February 26, 2013 from the Kern County Farm Bureau representative is attached for your consideration.

3. Impacts to County Services (Sales Tax). If approved by the CEC, the HECA Project would be sited and will operate within Kern County. The impacts of the project will affect Kern County property owners, residents, and County services. To address such impacts, the Kern County Board of Supervisors requires that renewable energy projects, specifically wind and solar PV, identify their place of origin as an address within an unincorporated area Kern County and register that address with the State Board of Equalization; such that the purchase of project equipment and other materials which generate sales tax payments will benefit Kern County residents. Staff notes that the HECA applicant has an office located in Buttonwillow (an unincorporated area of Kern) and that this sales-tax mitigation measure has been implemented for over 15 other projects with no objection from those applicants; including international and out-of-state companies. Therefore, there should be no objection from the applicant to inclusion of this measure on the HECA Project, and the applicant expressed no objection at the hearing before the Board of Supervisors.

   Therefore, the recommended mitigation measure is as follows:

   Prior to the issuance of building permits for the HECA project, the Project Proponent/Operator shall comply with the following: The Project Proponent shall work with the appropriate Kern County Staff to determine how the receipt of sales and use taxes related to the construction of the project will be maximized. This process shall include, but is not necessarily limited to: the Project Proponent/Operator obtaining a street address within the unincorporated portion of Kern County for acquisition, purchasing and billing purposes, registering this address with the State Board of Equalization, using this address for acquisition, purchasing and billing purposes associated with the proposed project. The Project Proponent/Operator shall allow the County to use this sales tax information publicly for reporting purposes.

4. Transparency of CEQA Analysis (Air Quality Emissions Data). According to a CEC letter dated January 23, 2013 (TN #69231), HECA filed an application to the CEC in January, 2013 requesting confidentiality for the calculations and formulas used to calculate HECA's potential air emissions of criteria pollutants, greenhouse gases and toxic air contaminants. The application states that the formulas and calculations are confidential as a "trade secret" that provides a business advantage

because the data is technical in nature and required time and resources to develop. HECA also stated that the information is proprietary in nature and exempt from disclosure under Government Code section 6254.15.

The CEC approved the request for confidentiality and, in doing so, made note that the application "does not seek to have the emissions data designated as confidential but only the underlying formulas and calculations." The PCDD concludes that a "blanket" restriction of data is not in the spirit of CEQA, which requires full public disclosure of a project's environmental impacts and the assumptions used to determine those impacts. In order for public agencies (such as Kern County) and the general public to be able to conduct a meaningful and adequate review of the HECA Project, all of the materials used to calculate the project's emissions must be made readily available.

Subsequent to the CEC's approval of the request for confidentiality, the applicant verbally explained to PCDD Staff that the confidentiality request only applied to specific details of the mechanical-configuration of the gasification machine; and that only those details would be redacted from the emissions report. The applicant indicated that they would revise their request to the CEC to reflect this more focused confidentiality request. PCDD Staff concluded that a narrow and focused redaction of the scope described by the applicant may be appropriate and consistent with standard industry practices.

On February 25, 2013, HECA submitted a revised letter to the CEC (Attn: Director Ogelsby) to clarify the purpose of the confidentiality request.

Therefore, the PCDD recommends that the CEC review the applicant's clarification and issue a revised letter to clarify that the confidentiality approval is for focused confidentially of air quality emissions data in lieu of providing "blanket" confidentiality approval.

5. Alternatives used in CEQA Analysis. Chapter 6 of the applicant's HECA application to the CEC lists 4 "Alternative Sites" for the HECA Project. The applicant appears to have provided this information to comply with Section 15126.6 of the CEQA requirements, which state that an environmental analysis must describe a range of reasonable alternatives or locations for the project that could feasibly avoid or lessen any significant environmental impacts of the project while attaining most of the project's basic objectives.

   Staff notes that Alternative Site 1, as identified by HECA, is located on property that is owned by the Romanini Family Trust. The Romaninis are opposed to the HECA project and have been officially designated by the CEC as interveners against the project. The Romaninis have expressed to Staff that they have not had discussions with SCS Energy regarding acquisition of their property. Therefore, PCDD Staff does not believe that it is appropriate for the applicant to have included the Romanini parcels as a potential alterative because use of this site is not feasible.

   Therefore, the PCDD recommends that the CEC not include this site as an Alternative in the CEQA document. Staff also notes that the CEC should inquire as to whether the applicant has contacted all property owners listed in Alternative 4 prior to including that as a viable alternative option.

6. Project Water Usage. Page 2-18 of the Project Description portion of the May 2012 application to the CEC states that the HECA project will use between 4,600 – 5,150 gallons per minute (gpm) of brackish local groundwater, which equals 7,425 – 8,312 acre feet per year (afy). The range in use is due to temperature changes during summer months. The water will be provided by the Buena Vista Water Storage District (BVWSD) and will be used to cool critical components of the power plant as follows. In light of the water usage rates that would be generated by this project, Staff has concerns that need to be further addressed by the CEC in the CEQA document.

Therefore, the PCDD requests that the CEC's CEQA document include information on the following: (a) Will the brackish water source be available for the life of the project? Please include substantial data to support conclusions; (b) What is the alternative water source if the BWVSD supply becomes unavailable? Section 6.7 of the application lists several alternatives; including municipal effluent, State Water Project and fresh groundwater supplies; however, Staff notes that none of these listed alternatives are feasible because the site is not near a municipal effluent supplier, State Water Project waters have not been allocated, and State law does not allow power plants to use fresh groundwater sources; (c) Could the proposed brackish water be used for agricultural irrigation purposes?

7. Use of 75% Coal with 25% Petcoke and Future source of Petcoke. The Project Description of the May 2012 application (Section 2) states that the HECA Project would operate on a fuel blend consisting of 75% coal and 25% California petcoke; thereby using 1.6 million short tons of coal and 400,000 tons of petcoke per year.

   Staff notes the use of 75% coal is notably different than the initial application submitted to the CEC in 2008. Specifically, the 2008 application stated that petcoke would be the primary feedstock for the HECA Project and that coal would be a secondary feedstock not to exceed 60%. This new change in ratios of coal vs. petcoke is of concern to Kern County because petcoke is a by-product of existing refinery processes, while coal is produce that would be specifically mined and transported into Kern County for use as a feedstock at the HECA plant.

   Additionally, the application states that the coal would be primarily obtained from sources in New Mexico and that the coal would be transported to the site via trucking from a facility in Wasco or via a new railroad spur that would deliver the coal directly to the site. Both of these transport options would impact County infrastructure systems, as noted in the comments submitted by the Roads Department. Additionally, gas and vehicles coming from other States are subject to different environmental regulations that could be less stringent than California regulations.

   Staff also notes that the application states that the petcoke component of the HECA feedstock will be "readily available" to the project and that the petcoke will be trucked in from refineries. Staff has concerns regarding the variable sources of this petcoke and notes that the material may not be readily available for the life of the project if any of the source-refineries cease or change their operations.

   Therefore, the PCDD recommends that the CEQA document include a discussion of the environmental regulations that the trucks and fuel will be subject to, for those vehicles coming to Kern County from other States; as well as a discussion on the long-term availability of coal and petcoke fuel sources for the HECA project.

8. **Use of Eminent Domain.** Several Kern County residents have expressed concerns that the HECA Project will use eminent domain to obtain right-of-way for transmission lines and/or railroad spurs to serve the project. Several property owners have indicated that they do not want to lose portions of their land to the project because such development would make remaining portions of their farms unusable. Staff notes that the CEC has the power of eminent domain.

   Therefore, the PCDD notes that the Kern County Board of Supervisors would like to go on record to not support the use of eminent domain in association with this project; including for the acquisition of transportation and/or transmission infrastructure.

KERN COUNTY FIRE DEPARTMENT (KCFD)

(February 13, 2013)

The Kern County Fire Department has performed an exhaustive review of the proposed HECA Project and has concluded that the HECA project will have significant impacts on Kern County Fire facilities, if left unmitigated. The KCFD has identified the specific impacts in detail, as outlined in the attached comment letter dated February 13, 2013.

To address the impacts of the proposed HECA Project on County Fire facilities, the KCFD has identified the following ***mitigation measures*** that, at minimum, should be included in any project approval:

1. Prior to the issuance of the first grading or building permit for the HECA Project, the Project Proponent shall fund the purchase and delivery to the Fire Department of a fully equipped Industrial Foam pumper/tender, which will be housed and maintained by the Kern County Fire Department, and an additional 2,500 gallon cache of Class B foam to be provided to the Department to be stored at an off-site location. The Industrial Foam pumper/tender, with its onboard foam capabilities, and the 2,500 gallon cache of Class B foam will allow the Department to have the specialized capabilities and equipment necessary to control and contain a fire or product leak emergency that occurs at the HECA plant.

   Therefore, in order to mitigate the significant impact that this project creates, HECA is required to purchase and deliver to the County a fully equipped Industrial Foam pumper/tender with its onboard foam storage capabilities, and an additional 2,500 gallon cache of foam, which adheres to the following minimum standards.

   a. The Industrial Foam pumper/tender shall be manufactured to the Department's standards with no substitutions.
   b. The Industrial Foam pumper/tender must be purchased, constructed, and delivered (construction and delivery time is estimated to be nine months) to the Department 30 days prior to the start-up of the project. Additional time may be required in order to place the Industrial Foam pumper/tender in service and to allow for training personnel assigned to operate the pumper.
   c. The Industrial Foam pumper/tender shall be fully equipped to Department specifications.
   d. The final authority on the specifications for the Industrial Foam Pumper/Tender shall rest with the Department.
   e. The Title for the Industrial Foam Pumper/Tender shall be transferred to the County upon delivery.
   f. The cache of foam shall meet the Department's standards.
   g. If the Department responds to an emergency at HECA and uses the cache of foam to control or contain the emergency, HECA will be required to replace the amount used within 30 days of the incident.

   The estimated cost for the Industrial Foam Pumper/Tender is $800,000 and the 2,500 gallon cache is $50,000. Please note: Foam storage data derived from calculations based on satisfactorily extinguishing a two-dimensional tank fire involving the largest tank containing HECA's most volatile/dangerous commodity.

2. Prior to the application for the first grading or building permit for the HECA Project, the Project Proponent shall provide a Fire Protection Specialist to the Kern County Fire Department for use during the plan review process. HECA will be allowed to select the Specialist from a list of qualified individuals provided by the Department. Furthermore, HECA and the Fire Protection Specialist shall develop a comprehensive *Fire and Life Safety* plan that describes the methods to reduce the potential of an uncontrolled fire thus reducing the threat to life and property. These plans must be submitted and approved by the Department prior to building permit approval.

3. Prior to the issuance of the first grading or building permit for the HECA Project, the Project Proponent shall provide, or reimburse Kern County for the purchase of, a 3 ½ to 5 acre plot of land in which to relocate Kern County Fire Station 53. The Fire Department intends to relocate Fire Station 53 in the vicinity of Interstate 5 and Highway 119 in order to better serve HECA and the surrounding communities. The new Fire Station site would include a standard fire station capable of housing three to six on-duty firefighters, a three-bay engine house, and a helipad capable of handling emergency helicopters. The Fire Department shall have final authority on the exact location for the fire station.

4. During the active construction phase of the project, the Project Proponent shall provide 50% of the operating cost of a Kern County Fire Department fire prevention inspector, estimated to be $88,600 who will be actively involved with fire prevention measures on a daily basis.

5. Prior to the issuance of the first certificate of occupancy, the Project Proponent shall provide training to Kern County Fire Department Staff, as identified by the Fire Department, in the areas needed to mitigate Hydrogen and other related hazardous material emergencies that might arise at the plant for the crews that are stationed at Buttonwillow (25), Taft (21), Old River (53), Maricopa (22) and Fellows (23). This will also be an annual requirement to train at least three (3) Kern County Fire Department personnel in these station areas.

6. Prior to the issuance of the first grading or building permit for the HECA Project, the Project Proponent shall provide full funding to purchase a fire rescue truck, to be housed and maintained by the Kern County Fire Department, and capable of lifting heavy loads in order to extricate trapped passengers in the event of a semi-truck vehicle accident. Fire Rescue Truck specifications/ capabilities, and purchasing details, are as follows:

   a. A fire rescue truck with a 50-ton rotator crane, manufactured to the Fire Department's specifications with no substitutions.
   b. The fire rescue truck must be purchased, constructed, and delivered (construction and delivery time is estimated to be nine months) to the Fire Department 30 days prior to the start-up of the project. Additional time may be required in order to place the fire rescue truck in service and to allow for training personnel assigned to operate the vehicle.
   c. The fire rescue truck shall be fully equipped to Department specifications.
   d. The final authority on the specifications for the fire rescue truck shall rest with the Fire Department.
   e. The vehicle title for the fire rescue truck shall be transferred to the County upon delivery.

7. Prior to the issuance of the first certificate of occupancy, the Project Proponent shall provide the Kern County Fire Department with air monitoring equipment that provides first responders with the capability to monitor for multiple toxic gases during an emergency at the facility.

8. The Project Proponent shall continuously comply with the following: The Project Proponent shall be responsible to contribute annually funds to the Kern County Fire Department for the full salaries of six Fire Engineer positions to drive and operate the Industrial Foam Pumper/Tender and the Fire Rescue Truck.

9. The Project Proponent shall continuously comply with the following: The Project Proponent shall be responsible to contribute annually to the Kern County Fire Department for the reverse 9-1-1 system, based upon the number of addresses that would be directly affected by a major emergency at the facility requiring surrounding residences to shelter-in-place or evacuate.

KERN COUNTY PUBLIC HEALTH SERVICES DEPARTMENT, ENVIRONMENTAL HEALTH DIVISION (EHS)

(As of 12/20/12)

The Environmental Health Division has reviewed the project and has the local regulatory authority to enforce state regulations and local codes as they relate to hazardous materials management, waste management and discharge, water supply requirements, and other items that may affect the health and safety of the public or that may be detrimental to the environment.

The Division requests the following ***mitigation measures*** be satisfied prior to project operation:

1. The applicant shall provide crash protection around the proposed secondary containment areas as appropriate to accommodate stacking/moving equipment. The applicant shall provide physical barriers and site security for the proposed project site as approved by the Environmental Health Division to reduce the potential of a chemical release.

2. The applicant shall provide sensors and/or detectors, as approved by the Environmental Health Division, at the site that will provide early notification of an accidental release of large quantities of toxic and flammable gasses/vapors from hazardous materials stored or generated on site. Chemicals of concern proposed for storage include anhydrous ammonia (toxic), hydrogen sulfide (toxic and flammable) and alcohol (flammable) and are to be monitored by an appropriate sensor array sufficient in scope to reasonably detect the materials before going offsite.

3. The applicant shall apply for a permit and comply with all regulations pertaining to the Certified Unified Program Agency (CUPA). Program elements consolidated under the CUPA are: Hazardous Materials Release Response Plan, Chemical Inventory, Hazardous Waste Generator, Onsite Hazardous Waste Treatment Programs, California Accidental Release Prevention Program (CalARP), Underground Storage Tanks, and Aboveground Petroleum Storage Tank Spill Prevention Control and Countermeasure Plan (SPCC). The Hazardous Materials Business Plan must be completed prior to operations of the facility into the California Environmental Reporting System (CERS).

4. The applicant shall provide a locked storage box (Knox box) outside the main entrance that can be accessed by first responders. It shall provide first responders with the ability to access the site immediately. It shall contain the following information:

   - Hazardous materials business plan
   - MSDS sheets for all chemicals stored at the site
   - Emergency contact numbers

5. The applicant shall provide a video monitoring system around the containment areas which can be used by first responders.

6. The applicant shall provide a means of secondary ingress/egress to the site for emergency use.

7. The applicant shall develop a letter/pamphlet/brochure to be reviewed and approved by the Planning Department and Environmental Health Division that provides information to the residences/businesses within the impact area of the off-site consequence analysis (OCA). The information must describe the OCA findings and actions to follow in the event of a release from any covered Cal ARP process.

8. The applicant must complete a Process Hazard Analysis (PHA) for all applicable hazardous materials and incorporate mitigation measures into the project design prior to commencement of operations. All PHA recommendations must be addressed prior to beginning facility operations. The Environmental Health Division must be notified of any scheduled PHA and given the opportunity to attend any session. The PHA must address issues of concern which include an uninterrupted power supply, safety system redundancies established to ensure the safe handling of the chemical at all times, and remote monitoring and surveillance. All PHAs and corrective actions must also be reviewed by this Division prior to implementation.

9. The applicant must provide documentation of an Emergency Response Plan for the accidental release of all applicable hazardous materials. The plan must address an intentional release or one caused by a natural disaster. A continuous training program for employees must be established to ensure a proper response to a release will occur and public health will be protected. Issues of site security, off-site monitoring, and public notification in the event of a release must be included. The Emergency Response Plan must be developed in conjunction with the Environmental Health Division and the Kern County Fire Department.

10. The applicant shall provide a permanent weather station with remote internet access for monitoring of wind direction in case of an accidental release at the facility. The data shall be kept on site or made available electronically for review by the Environmental Health Division on a 24/7 basis.

KERN COUNTY ENGINEERING, SURVEYING AND PERMIT SERVICES DEPARTMENT

ESPS has reviewed the project and stated that if the CEC requests the Building Inspection Division to provide CBO services related to plan reviews and/or inspections of this project, the following conditions shall be required:

1. The applicant shall be responsible to pay the County all plan review, inspection, and other related fees in accordance with the Department's adopted fee resolution.

2. The applicant shall provide a qualified person, approved by the Department, to prepare a report identifying all hazardous materials, classified in accordance with the California Building Code, to be used or stored. The report shall be submitted with their plan review documents and include recommendations for fire protection, as well as storage and handling of materials.

3. The applicant shall provide a California registered civil engineer to act as the Resident Engineer (RE) during the construction of the project. The RE shall be approved by the Department and paid for by the applicant. Duties and responsibilities of the RE shall be identified prior to construction.

4. The applicant shall provide an on-site office, plan rack, desk and adequate accommodations for the County's building inspector(s) for the duration of the project.

KERN COUNTY ROADS DEPARTMENT

The Kern County Roads Department has reviewed the traffic information included in HECA's application to the CEC and has found that there is not sufficient information available to make specific, detailed recommendations. Specifically, Kern County has not approved a Traffic Impact Study for the project.

The Roads Department reviewed Section 5, *Traffic* of the May 2012 application submitted to the CEC and concluded that the proposed mitigation measures appear to address construction only, as the operational impacts appear to have been deemed less than significant. Without an approved Traffic Impact Study, the Roads Department cannot confirm the assertions made in the application. The Roads Departments also found that the application does not address the impacts to the roadway segments as far as the capacity of the road to accommodate the number of heavy vehicles. The Roads Department has preliminarily concluded that Dairy Road, Adohr Road, Station Road, and Morris Road will not be able to withstand the impacts without mitigation; requiring reconstruction of those roadways.

To date, the project applicant is continuing to work with the Roads Department but has not yet submitted a Traffic Impact Study to the Kern County Roads Department.

Therefore, the Roads Department recommends that the CEC require the HECA applicant to work with the Kern County Roads Department to provide a technical memo to the County Roads Department to supplement the information and analysis provided in the Application for Certification (AFC) Amendment. The technical memo will incorporate clarification and confirmation of mitigation measures required to address the construction and operational impacts of the HECA Project. The technical memo shall be reviewed and approved by the County Roads Department.

KERN COUNTY WASTE MANAGEMENT DEPARTMENT

The Kern County Waste Management Department (KCWMD) operates the County-owned public solid waste facilities and is the Responsible Agency for maintaining the unincorporated Kern County jurisdiction's compliance with the Integrated Waste Management Plan (IWMP). The IWMP includes elements dealing with source reduction and recycling of waste, disposal facility siting criteria, and non-disposal facility identification.

The KCWMD has reviewed the proposed HECA project and has concluded that the project would have significant impacts on Kern County facilities. Those impacts are laid out in detail in the attached comment letter, dated January 22, 2013.

Most notably, the HECA Project would generate an extremely high-volume of waste, mainly from the gasification process. If these wastes (coarse solids) are credited to Kern County as disposal, Kern County would be forced into extreme non-compliance with current State-mandated Diversion Rates which would result in substantial increased costs to the County. These costs could include fines from the State (CalRecycle) for not meeting diversion goals, increased costs associated with improvements made to local landfills to accommodate HECA waste, etc.

The KCWMD reserves the right to continue to review the HECA Project as the applicant and the CEC continue to have on-going conversations with CalRecycle and other State agencies regarding concerns on this project; including but not limited to the project's effect on Kern County Diversion Rates. However, in the interim, the WMD recommends that the following additional information be obtained from the applicant and that the following mitigation measures be added to the project:

CEQA Analysis Recommendation: Quantify the volume of waste to be generated during construction of the HECA Project and describe how these waste materials will be handled to meet State requirements.

CEQA Analysis Recommendation: The HECA Project Proponent shall evaluate the characteristics of the gasification solids, based on a similar representative facility and then conduct a market analysis of potential uses based on the gasification solid characterization; with data to be included in the CEC's CEQA Analysis.

Mitigation Measures:

1. Prior to the acceptance of residual material from the HECA Project at a Kern County public landfill, the applicant shall supply the KCWMD a characterization of the waste for chemical and physical characteristics, and secure written approval from the Director of the KCWMD to ensure compatibility with our landfill operations and fee schedules.

2. Based on the characteristics of the gasification solid, HECA shall conduct a market analysis of potential beneficial uses of the waste.

3. If residual gasification solids, or other waste products, are subject to Jurisdictional Reporting and credited to the Kern County unincorporated area as disposal, HECA shall compensate Kern County via payment based on the following schedule: $30 a ton (0-100 tons per day); $50 a ton (101 – 200 tons per day); $75 a ton (greater than 200 tons per day); or other amount as approved by the Board of Supervisors, to mitigate impacts to diversion programs. The County shall deposit the money in a Diversion Mitigation Reserve Account that will be used to fund diversion programs in Kern County. This is in addition to any gate/tipping fees for disposal.

4. HECA waste stream shall be subdivided between several facilities to reduce the potential impacts to any one facility. Facilities to be considered include the Bakersfield Metropolitan (Bena) RSLF, the Shafter-Wasco RSLF and the Taft RSLF.

With the inclusion of the above mitigation measures, the Kern County Waste Management System may be able to accept the residual gasification solids and other waste materials generated by the HECA Project. However, the Project will still result in a significant impact to the unincorporated area of Kern County to comply with SB 1016 and AB 939 by resulting in a significant increase in per capita disposal, and reducing the diversion and recycling rate below the 50 percent mandate achieved by the County. The KCWMD reserves the right to refuse to accept any load that it deems to be unacceptable based on its potential impact to the health or safety of the customers, employees and/or environment. The KCWMD may provide additional comments if necessary.

KERN COUNTY SHERIFF'S OFFICE

The Kern County Sheriff's Office has reviewed the proposed project and has completed the Law Enforcement Needs Assessment Form. The Sheriff's Offices recommends the following mitigation measures:

1. Recommends increased private security during the initial construction phase of the project to prevent theft and states that preventing theft could also be accomplished with proper fencing, lighting, and video surveillance.

2. After the project is completed, building security and alarms would help minimize potential thefts.

CLOSING COMMENTS

On behalf of the Kern County Board of Supervisors and Kern County Departments listed in this letter, the Planning and Community Development Department would like to thank the CEC for your consideration of the comments listed in this letter and requests the following:

1. Please include the comments, mitigation measures, and requests for additional information, as listed in this letter and attachments, in the Preliminary and Final "Staff Assessment/Draft Environmental Impacts Statement" that is being prepared by CEC Staff;

2. Please ensure that this letter and all attachments are provided to the Commissioners for consideration in preparation of the "Presiding Member's Proposed Decision" and also to the full California Energy Commission for consideration in issuing the "Final Decision" on the project;

3. Please note that additional comments are forthcoming from the Kern County Roads Department;

4. Please note that the Kern County Board of Supervisors has directed PCDD Staff to bring this project back before the Board for review and preparation of additional Kern County comments on the CEC's "Final Staff Assessment/ Draft Environmental Impacts Statement."

Should you have any questions, please contact me at the contact information listed above. You may also contact the Supervising Planner coordinating Kern County's review of this project, Jacquelyn R. Kitchen, at (661) 862-8619 or via email at kitchenj@co.kern.ca.us.

Sincerely,

Lorelei H. Oviatt, AICP, Director
Kern County Planning & Community Development Department

By: Jacquelyn R. Kitchen, Supervising Planner
Advanced Planning Division

cc: SCS Energy California, LLC.
Attn: Marisa Mascaro
30 Monument Square, Suite 235
Concord, MA 01742

Hydrogen Energy California
Attn: Tom Daniels, Managing Director, Commercial Business
PO Box 100, PMB 271
Mammoth Lakes, CA 93546

Occidental of Elk Hills, Inc.
Attn: William H. Barrett, EOR Business Manager
10800 Stockdale Highway
Bakersfield, CA 93311

cc: (cont.)

Kern County Administrative Office

Kern County Clerk of the Board

Kern County Fire Department

Kern County Environmental Health Services

Kern County Engineering Services

Kern County Roads

Kern County Waste Management

Kern County Sheriff's Department

Kern County Farm Bureau, Inc.
Attn: Benjamin McFarland
801 South Mt. Vernon Avenue
Bakersfield, CA 93307-2048

Kern-Kaweah Chapter of the Sierra Club
Andrea Issod; Matthew Vespa
85 Second Street, 2nd Floor
San Francisco, CA 94105

HECA Neighbors
c/o Chris Romanini
P.O. Box 786
Buttonwillow, CA 93206

Association of Irritated Residents
Tom Frantz
30100 Orange Street
Shafter, CA 93263

KERN COUNTY FARM BUREAU, inc.

801 South Mt. Vernon Avenue
Bakersfield, CA 93307-2048
Phone: (661) 397-9635 - Fax: (661) 397-3403
Web: kerncfb.com - Email: kcfb@kerncfb.com

Steve Maniaci
President

Greg Wegis
1st Vice President

Jeff Rasmussen
2nd Vice President

Benjamin McFarland
Executive Director

February 26, 2013

Kern County Board of Supervisors Meeting
1115 Truxtun Avenue
Bakersfield, CA 93301

Good Afternoon Supervisors:

My name is Ben McFarland, I am the Executive Director of the Kern County Farm Bureau. As way of background, the Kern County Farm Bureau is a formal intervenor in the California Energy Commission's siting process for the Hydrogen Energy California Power Plant.

As you consider proposed mitigation measures, conditions and payments I am here to share with you our concerns as it relates to the impacts to Kern County agriculture. Specifically, the following five issues that were brought to the attention of the California Energy Commission at the July 2012 Scoping Meeting in Tupman;

- Potential bifurcation of farming operations as a result of new rail lines,
- Loss of state-designated important farmland,
- Disruption of neighboring farming activities, and
- Contribution of emissions negatively impacting local air quality, in which farming operations in the area are already significantly regulated.

In addition, after meeting again with our impacted members within the vicinity of the project, we support a plan in place for a financial commitment as mitigation to protect neighboring agricultural production in the event unforeseen negative events impact surrounding crop production.

Thank you for your consideration and continued support of agriculture in Kern County.

Sincerely,

Benjamin McFarland
Executive Director
Kern County Farm Bureau, inc.

Serving Agriculture since 1914

Attachment 1

Kern County
Requested Mitigation Measures &
Requests for Additional Information
Regarding Proposed HECA Project

– Attachment 1 –

Kern County's Requested Mitigation Measures & Requests for Additional Information Regarding Proposed HECA Project

KERN COUNTY PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT (PCDD)
As of February 26, 2013

1. **Mitigation Measure Recommendation**: Include MM to restrict the items produced on site and in the Manufacturing Complex to "fertilizer manufacture and storage for agricultural use only" per Section 19.12.030.A of the Kern County Zoning Ordinance.

2. Comments on Agriculture and Site Selection:

   a. **Mitigation Measure Recommendation**: Include MM to mitigate for the loss of Prime Farmland at a 1:1 ratio, with mitigation lands to occur within Kern County.

   b. **CEQA Analysis Recommendation**: Request that the CEC's CEQA evaluation include meaningful review alternative sites for the project that do not contain Prime Agricultural Farmland.

3. **Mitigation Measure Recommendation**: Include the following mitigation measures to address impacts to public services: Prior to the issuance of building permits for the HECA project, the Project Proponent/Operator shall comply with the following: The Project Proponent shall work with the appropriate Kern County Staff to determine how the receipt of sales and use taxes related to the construction of the project will be maximized. This process shall include, but is not necessarily limited to: the Project Proponent/Operator obtaining a street address within the unincorporated portion of Kern County for acquisition, purchasing and billing purposes, registering this address with the State Board of Equalization, using this address for acquisition, purchasing and billing purposes associated with the proposed project. The Project Proponent/Operator shall allow the County to use this sales tax information publicly for reporting purposes.

4. **Information Request**: PCDD requests that the CEC review the applicant's 2/25/13 clarification letter and issue a revised letter to clarify that the confidentiality approval is for focused confidentially of air quality emissions data in lieu of providing "blanket" confidentiality approval.

5. **CEQA Analysis Recommendation**: PCDD recommends that the CEC not include this site listed as Alternative 1 (owned by Romanini) as an Alternative in the CEQA document. PCDD also recommends that CEC inquire as to whether the applicant has contacted all property owners listed in Alternative 4 prior to including that as a viable alternative option.

6. **CEQA Analysis Recommendation**: PCDD recommends that the CEC's CEQA document include information on the following hydrology and water issues:

   a. Will the brackish water source be available for the life of the project? Please include substantial data to support conclusions.

   b. What is the alternative water source if the BWVSD supply becomes unavailable? Section 6.7 of the application lists several alternatives; including municipal effluent, State Water Project and fresh groundwater supplies; however, Staff notes that none of these listed alternatives are feasible because the site is not near a municipal effluent supplier, State Water Project waters have not been allocated, and State law does not allow power plants to use fresh groundwater sources.

   c. Could the proposed brackish water be used for agricultural irrigation purposes?

7. **CEQA Analysis Recommendation**: PCDD recommends that the CEQA document include a discussion of the environmental regulations that the trucks and fuel will be subject to, for those vehicles coming to Kern County from other States; as well as a discussion on the long-term availability of coal and petcoke fuel sources for the HECA project.

8. **CEQA Analysis Recommendation**: Therefore, the PCDD notes that the Kern County Board of Supervisors is on record to not support the use of eminent domain in association with this project; including for the acquisition of transportation and/or transmission infrastructure.

KERN COUNTY FIRE DEPARTMENT

(As of February 13, 2013)

Recommended Mitigation Measures:

1. Prior to the issuance of the first grading or building permit for the HECA Project, the Project Proponent shall fund the purchase and delivery to the Fire Department of a fully equipped Industrial Foam pumper/tender, which will be housed and maintained by the Kern County Fire Department, and an additional 2,500 gallon cache of Class B foam to be provided to the Department to be stored at an off-site location. The Industrial Foam pumper/tender, with its onboard foam capabilities, and the 2,500 gallon cache of Class B foam will allow the Department to have the specialized capabilities and equipment necessary to control and contain a fire or product leak emergency that occurs at the HECA plant.

   Therefore, in order to mitigate the significant impact that this project creates, HECA is required to purchase and deliver to the County a fully equipped Industrial Foam pumper/tender with its onboard foam storage capabilities, and an additional 2,500 gallon cache of foam, which adheres to the following minimum standards.

   a. The Industrial Foam pumper/tender shall be manufactured to the Department's standards with no substitutions.
   b. The Industrial Foam pumper/tender must be purchased, constructed, and delivered (construction and delivery time is estimated to be nine months) to the Department 30 days prior to the start-up of the project. Additional time may be required in order to place the Industrial Foam pumper/tender in service and to allow for training personnel assigned to operate the pumper.
   c. The Industrial Foam pumper/tender shall be fully equipped to Department specifications.
   d. The final authority on the specifications for the Industrial Foam Pumper/Tender shall rest with the Department.
   e. The Title for the Industrial Foam Pumper/Tender shall be transferred to the County upon delivery.
   f. The cache of foam shall meet the Department's standards.
   g. If the Department responds to an emergency at HECA and uses the cache of foam to control or contain the emergency, HECA will be required to replace the amount used within 30 days of the incident.

   The estimated cost for the Industrial Foam Pumper/Tender is $800,000 and the 2,500 gallon cache is $50,000. Please note: Foam storage data derived from calculations based on satisfactorily extinguishing a two-dimensional tank fire involving the largest tank containing HECA's most volatile/dangerous commodity.

2. Prior to the application for the first grading or building permit for the HECA Project, the Project Proponent shall provide a Fire Protection Specialist to the Kern County Fire Department for use during the plan review process. HECA will be allowed to select the Specialist from a list of qualified individuals provided by the Department. Furthermore, HECA and the Fire Protection Specialist shall develop a comprehensive *Fire and Life Safety* plan that describes the methods to reduce the potential of an uncontrolled fire thus reducing the threat to life and property. These plans must be submitted and approved by the Department prior to building permit approval.

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4. During the active construction phase of the project, the Project Proponent shall provide 50% of the operating cost of a Kern County Fire Department fire prevention inspector, estimated to be $88,600 who will be actively involved with fire prevention measures on a daily basis.

5. Prior to the issuance of the first certificate of occupancy, the Project Proponent shall provide training to Kern County Fire Department Staff, as identified by the Fire Department, in the areas needed to mitigate Hydrogen and other related hazardous material emergencies that might arise at the plant for the crews that are stationed at Buttonwillow (25), Taft (21), Old River (53), Maricopa (22) and Fellows (23). This will also be an annual requirement to train at least three (3) Kern County Fire Department personnel in these station areas.

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KERN COUNTY PUBLIC HEALTH SERVICES DEPARTMENT, ENVIRONMENTAL HEALTH DIVISION

(As of 12/20/12)

Recommended Mitigation Measures:

Prior to the commencement of project operations, the Project Proponent shall comply with the following:

1. The applicant shall provide crash protection around the proposed secondary containment areas as appropriate to accommodate stacking/moving equipment. The applicant shall provide physical barriers and site security for the proposed project site as approved by the Environmental Health Division to reduce the potential of a chemical release.

2. The applicant shall provide sensors and/or detectors, as approved by the Environmental Health Division, at the site that will provide early notification of an accidental release of large quantities of toxic and flammable gasses/vapors from hazardous materials stored or generated on site. Chemicals of concern proposed for storage include anhydrous ammonia (toxic), hydrogen sulfide (toxic and flammable) and alcohol (flammable) and are to be monitored by an appropriate sensor array sufficient in scope to reasonably detect the materials before going offsite.

3. The applicant shall apply for a permit and comply with all regulations pertaining to the Certified Unified Program Agency (CUPA). Program elements consolidated under the CUPA are: Hazardous Materials Release Response Plan, Chemical Inventory, Hazardous Waste Generator, Onsite Hazardous Waste Treatment Programs, California Accidental Release Prevention Program (CalARP), Underground Storage Tanks, and Aboveground Petroleum Storage Tank Spill Prevention Control and Countermeasure Plan (SPCC). The Hazardous Materials Business Plan must be completed prior to operations of the facility into the California Environmental Reporting System (CERS).

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   - Hazardous materials business plan
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5. The applicant shall provide a video monitoring system around the containment areas which can be used by first responders.

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7. The applicant shall develop a letter/pamphlet/brochure to be reviewed and approved by the Planning Department and Environmental Health Division that provides information to the residences/businesses within the impact area of the off-site consequence analysis (OCA). The information must describe the OCA findings and actions to follow in the event of a release from any covered Cal ARP process.

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10. The applicant shall provide a permanent weather station with remote internet access for monitoring of wind direction in case of an accidental release at the facility. The data shall be kept on site or made available electronically for review by the Environmental Health Division on a 24/7 basis.

KERN COUNTY ENGINEERING, SURVEYING AND PERMIT SERVICES DEPARTMENT
(As of 12/18/12)

If the CEC requests the Building Inspection Division to provide CBO services related to plan reviews and/or inspections of this project, the following conditions shall be required:

1. The applicant shall be responsible to pay the County all plan review, inspection, and other related fees in accordance with the Department's adopted fee resolution.

2. The applicant shall provide a qualified person, approved by the Department, to prepare a report identifying all hazardous materials, classified in accordance with the California Building Code, to be used or stored. The report shall be submitted with their plan review documents and include recommendations for fire protection, as well as storage and handling of materials.

3. The applicant shall provide a California registered civil engineer to act as the Resident Engineer (RE) during the construction of the project. The RE shall be approved by the Department and paid for by the applicant. Duties and responsibilities of the RE shall be identified prior to construction.

4. The applicant shall provide an on-site office, plan rack, desk and adequate accommodations for the County's building inspector(s) for the duration of the project.

KERN COUNTY ROADS DEPARTMENT
(As of 2/26/13)

– Placeholder –

Comments Pending Further Conversations with HECA Applicant and Applicant Preparation of an Adequate Traffic Impact Study

The Roads Department recommends that the CEC require the HECA applicant to work with the Kern County Roads Department to provide a technical memo to the County Roads Department to supplement the information and analysis provided in the Application for Certification (AFC) Amendment. The technical memo will incorporate clarification and confirmation of mitigation measures required to address the construction and operational impacts of the HECA Project. The technical memo shall be reviewed and approved by the County Roads Department.

KERN COUNTY WASTE MANAGEMENT DEPARTMENT

(As of 1/22/13)

CEQA Analysis Recommendation: Quantify the volume of waste to be generated during construction of the HECA Project and describe how these waste materials will be handled to meet State requirements.

CEQA Analysis Recommendation: The HECA Project Proponent shall evaluate the characteristics of the gasification solids, based on a similar representative facility and then conduct a market analysis of potential uses based on the gasification solid characterization; with data to be included in the CEC's CEQA Analysis.

Mitigation Measures:

1. Prior to the acceptance of residual material from the HECA Project at a Kern County public landfill, the applicant shall supply the KCWMD a characterization of the waste for chemical and physical characteristics, and secure written approval from the Director of the KCWMD to ensure compatibility with our landfill operations and fee schedules.

2. Based on the characteristics of the gasification solid, HECA shall conduct a market analysis of potential beneficial uses of the waste.

3. If residual gasification solids, or other waste products, are subject to Jurisdictional Reporting and credited to the Kern County unincorporated area as disposal, HECA shall compensate Kern County via payment based on the following schedule: $30 a ton (0-100 tons per day); $50 a ton (101 – 200 tons per day); $75 a ton (greater than 200 tons per day); or other amount as approved by the Board of Supervisors, to mitigate impacts to diversion programs. The County shall deposit the money in a Diversion Mitigation Reserve Account that will be used to fund diversion programs in Kern County. This is in addition to any gate/tipping fees for disposal.

4. HECA waste stream shall be subdivided between several facilities to reduce the potential impacts to any one facility. Facilities to be considered include the Bakersfield Metropolitan (Bena) RSLF, the Shafter-Wasco RSLF and the Taft RSLF.

KERN COUNTY SHERIFF'S OFFICE

(As of 10/10/12)

The Sheriff's Offices recommends the following mitigation measures:

1. Recommends increased private security during the initial construction phase of the project to prevent theft and states that preventing theft could also be accomplished with proper fencing, lighting, and video surveillance.

2. After the project is completed, building security and alarms would help minimize potential thefts.

Attachment 2

Comments from Kern County Departments

Kern County Fire Department
(As of February 13, 2013)

Kern County Public Health Services Department, Environmental Health Division
(As of 12/20/12)

Kern County Engineering, Surveying and Permit Services Department
(As of 12/18/12)

Kern County Roads Department
(Placeholder - As of 2/26/13)

Kern County Waste Management Department
(As of 1/22/13)

Kern County Sheriff's Office
(As of 10/10/12)

Brian S. Marshall
Fire Chief & Director of Emergency Services

Fire Department Headquarters
5642 Victor Street • Bakersfield, CA 93308 • www.kerncountyfire.org
Telephone 661-391-7000 • FAX 661-399-2915 • TTY Relay 800-735-2929

February 13, 2013

Lorelei H. Oviatt, Director
Kern County Planning and Community Development
2700 "M" Street
Suite 100
Bakersfield, California, 93301

RE: Hydrogen Energy California Plant

Lorelei,

The Kern County Fire Department (Department) has performed an exhaustive review of the proposed 473 acre Hydrogen Energy California (HECA) plant that is to be constructed 1.5 miles northwest of the unincorporated community of Tupman. The HECA plant will gasify petroleum coke (petcoke) (or blends of petcoke and coal) to produce hydrogen to fuel a combustion turbine operating in a combined cycle mode. The Gasification Block feeds a 390-megawatt combined cycle plant generating approximately 250 MW of low-carbon baseload power to the electrical grid.

HECA will be served by fire stations located in Taft, Fellows, McKittrick, and Buttonwillow. Specialized firefighting and rescue resources are located in Metropolitan Bakersfield, approximately 30 miles away.

Using information provided by HECA and commonly available information including MSDS sheets, the Department has determined that Petcoke (15,000 tons of active storage and at least 30 days inactive emergency storage), Molten Sulfur (150,000 gallons), and Methanol (550,000 gallons) provide the greatest hazards due to their hazard characteristics and flammability.

Petcoke is a hydrocarbon based by-product from refineries primary fuel source for HECA. The active petcoke is stored in three 5,000-ton silos and the inactive storage will be stored in a storage pile, covered with a stabilizer. Petcoke is subject to spontaneous heating and combustion. The suitable extinguishing media is large volumes of water or foam. Firefighting may expose firefighters to high heat, smoke, or toxic by-products. A petcoke fire will produce large quantities of dense black smoke containing toxic and hazardous products that will spread out over large areas.

Molten Sulfur is a flammable solid that that has a flash point of 404.6^0 F and a wide flammable limit of 4% to 44%. The molten sulfur is a by-product of the gasification process and will be trucked off site. Approximately five trucks per day will be used to remove the molten sulfur. Molten sulfur is highly toxic to the respiratory tract and direct contact will cause severe thermal burns. If large trucks or tank cars become involved in fire, the recommended course of action is to let the fire burn and evacuate ½ mile in all directions.

Methanol is used in the cold startup process. Methanol is a Poison-Class B that has a flash point of 520^0 F and a flammable range of 6.0% to 36%. Ingestion of as little as one ounce can cause irreversible injury to the nervous system, blindness, or death. Methanol is extremely flammable and may explode in confined space conditions. Water is ineffective in extinguishing this type of fire. The suitable extinguishing media is large volumes of alcohol resistant foam. If large trucks or tank cars become involved in fire, the recommended course of actions is to let the fire burn and evacuate ½ mile in all directions.

HECA presents significant challenges to the Department due to confined space hazards, hazardous material use and storage, large population of workers, tall structures, and large machinery. Additionally, increased truck and train traffic to deliver the required amount of feedstock presents increased emergency activity throughout the County particularly on Highway 33, Interstate 5, and the major railroads.

It is the professional opinion of the Department that HECA will adversely impact the Department's ability to continue to provide a high level of service to not only this project, but also the surrounding communities and property owners. Furthermore, the mitigation measures provided to the Department by HECA are not adequate to mitigate the risk of an uncontrolled fire.

In the expert experience of the Department, the appropriate mitigation measures are as follows:

- Purchase, and delivery to the Department, a fully equipped Industrial Foam pumper/tender, which will be housed and maintained by the Kern County Fire Department, and an additional 2,500 gallon cache of Class B foam to be provided to the Department to be stored at an off-site location. The Industrial Foam pumper/tender, with its onboard foam capabilities, and the 2,500 gallon cache of Class B foam will allow the Department to have the specialized capabilities and equipment necessary to control and contain a fire or product leak emergency that occurs at the HECA plant. Therefore, in order to mitigate the significant impact that this project creates, HECA is required to purchase and deliver to the County a fully equipped Industrial Foam pumper/tender with its onboard foam storage capabilities, and an additional 2,500 gallon cache of foam.
  1) The Industrial Foam pumper/tender shall be manufactured to the Department's standards with no substitutions.
  2) The Industrial Foam pumper/tender must be purchased, constructed, and delivered (construction and delivery time is estimated to be nine months) to the Department 30 days prior to the start-up of the project. Additional time may be required in order to place the Industrial Foam pumper/tender in service and to allow for training personnel assigned to operate the pumper.
  3) The Industrial Foam pumper/tender shall be fully equipped to Department specifications.
  4) The final authority on the specifications for the Industrial Foam Pumper/Tender shall rest with the Department.
  5) The Title for the Industrial Foam Pumper/Tender shall be transferred to the County upon delivery.
  6) The cache of foam shall meet the Department's standards.
  7) If the Department responds to an emergency at HECA and uses the cache of foam to control or contain the emergency, HECA will be required to replace the amount used within 30 days of the incident.

The estimated cost for the Industrial Foam Pumper/Tender is $800,000 and the 2,500 gallon cache is $50,000. Please note: Foam storage data derived from calculations based on satisfactorily extinguishing a two-dimensional tank fire involving the largest tank containing HECA's most volatile/dangerous commodity.

- HECA shall provide a Fire Protection Specialist to the Department during the plan review process. HECA will be allowed to select the Specialist from a list of qualified individuals provided by the Department. Furthermore, HECA and the Fire Protection Specialist shall develop a comprehensive *Fire and Life Safety* plan that describes the methods to reduce the potential of an uncontrolled fire thus reducing the threat to life and property. These plans must be submitted and approved by the Department prior to building permit approval.
- HECA shall provide a 3 ½ to 5 acre plot of land in which to relocate Kern County Fire Station 53. The Department intends to relocate Fire Station 53 in the vicinity of Interstate 5 and Highway 119 in order to better serve HECA and the surrounding communities. The new Fire Station site would include a standard fire station capable of housing three to six on-duty firefighters, a three-bay engine house, and a helipad capable of handling emergency helicopters.
    1) The Department shall have final authority on the exact location for the fire station.
- During the active construction phase of the project, HECA, shall provide 50% of the operating cost of a Kern County Fire Department fire prevention inspector, estimated to be $88,600 who will be actively involved with fire prevention measures on a daily basis.
- Before certificate of occupancy is issued, HECA will provide training in the areas needed to mitigate Hydrogen and other related hazardous material emergencies that might arise at the plant for the crews that are stationed at Buttonwillow (25), Taft (21), Old River (53), Maricopa (22) and Fellows (23). This will also be an annual requirement to train at least three (3) Kern County Fire Department personnel in these station areas.
- A fire rescue truck, housed and maintained by the Kern County Fire Department, capable of lifting heavy loads in order to extricate trapped passengers in the event of a semi-truck vehicle accident. Fire Rescue Truck specifications/capabilities, and purchasing details, are as follows:
    1) A fire rescue truck with a 50-ton rotator crane, manufactured to the Fire Department's specifications with no substitutions.
    2) The fire rescue truck must be purchased, constructed, and delivered (construction and delivery time is estimated to be nine months) to the Fire Department 30 days prior to the start-up of the project. Additional time may be required in order to place the fire rescue truck in service and to allow for training personnel assigned to operate the vehicle.
    3) The fire rescue truck shall be fully equipped to Department specifications.
    4) The final authority on the specifications for the fire rescue truck shall rest with the Fire Department.
    5) The vehicle title for the fire rescue truck shall be transferred to the County upon delivery.
- HECA shall provide the Kern County Fire Department with air monitoring equipment that provides first responders with the capability to monitor for multiple toxic gases during an emergency at the facility.
- HECA shall be responsible to contribute annually to the Kern County Fire Department for six Fire Engineer positions to drive and operate the Industrial Foam Pumper/Tender and the Fire Rescue Truck.
- HECA shall be responsible to contribute annually to the Kern County Fire Department for the reverse 9-1-1 system, based upon the number of addresses that would be directly affected by a major emergency at the facility requiring surrounding residences to shelter-in-place or evacuate.

The Department has determined that the risk of an uncontrolled fire at the HECA plant is a significant environmental impact and must be mitigated. This letter outlines the minimum mitigation requested by the Department.

The Department looks forward to working with the management and sub-contractors of HECA during the construction phase of the project. In addition, the Department recognizes the need for HECA and the Department to have a good working relationship during the day-to-day activities at the plant and during any future expansion projects that may occur at the plant.

If additional information is required, please contact Fire Chief Brian Marshall by phone at (661) 391-7011, by fax at (661) 391-7013, or send an e-mail to bmarshall@co.kern.ca.us.

Respectfully Submitted,

Brian S. Marshall,
Fire Chief & Director of Emergency Services

Cc: John Silliman, Acting Deputy Fire Chief
Benny Wofford, Fire Marshal
John Nilon, County Administrative Officer
Sandra Quigly, Administrative Analyst

ENVIRONMENTAL HEALTH
DIVISION

2700 M STREET, SUITE 300, BAKERSFIELD, CA 93301-2370
VOICE: (661) 862-8740 FAX: (661) 862-8701
Web: www.co.kern.ca.us/eh E-mail: eh@co.kern.ca.us
"ONE VOICE"

MATTHEW CONSTANTINE, DIRECTOR
PUBLIC HEALTH SERVICES

CLAUDIA JONAH, MD
PUBLIC HEALTH OFFICER

INTEROFFICE MEMORANDUM

To:	Jacqui Kitchen	Date:	December 20, 2012
From:	Environmental Health Division		
Subject:	HECA Project		

The Kern County Environmental Health Division has reviewed the above referenced project. This Division has the local regulatory authority to enforce state regulations and local codes as they relate to hazardous materials management, waste management and discharge, water supply requirements, and other items that may affect the health and safety of the public or that may be detrimental to the environment.

The Environmental Health Division requests that the following conditions be placed on the subject project and be satisfied prior to operation:

1) The applicant shall provide crash protection around the proposed secondary containment areas as appropriate to accommodate stacking/moving equipment. The applicant shall provide physical barriers and site security for the proposed project site as approved by the Environmental Health Division to reduce the potential of a chemical release.

2) The applicant shall provide sensors and/or detectors, as approved by the Environmental Health Division, at the site that will provide early notification of an accidental release of large quantities of toxic and flammable gasses/vapors from hazardous materials stored or generated on site. Chemicals of concern proposed for storage include anhydrous ammonia (toxic), hydrogen sulfide (toxic and flammable) and alcohol (flammable) and are to be monitored by an appropriate sensor array sufficient in scope to reasonably detect the materials before going offsite.

3) The applicant shall apply for a permit and comply with all regulations pertaining to the Certified Unified Program Agency (CUPA). Program elements consolidated under the CUPA are: Hazardous Materials Release Response Plan, Chemical Inventory, Hazardous Waste Generator, Onsite Hazardous Waste Treatment Programs, California Accidental Release Prevention Program (CalARP), Underground Storage Tanks, and Aboveground Petroleum Storage Tank Spill Prevention Control and Countermeasure Plan (SPCC). The Hazardous Materials Business Plan must be completed prior to operations of the facility into the California Environmental Reporting System (CERS).

4) The applicant shall provide a locked storage box (Knox box) outside the main entrance that can be accessed by first responders. It shall provide first responders with the ability to access the site immediately. It shall contain the following information:

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- Hazardous materials business plan
- MSDS sheets for all chemicals stored at the site
- Emergency contact numbers

5) The applicant shall provide a video monitoring system around the containment areas which can be used by first responders.

6) The applicant shall provide a means of secondary ingress/egress to the site for emergency use.

7) The applicant shall develop a letter/pamphlet/brochure to be reviewed and approved by the Planning Department and Environmental Health Division that provides information to the residences/ businesses within the impact area of the off-site consequence analysis (OCA). The information must describe the OCA findings and actions to follow in the event of a release from any covered Cal ARP process.

8) The applicant must complete a Process Hazard Analysis (PHA) for all applicable hazardous materials and incorporate mitigation measures into the project design prior to commencement of operations. All PHA recommendations must be addressed prior to beginning facility operations. The Environmental Health Division must be notified of any scheduled PHA and given the opportunity to attend any session. The PHA must address issues of concern which include an uninterrupted power supply, safety system redundancies established to ensure the safe handling of the chemical at all times, and remote monitoring and surveillance. All PHAs and corrective actions must also be reviewed by this Division prior to implementation.

9) The applicant must provide documentation of an Emergency Response Plan for the accidental release of all applicable hazardous materials. The plan must address an intentional release or one caused by a natural disaster. A continuous training program for employees must be established to ensure a proper response to a release will occur and public health will be protected. Issues of site security, off-site monitoring, and public notification in the event of a release must be included. The Emergency Response Plan must be developed in conjunction with the Environmental Health Division and the Kern County Fire Department.

10) The applicant shall provide a permanent weather station with remote internet access for monitoring of wind direction in case of an accidental release at the facility. The data shall be kept on site or made available electronically for review by the Environmental Health Division on a 24/7 basis.

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KERN COUNTY

Engineering, Surveying and Permit Services Department

Memorandum

Charles Lackey, P.E., Director

To: Jacquelyn Kitchen
Supervising Planner

Date: December 18, 2012

From: Greg Fenton, PE, CBO
Senior Engineering Manager

Phone: 862-5061
Fax: 862-5101

Subject: **Hydrogen Energy of California Project (HECA)**

The California Energy Commission (CEC) has authority over this project regarding building permits and related plan reviews and inspections. However, on other energy projects constructed in Kern County, the CEC has previously requested the Kern County Building Inspection Division to provide the services of a Chief Building Official (CBO) on their behalf. It is likely the CEC will again request the County to provide CBO services on this project.

If the CEC requests the Building Inspection Division to provide CBO services related to plan reviews and/or inspections of this project, the following conditions shall be required:

1. The applicant shall be responsible to pay the County all plan review, inspection, and other related fees in accordance with the Department's adopted fee resolution.

2. The applicant shall provide a qualified person, approved by the Department, to prepare a report identifying all hazardous materials, classified in accordance with the California Building Code, to be used or stored. The report shall be submitted with their plan review documents and include recommendations for fire protection, as well as storage and handling of materials.

3. The applicant shall provide a California registered civil engineer to act as the Resident Engineer (RE) during the construction of the project. The RE shall be approved by the Department and paid for by the applicant. Duties and responsibilities of the RE shall be identified prior to construction.

4. The applicant shall provide an on-site office, plan rack, desk and adequate accommodations for the County's building inspector(s) for the duration of the project.

KERN COUNTY ROADS DEPARTMENT

(As of 2/26/13)

– Placeholder –

Comments Pending Further Conversations with HECA Applicant and Applicant Preparation of an Adequate Traffic Impact Study

The Roads Department recommends that the CEC require the HECA applicant to work with the Kern County Roads Department to provide a technical memo to the County Roads Department to supplement the information and analysis provided in the Application for Certification (AFC) Amendment. The technical memo will incorporate clarification and confirmation of mitigation measures required to address the construction and operational impacts of the HECA Project. The technical memo shall be reviewed and approved by the County Roads Department.

KERN COUNTY WASTE MANAGEMENT DEPARTMENT
Douglas E. Landon, Director
2700 "M" Street, Suite 500
Bakersfield, CA 93301-2372
(661) 862-8900
(800) 552-KERN (option 6)
Fax: (661) 862-8905
http://www.kerncountywaste.com

January 22, 2013

Ms. Jacquelyn Kitchen, Supervising Planner
Planning and Community Development Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301

Dear Ms. Kitchen:

SUBJECT: Hydrogen Energy California – 2012 Revised Application for Certification

Thank you for the opportunity to comment on the 2012 Revised Application for Certification of the Hydrogen Energy California plant. The Project will gasify a fuel blend of 75 percent coal and 25 percent petroleum coke (petcoke) to produce synthesis gas (syngas). Syngas produced via gasification will be purified to hydrogen rich fuel, and used to generate a nominal 300 megawatts (MW) of low-carbon baseload electricity in a Combined Cycle Power Block, low-carbon nitrogen-based products in an integrated Manufacturing Complex, and carbon dioxide (CO2) for use in enhanced oil recovery (EOR).

The Project is located on a 473-acre site approximately seven miles west of the City of Bakersfield in the unincorporated area of Kern County.

The Kern County Waste Management Department (KCWMD) operates the County owned public solid waste facilities, and is the Responsible Agency for maintaining the unincorporated Kern County jurisdiction's compliance with the Integrated Waste Management Plan (IWMP). The IWMP includes elements dealing with source reduction and recycling of waste, disposal facility siting criteria and non-disposal facility identification.

The KCWMD has reviewed the proposed Project. The KCWMD focuses on, but is not limited to, two questions identified in the CEQA checklist related to solid waste for which every project is to be evaluated. These questions include:

1. Would the Project be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?
2. Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain performance objectives for public facilities?

This comment letter will address each question in order.

<u>Would the Project be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs</u>?

Sufficient permitted capacity involves three components: (1) daily tonnage, (2) daily traffic, and (3) permitted volume. The KCWMD must also evaluate operational concerns primarily

due to the physical characteristics of the waste. The closest public solid waste facility in the vicinity of the HECA Project is the Taft Recycling and Sanitary Landfill.

The HECA Project will consist of three phases: construction, start-up and ongoing operation. The existing Project Description does not describe the construction phase or the quantity of waste generated during the construction phase. The 2008 California Green Building Standards Code requires all construction projects to develop a recycling plan to divert and/or recycle at least 50 percent of waste generated during construction. Please refer to the 2008 California Green Building Standards Code Section 708 Construction Waste Reduction, Disposal and Recycling for specific details. **The KCWMD requests that HECA Project quantify the volume of waste to be generated during construction and briefly describe how these waste materials will be handled to meet State requirements.**

The third phase of the HECA Project is the ongoing operation in which the facility will be fueled by a combination of petroleum coke (petcoke) and coal. The Project will gasify a fuel blend of 75 percent coal and 25 percent petcoke to produce synthesis gas (syngas). This phase of the Project is projected to generate approximately 770 tpd of gasification solids. The Project is anticipated to produce an additional 57 tpd of waste that could be classified as either hazardous or non-hazardous and could be disposed in a Class III solid waste facility depending on characterization.

Taft Recycling and Sanitary Landfill
Permit/Operational Conditions

	Permit	Current Operation	HECA Project
Daily Tonnage (tpd)	800	112	57 - 827
Daily Traffic (vpd)	350	54	

During the 2012 year, the Taft Recycling and Sanitary Landfill (RSLF) accepted an average of 112 tons per day. A 57 tpd to 827 tpd increase at the facility would significantly impact the permitted capacity and the operational conditions at the facility. As stated above however, the KCWMD operates the County-owned public solid waste facilities. **The KCWMD requests that the HECA waste stream be subdivided between several facilities to reduce the potential impacts to any one facility. Facilities to be considered include the Bakersfield Metropolitan (Bena) RSLF, the Shafter-Wasco RSLF and the Taft RSLF.** The HECA Project may also consider several private facilities, including but not limited to, Clean Harbors, H. M. Holloway or McKittrick Disposal.

Additionally, prior to the acceptance of residual material from the proposed Project at any Kern County public landfill, the applicant shall supply the KCWMD a characterization of the waste for chemical and physical characteristics, and secure written approval from the Director of the KCWMD to ensure compatibility with landfill operations and fee schedules. A special handling fee may be assessed pending results of the characterization and impacts on landfill operations.

Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause

significant environmental impacts, in order to maintain performance objectives for public facilities?

The HECA Project is described as a gasification process. The Project Description projects that the facility will generate between 57 tpd and 827 tpd of non-hazardous industrial waste that could be disposed in a Class III solid waste facility. The California Integrated Waste Management Act (AB 939) required all California cities, counties and approved regional solid waste management agencies responsible for enacting plans and implementing programs to divert 25 percent of their solid waste by 1995 and 50 percent by year 2000.

In 2008, the California State Senate passed Senate Bill 1016 (SB 1016) to make the process of goal measurement (obtaining and maintaining a 50 percent diversion rate) established by AB 939 simpler, more timely, and more accurate. SB 1016 accomplishes this by changing to a disposal-based indicator, the per capita disposal rate, which uses only two factors: a jurisdiction's population (or in some cases employment) and its disposal as reported by disposal facilities. The Kern County unincorporated jurisdiction's per capita disposal equivalent to a 50 percent diversion rate was set at 7.6 lbs/person/day.

The proposed Project is located within the unincorporated area of Kern County; the disposal rate for this area is currently 5.7 lbs/person/day. In order to remain in compliance with SB 1016 and AB 939, the unincorporated area cannot exceed a disposal rate of 7.6 lbs/person/day. The HECA Project is projected to dispose of 292,118 tons/year (tpy) during operation, which equates to 5.36 lbs/person/day from the project alone. The HECA project would raise the County per capita disposal to 11.06 lbs/person/day, a 48.5% increase, exceeding the County's disposal cap of 7.6 lbs/person/day. The HECA Project is a significant impact and will place Kern County in jeopardy of non-compliance with mandated recycling goals. The following strategies may be used to negate this impact:

1. Recycle or reuse residual waste as a beneficial use.
2. Dispose of the material and receive confirmation from CalRecycle that the waste material cannot be recycled and have CalRecycle concurrence that the waste can be adjusted out of the jurisdictional reporting as disposal.
3. Seek/receive legislative or regulatory exemption.

The HECA Project Description indicates that the gasification solids, slag, may be recycled. The KCWMD acknowledges that there are limited local markets for slag; however, existing markets appear to be saturated as significant volumes of slag are disposed locally. Additionally, the chemical and physical characteristics of slag are variable and highly dependant on the feedstock and method of processing. Suitability of the HECA slag for beneficial use or disposal cannot be accurately evaluated until the material has been characterized. **Therefore, the KCWMD requests that HECA evaluate the characteristics of the gasification solids, based on a similar representative facility and then conduct a market analysis of potential uses based on the gasification solid characterization.**

If the Project cannot negate the impact of disposal on Kern County's diversion/recycling mandates, the KCWMD requests the following mitigation. If residual gasification solids, or other waste products, are subject to Jurisdictional Reporting and credited to the Kern County unincorporated area as disposal, HECA shall compensate Kern County $75/ton for

implementation of additional recycling facilities and programs to maintain compliance with State diversion mandates. This is in addition to any gate/tipping fees for disposal.

Recommended Mitigation Measures:

The Waste Management Department recommends the following mitigation measure to decrease the Project's potential impacts to the Taft RSLF or other Department facilities and programs to less than significant:

1. Prior to the acceptance of residual material from the proposed Project at a Kern County public landfill, the applicant shall supply the KCWMD a characterization of the waste for chemical and physical characteristics, and secure written approval from the Director of the KCWMD to ensure compatibility with our landfill operations and fee schedules.
2. Based on the characteristics of the gasification solid, HECA shall conduct a market analysis of potential beneficial uses of the waste.
3. If residual gasification solids or other waste products, are subject to Jurisdictional Reporting and credited to the Kern County unincorporated area as disposal, HECA shall compensate Kern County $75/ton for implementation of additional recycling facilities and programs to maintain compliance with State diversion mandates. This is in addition to any gate/tipping fees for disposal.

With the inclusion of the above mitigation measures, the Kern County Waste Management System may be able to accept the residual gasification solids and other waste materials generated by the HECA Project. However, the Project will still result in a significant impact to the unincorporated area of Kern County to comply with SB 1016 and AB 939 by resulting in a significant increase in per capita disposal, and reducing the diversion and recycling rate below the 50 percent mandate achieved by the County.

The KCWMD reserves the right to refuse to accept any load that it deems to be unacceptable based on its potential impact to the health or safety of the customers, employees and/or environment. The KCWMD may provide additional comments if necessary.

If you have any further questions, please contact Katrina Slayton at (661) 862-8810.

Sincerely,

Nancy L. Ewert, P.E.
Senior Engineering Manager

Revised February 28, 2013
H:\E_MAIL\13-12-Kat_ys-Modified.doc
cc: Tony Bonanno; Brian Klatt
Bill O'Rullian; Amy Rutledge (KCEHD)
Lorelei Oviatt (KCPD)
WMD-PADS
WMD-IWMP (COR)

DONNY YOUNGBLOOD
Sheriff-Coroner
Public Administrator

SHERIFF'S OFFICE
COUNTY OF KERN

Telephone (661) 391-7500

1350 Norris Road
Bakersfield, California 93308-2231

October 10, 2012

Aaron Nousaine
California Energy Commission
Sitting, Transmission, and Environmental Protection Division
1516 Ninth Street, MS 40
Sacramento, CA 95814

RE: Law Enforcement Needs Assessment Form relating to the proposed Hydrogen Energy California Power Plant Project (08-AFC-8)

Mr. Nousaine,

The Kern County Sheriff's Office has reviewed the project characteristics, as proposed by the project applicant, reviewed the map for the proposed project, and completed the Law Enforcement Needs Assessment Form. Please refer to the attached document.

Oil Field and rural crime is prevalent in this area. There is always a possibility of vandalism and/or theft related crimes during the initial stages of this type of construction project. Once construction is completed on a project such as this, there are potential impacts on law enforcement services. Those types of service impacts are burglary alarm calls, burglary reports, and miscellaneous theft investigations.

The impact of this project on the Sheriff's Office resources will result in an increase in the number of calls for service. This increase should be negligible and could be mitigated by increased private security during the initial construction phase of the project to prevent thefts. Preventing thefts could also be accomplished with proper fencing, lighting, and video surveillance. After the project is completed, proper building security and alarms would help to minimize potential thefts.

In conclusion, there is a potential for an increase in calls for service during the construction of the project. Once construction is complete; however, the impact on the Sheriff's Office services should be minimal.

Thank you for the opportunity to respond to the law enforcement needs for this project. Please feel free to contact Sergeant Haiungs at (661) 764-6954 if you have any further questions or inquiries.

Sincerely,

DONNY YOUNGBLOOD, Sheriff-Coroner

By: Lieutenant Steve Hansen
South Area Substations Section

Attachment

Hydrogen Energy California Power Plant Project (08-AFC-8)
Law Enforcement Needs Assessment Form Responses

EXISTING LAW ENFORCEMENT RESOURCES AND SERVICES IN THE PROJECT AREA:

Names and addresses of the facilities (e.g., sheriff substations) serving the project area, and distance of closest dispatch facility to the project site:

Taft Substation	North County Substation	KSCO Communication Center
315 N. Lincoln Street	181 E. 1st Street	2601 Panorama Drive
Taft, CA 93268	Buttonwillow, CA 93206	Bakersfield, CA 93306

Adopted or desired service standard (e.g., one sworn officer per 1,000 population) applicable to the project site:

N/A; the project will not significantly impact permanent population to the area.

Existing staffing levels for facilities serving the project area (including sworn officers and civilians, totals and per shift):

Taft Substation	North County Substation – Buttonwillow
Fourteen (14) Sworn Deputies	Thirteen (13) Sworn Deputies
One (1) Civilian Clerk	Two (2) Civilian Clerks

*Most shifts have at least two (2) patrol deputies on duty per shift

Estimated response times to the project site:

Taft Substation		North County Substation - Buttonwillow	
Priority Calls:	15 to 25 minutes	Priority Calls:	10 to 40 minutes
Non-Priority Calls:	25 to 35 minutes	Non-Priority Calls:	15 to 60 minutes

* Response times fluctuate due to where the deputies are responding from.

Current projected needs (e.g., facilities and staff) to maintain or meet existing service levels:

The North County Substation does not foresee any additional facilities or staffing needs as a direct result of this project.

Additional needs beyond those identified above to maintain or meet existing service levels with the project:

N/A

Exchange of general law enforcement responsibilities (e.g., formal and/or informal agreements with local municipalities for provision of services) in the project area:

N/A

Current inventory of specialized equipment (e.g., helicopters or other aircraft):

The Kern County Sheriff's Office has helicopters and fixed wing aircraft in its inventory. These resources are based at Meadow Field in Bakersfield, California, which is 27 miles from the proposed project.

ESTIMATED NEED FOR LAW ENFORCEMENT SERVICES, EQUIPMENT, AND FACILITIES:

Is there a process or formula used by your department to determine the need for additional law enforcement services to serve a new large-scale power plant? Please explain.

I am not aware of any specific process or formula used to evaluate any additional needs resulting from a project such as this.

Could the project trigger a need for additional law enforcement services for on-site crimes against persons, theft of materials, and/or vandalism? Please explain.
During project construction:

Oil field and rural crime is prevalent in this area. There is always the possibility of theft of materials during construction. Therefore, additional law enforcement services might be needed for extra patrol by on duty deputies to discourage criminal activity. Additional time would be required to take theft reports and to conduct investigations.

During project operation:

The likelihood of theft during this project would be significantly reduced with the proposed 24/7 on-site security.

Could increased project-related traffic affect circulation and access on roads near the project site to the extent that an impact to emergency response times might occur? Please explain.
During project construction:

There are only two lane roads in the area around this site. There will be possible road delays during construction; however, the project is far enough away from major highways (CA HWY 58 and Interstate 5) that no significant traffic problems should be expected.

During project operation:

There would be increased traffic during shift change, but I do not expect any significant traffic issues.

Hydrogen Energy California Power Plant Project (08-AFC-8)
Law Enforcement Needs Assessment Form Responses

Do law enforcement personnel review development site plans for projects to assess potential law enforcement issues (e.g., lighting and other safety factors)? Please explain.

We review site plans and planning documents to ascertain the impact of law enforcement services. With this project being located in the unincorporated area of Kern County, all lighting, traffic, and roads needs and/or assessments requests should be forwarded to the California Highway Patrol.

Are specific measures recommended to reduce the potential for crimes to occur at or near the project site (e.g., specific types of security fencing)? Please explain.

Chain link fence around perimeter
24 hour private security patrols
Large motion sensor lights
Alarm systems
Recorded video monitoring system

Please explain any other law enforcement concerns that have not been addressed by this needs assessment form.

This site is at the most Northern boundary for the Taft Substation response area and the most Southern boundary for the North County Substation. The distance from our normal patrol areas to this site could be impacted during our response to the project/plant.

Person(s) Completing This Needs Assessment Form

Name: Marc Haiungs
Title/Position: Sergeant
Telephone No: (661) 599-0157
E-mail Address: haiungsm@kernsheriff.com

California Energy Commission Staff Status Report April 30, 2013

State Of California

The Resources Agency of California

Memorandum

Date: April 30, 2013
Telephone: (916) 651-8853
File: 08-AFC-8A

California Energy Commission
DOCKETED
08-AFC-8A
TN # 70544
APR. 30 2013

To: Commissioner Karen Douglas, Presiding Member
Commissioner Andrew McAllister, Associate Member
Hearing Officer Raoul Renaud

From: California Energy Commission - Robert Worl,
1516 Ninth Street
Sacramento, CA 95814-5512
Project Manager

Robert Worl

Subject: **HYDROGEN ENERGY CALIFORNIA, AMENDED (08-AFC-8A)**
STAFF STATUS REPORT NUMBER 7

Staff hereby files Status Report number 7 for the Hydrogen Energy California, Amended AFC (HECA). Energy Commission staff and the U.S. Department of Energy (DOE) are jointly conducting the review of the proposed HECA project and intend to issue joint documents. Staff is evaluating the project subject to both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

Staff is filing this status report to note that a revised time frame will be necessary for staff to complete its work to publish the Preliminary Staff Assessment/Draft Environmental Impact Statement (PSA/DEIS). As indicated in Status Report Number 6, it is critical for DOE's purposes that this Preliminary Staff Assessment and Draft Environmental Impact Statement be as complete and comprehensive as possible. Staff continues to work to meet these standards, but late receipt of important information and the need for thorough review necessitates a later delivery date for the PSA/DEIS joint document than originally planned. Additionally, the requirements for production of a complex document are being coordinated between the Energy Commission staff and the Department of Energy. Staff and DOE now expect to be able to publish the joint PSA/DEIS by May 17, 2013.

PROOF OF SERVICE (REVISED 3/04/2013) FILED WITH ORIGINAL IN SACRAMENTO ON 4/30/2013
DLS

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

AMENDED APPLICATION FOR CERTIFICATION FOR THE HYDROGEN ENERGY CALIFORNIA PROJECT

Docket No. 08-AFC-08A
PROOF OF SERVICE
(Revised 3/4/13)

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HECA Neighbors
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*Indicates Change

ENERGY COMMISSION – PUBLIC ADVISER
Blake Roberts
Assistant Public Adviser
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COMMISSION DOCKET UNIT
CALIFORNIA ENERGY
COMMISSION – DOCKET UNIT
Attn: Docket No. 08-AFC-08A
1516 Ninth Street, MS-4
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docket@energy.ca.gov

OTHER ENERGY COMMISSION PARTICIPANTS (LISTED FOR CONVENIENCE ONLY):

After docketing, the Docket Unit will provide a copy to the persons listed below. Do not send copies of documents to these persons unless specifically directed to do so.

KAREN DOUGLAS
Commissioner and Presiding Member

ANDREW McALLISTER
Commissioner and Associate Member

Raoul Renaud
Hearing Adviser

Galen Lemei
Adviser to Presiding Member

Jennifer Nelson
Adviser to Presiding Member

*Hazel Miranda
Adviser to Associate Member

David Hungerford
Adviser to Associate Member

Patrick Saxton
Adviser to Associate Member

Eileen Allen
Commissioners' Technical
Adviser for Facility Siting

DECLARATION OF SERVICE

I, Diane L. Scott, declare that on April 30, 2013, I served and filed copies of the attached **HYDROGEN ENERGY CALIFORNIA, AMENDED (08-AFC-8A) STAFF STATUS REPORT NUMBER 7**, dated April 30, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at: **http://www.energy.ca.gov/sitingcases/hydrogen_energy/**.

The document has been sent to the other persons on the Service List above in the following manner:

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

_X_ I e-mailed the document to all e-mail addresses on the Service List above and personally delivered it or deposited it in the US mail with first class postage to those persons noted above as "hard copy required"; **OR**

____ Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: April 30, 2013

Diane Lee Scott

Diane L. Scott, Project Assistant
Siting, Transmission and Environmental Protection Division

Application and Support Documents

PETITION FOR CANCELLATION OF A LAND USE CONTRACT OR LAND USE AGREEMENT

CALIFORNIA LAND CONSERVATION ACT

Date: December 20, 2012

I, See attached Exhibit "A"

owner of the property described below, petition the Kern County Board of Supervisors for cancellation of all or a portion of an Agricultural Preserve Land Use Contract or Land Use Agreement, pursuant to Chapter 7, Article 5, Sections 51280 through 51286 of the Government Code, State of California, and pursuant to Kern County Board of Supervisors Resolution No. 72-69, dated January 25, 1972.

Signature (please have notarized) _____ Mailing Address _____

Name of Previous Property Owner (if known)

DESCRIPTION OF PROPERTY INCLUDED IN THE CANCELLATION REQUEST:

Assessor's Parcel Number(s):
159-040-02

LEGAL DESCRIPTION (include plot plan or map of the area):

See attached Exhibit "B"

REASONS FOR WHICH THE CANCELLATION IS REQUESTED (refer to Section 51282, Government Code, State of California, as set forth on Page 2):

See attached Exhibit "C"

NOTE: Return this Petition and a filing fee of $990 (which is nonrefundable) to:

KERN COUNTY PLANNING DEPARTMENT
2700 "M" STREET, SUITE 100
BAKERSFIELD, CA 93301

******* FOR OFFICE USE ONLY *******

Name _____ APN _____ Map #_____ S.D. #_____
Last First Middle

Contract Executed by _____

Recordation Date _____ Book _____ Pages _____

Fee _____ Receipt #_____ Date _____ Rec'd by _____

Section 51282, Government Code, State of California

Petition for Cancellation of Contract; Grounds

(a)The landowner may petition the Board of Supervisors for cancellation of any Contract as to all or any part of the subject land. The Board may grant tentative approval for cancellation of a Contract only if it makes one of the following findings:

(1)That the cancellation is consistent with the purposes of Chapter 7; or

(2)That cancellation is in the public interest.

(b)For the purposes of paragraph (1) of subdivision (a), cancellation of a Contract shall be consistent with the purposes of Chapter 7 only if the Board makes all of the following findings:

(1)That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245.

(2)That cancellation is not likely to result in the removal of adjacent lands from agricultural use.

(3)That cancellation is for an alternative use which is consistent with the applicable provisions of the County General Plan.

(4)That cancellation will not result in discontiguous patterns of urban development.

(5)That there is no proximate non-Contracted land which is both available and suitable for the use to which it is proposed the Contracted land be put, or, that development of the Contracted land would provide more contiguous patterns of urban development than development of proximate non Contracted land.

(c)For purposes of paragraph (2) of subdivision (a), cancellation of a Contract shall be in the public interest only if the Board makes the following findings:

(1)That other public concerns substantially outweigh the objectives of Chapter 7; and

(2)That there is no proximate non-Contracted land which is both available and suitable for the use to which it is proposed the Contracted land be put, or, that development of the Contracted land would provide more contiguous patterns of urban development than development of proximate non-Contracted land.

(d)For purposes of subdivision (a), the uneconomic character of the 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.

(e)The landowner's petition shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternative use shall be determined by the Board as that necessary to permit them to make the findings required.

(f)In approving a cancellation pursuant to this section, the Board shall not be required to make any findings other than or in addition to those expressly set forth in this section and, where applicable, in Section 21081 of the Public Resources Code.

PROVIDE A STATEMENT INDICATING WHY THE PROPOSED CANCELLATION COMPLIES WITH THE ABOVE SECTION OF THE GOVERNMENT CODE.

See attached Exhibit "D"

ACKNOWLEDEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

On this _____ day of _____, 2008, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Exhibit "A"

I, Dane Peacock, Assistant Secretary of Hydrogen Energy International LLC, the owner of APN Nos. 159-040-02, 159-040-16 and 159-040-18, on behalf of Hydrogen Energy International LLC, petition the Kern County Board of Supervisors for cancellation of all or a portion of an Agricultural Preserve Land Use Contract or Land Use Agreement, pursuant to Chapter 7, Article 5, Sections 51280 through 51286 of the Government Code, State of California, and pursuant to Kern County Board of Supervisors Resolution No. 72-69, dated January 15, 1972.

Signature

12.19.2012
Date

700 Louisiana Street, 32nd Floor
Houston, TX 77002

STATE OF TEXAS §
§
COUNTY OF HARRIS §

On December 19, 2012 before me, Kaye Moehle, Notary Public, personally appeared Dane Peacock, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

F. KAYE MOEHLE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 1-26-2015

LEGAL DESCRIPTION

EXHIBIT "B"

FOR CANCELLATION OF A LAND USE CONTRACT

That portion of the East Half of the Southeast Quarter of Section 10, Township 30 South, Range 24 East, Mount Diablo Meridian, described as follows:

Commencing at the Point of Beginning (P.O.B.) being the east quarter corner of said Section 10; Thence North 89°24'15" West 1321.11 feet (L3); Thence South 00°44'00" West 2359.90 feet to a point on a line parallel with and 280.00 feet northerly of the southerly line of said Section 10; Thence along said parallel line South 89°27'40" East, 1321.34 feet to a point on the east line of said Section 10; Thence along said east line North 00°43'40" East, 2358.58 feet to said Point of Beginning (P.O.B.)

Contains 71.558 acres.

Subject to all matters of record, if any.

See Exhibit "B", Attachment "A" attached hereto and made a part hereof.

This legal description is not intended for use in the division and /or conveyance of land in violation of the Subdivision Map Act of the State of California.

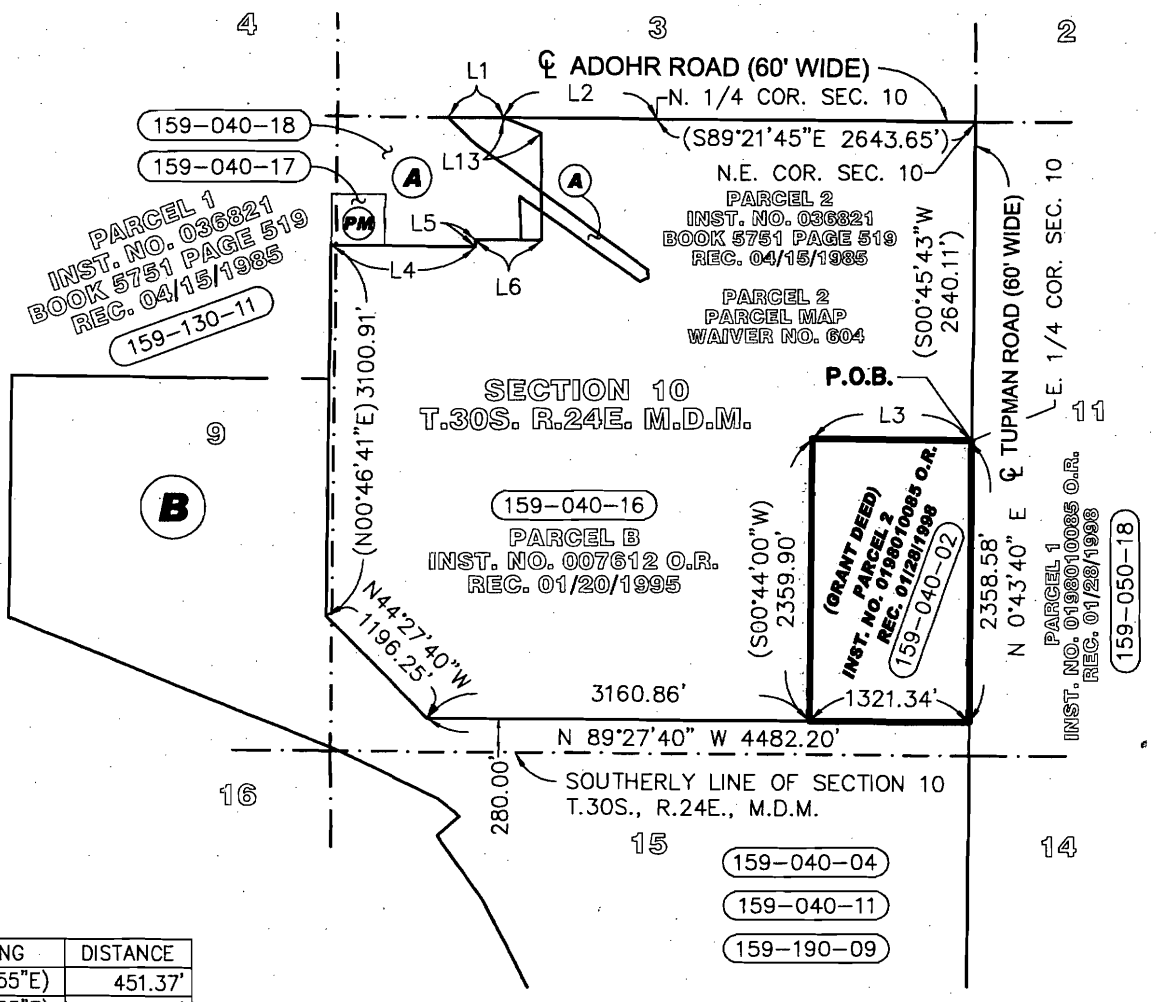
This legal description has been prepared by me or under my direction:

David E. Woolley, P.L.S. 7304 Dated: 12/19/12

This document is preliminary unless signed.

Pursuant to California Business and Professions Code § 8761 the recorded document shall bear the signature and seal hereon.

David E. Woolley, Professional Land Surveyor 7304
D. Woolley & Associates, Inc., 2832 Walnut Avenue, Suite A, Tustin, California 92780
Phone: 714-734-8462 FAX: 714-508-7521
dave@dwoolley.com



LAND AREA

71.558 ACRES

LINE TABLE

LINE	BEARING	DISTANCE
L1	(S89°21'55"E)	451.37'
L2	(S89°21'55"E)	1263.39'
L3	(N89°24'15"W)	(1321.11')
L4	(S89°14'01"E)	(1205.04')
L5	(N00°23'43"W)	(56.24')
L6	(S89°51'55"E)	539.75'

LEGEND

- (A) PARCEL A OF INST. NO. 007612 O.R., REC. 01/20/1995
- (B) PARCEL B OF INST. NO. 007612 O.R., REC. 01/20/1995
- (PM) PARCEL MAP NO. 10341, P.M.B. 49/7-8
- 10 SECTIONAL NUMBER OF T30S, R24E, M.D.M.
- (159-040-02) ASSESSORS PARCEL NUMBER
- LAND USE BOUNDARY LINE
- PROPERTY LINE
- SECTION LINE

RECORD REFERENCE

( ) INDICATES RECORD DATA PER CERTIFICATE OF COMPLIANCE, REC. 01/20/1995 AS INST. NO. 007612 O.R.

0' 800' 1600'

SCALE: 1" = 1600'

PROFESSIONAL LAND SURVEYOR
DAVID E. WOOLLEY
No. 7304
STATE OF CALIFORNIA

Section 10, T30S, R24E, Mount Diablo Meridian
County of Kern, State of California

HECA PROJECT

EXHIBIT "B", ATTACHMENT "A"
FOR CANCELLATION OF A LAND USE CONTRACT

D. Woolley & Associates
2832 Walnut Avenue, Suite A
Tustin, California 92780
(714) 734-8462 www.dwoolley.com

Scale:	1' = 1600'
Date:	11/28/12
Drafted:	GFL
Reviewed:	DEW
Task No.	DWA-9256
Sheet:	1 of 1

Exhibit "C"

REASONS FOR WHICH THE PROPOSED CANCELLATION IS BEING REQUESTED (GOV. CODE, § 51282)

Hydrogen Energy California, LLC (HECA LLC) is requesting cancellation of the Williamson Act contract restrictions over a 71.558-acre parcel (APN No. 159-040-02) in order to facilitate construction of Hydrogen Energy California, an Integrated Gasification Combined-Cycle (IGCC) electrical power generating facility (referred to herein as HECA or the Project) on a 453-acre site (Project Site). The Project Site is currently owned by Hydrogen Energy International, LLC, a Delaware limited liability company (Owner). HECA LLC has an option to purchase the Project Site from the Owner along with 653 additional acres adjacent to the Project Site (Controlled Area).

I. Project Description

The Project will be a state-of-the-art facility that will produce electricity and other useful products. The Project will gasify a coal and petroleum coke (petcoke) fuel blend to produce synthesis gas (syngas). Syngas produced via gasification will be purified to hydrogen-rich fuel, which will be used to generate low-carbon baseload electricity in a Combined Cycle Power Block, low-carbon nitrogen-based fertilizer in an integrated Manufacturing Complex, and carbon dioxide (CO_2) for use in enhanced oil recovery (EOR).

The power and fertilizer produced by the Project have a lower carbon footprint than power and similar products traditionally produced from fossil fuels. This low-carbon footprint is accomplished by capturing approximately 90 percent of the CO_2 in the syngas and transporting the CO_2 off-site for use in EOR, which will result in sequestration (storage) of the CO_2 in a secure geologic formation. CO_2 will be transported for use in EOR in the adjacent Elk Hills Oil Field (EHOF), which is owned and operated by Occidental of Elk Hills, Inc. (OEHI). The OEHI EOR Project will be separately permitted by OEHI through the Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR).

Major components located on the Project Site will include:

- **Solids handling, gasification, and gas treatment:**
  - Feedstock delivery, handling, and storage
  - Gasification Unit
  - Sour Shift/LTGC/Mercury Removal units
  - AGR Unit
  - SRU/Tail Gas Compression
  - CO_2 compression
- **Power generation:**
  - Combined Cycle Power Block equipment
  - Electrical equipment and systems

- **Manufacturing Complex:**
  - PSA Unit
  - Ammonia Synthesis Unit
  - CO_2 compression and purification (for urea production)
  - Urea Unit
  - Urea Pastillation Unit
  - UAN Complex (includes Nitric Acid Unit, Ammonium Nitrate Unit, and Urea Ammonium Nitrate Unit)
- **Supporting process systems:**
  - Natural gas fuel systems
  - ASU
  - Sour water treatment
  - Wastewater treatment for process and plant wastewater streams
  - Raw water treatment plant for process water
  - Other plant systems (i.e., heat rejection systems, auxiliary boiler, flares, emergency engines, fire protection, plant instrumentation, and air emission monitoring systems)

Highlights of the Project are as follows:

- The feedstocks will be gasified to produce syngas that will be further processed and cleaned in the Gasification Block to produce hydrogen-rich fuel.

- Approximately 90 percent of the carbon in the raw syngas will be captured in a high-purity CO_2 stream during steady-state operation.

- High purity CO_2 will be compressed and transported by pipeline to the EHOF for injection into deep underground hydrocarbon reservoirs for CO_2 EOR.

- The Combined Cycle Power Block will generate approximately 405 megawatts (MW) of gross power and will provide a nominal 300 MW of low-carbon baseload electricity to the grid during operations, feeding major load sources.

- An integrated Manufacturing Complex will produce approximately 1 million tons per year of low-carbon fertilizer to be used in agricultural applications.

- The power and fertilizer produced by the Project will have a significantly lower carbon emission profile relative to similar power and products traditionally generated from fossil fuels, such as natural gas or coal. Natural gas is the fuel source predominantly used for power generation in California.

- The process water source for the Project will be brackish groundwater from the Buena Vista Water Storage District (BVWSD) Brackish Groundwater Remediation Project. The water will be supplied via an approximately 15-mile pipeline from northwest of the Project Site by BVWSD and will be treated on site to meet Project specifications. Potable water will be supplied by West Kern Water District (WKWD) for drinking and sanitary purposes.

- There will be no direct surface water discharge of industrial wastewater or storm water. Process wastewater will be treated on site and recycled for reuse within the Project. Other wastewaters (e.g., from cooling tower blowdown and the wastewater treatment unit) will be

collected and directed to on-site zero liquid discharge (ZLD) unit. Water recovered by the ZLD unit is recycled for reuse within the facility.

- The Project is designed with state-of-the-art emission control technology to achieve minimal air emissions through the use of Best Available Control Technology (BACT). The Project is designed to avoid flaring during steady-state operation, and to minimize flaring during startup and shut-down operations.

- Project greenhouse gas (GHG) emissions (e.g., CO_2) will be reduced through carbon capture and CO_2 EOR, which will result in sequestration.

- Promoting energy security by converting abundant and inexpensive solid fuels – coal and petcoke – to clean hydrogen fuel to produce electricity and other useful products.

III. Project History and Background

The California Energy Commission (CEC) is responsible for reviewing and approving the Project under the Warren–Alquist Act (Pub. Resources Code, §§ 25500 *et seq.*). HECA LLC submitted its initial Application for Certification (AFC) on July 31, 2008, which proposed the Project on a different site. HECA LLC subsequently decided to relocate the Project when it discovered the existence of sensitive biological resources at the original site. A Revised AFC was submitted on May 28, 2009 for a new project site, and deemed data adequate on August 26, 2009.

On June 29, 2010, the Kern County Board of Supervisors adopted Resolution 2010-168, approving the tentative cancellation of the Williamson Act contracts on approximately 491 acres, which included the 473 acres comprising the former project site boundaries, and 18 acres of perimeter land outside of the project footprint. In approving the tentative cancellation, the Board of Supervisors determined that the cancellation was in the public interest, pursuant to section 51282(a)(2) of the Government Code. The tentative cancellation was found statutorily exempt from CEQA pursuant to Public Resources Code section 21080(b)(6) and section 15271 of the CEQA Guidelines (14 Cal. Code Regs., § 15271), which exempt early actions related to thermal power plants if an environmental document covering the actions will subsequently be prepared by a regulatory agency.

A Certificate of Tentative Cancellation was recorded on July 14, 2010. Additionally, a letter from the California Department of Conservation (DOC) dated May 27, 2010 states that DOC has no objection to the approval of the cancellation application by the Kern County Board of Supervisors. The Williamson Act restrictions over the tentatively cancelled acreage continue to remain in place until the conditions set forth in the Certificate of Tentative Cancellation are satisfied, including payment of the assessed cancellation fee, and recording of the final Certificate of Cancellation.

In September 2011, SCS Energy California LLC acquired 100 percent ownership of HECA LLC and modified the Project design to ensure its economic viability and to better serve market needs, while continuing to adhere to the strictest environmental standards. One of the modifications was a change to the Project Site boundaries to include some areas previously within the Controlled Area and to exclude other areas that were previously part of the Project Site. As depicted on Exhibit "E" to this application, the current Project Site and Controlled Area are now 453 acres and 653 acres, respectively, rather than the 473 and 628 acres that were presented in the 2009 Revised AFC. On May 3, 2012 HECA LLC filed an AFC Amendment with

the CEC which describes and analyzes the changes to the Project design, and supersedes previous AFC materials.

As a portion of the new Project Site remains encumbered by Williamson Act contract restrictions, to accommodate the Project HECA LLC is submitting this petition to cancel the Williamson Act contract restrictions over an additional 71.558-acre parcel (APN No. 159-040-02) as described and depicted in Exhibit "B".

Exhibit "D"

STATEMENT INDICATING WHY THE PROPOSED CANCELLATION COMPLIES WITH GOVERNMENT CODE SECTION 51282

The proposed cancellation complies with the requirements of Government Code section 51282, which governs County approvals of cancellation requests. Specifically, the proposed cancellation is in the public interest, in accordance with Government Code section 51282(a)(2), because other public concerns substantially outweigh the objectives of the Williamson Act (Gov. Code, § 51282(c)(1)), and because there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land (Gov. Code, § 51282(c)(2).)

I. The Proposed Cancellation Is In The Public Interest (Gov. Code, § 51282(a)(2))

A. Other public concerns substantially outweigh the objectives of the Williamson Act (Gov. Code, § 51282(c)(1))

The public concerns of energy supply, energy security, global climate change, water supply, hydrogen infrastructure, fertilizer supply and the economy substantially outweigh the objectives of the Williamson Act. The Project will demonstrate a first of its kind combination of proven technologies at commercial scale that can provide baseload low-carbon power that will make an essential contribution to addressing each of these public concerns and provide numerous public benefits at the local, state, regional, national, and global levels. Furthermore, the Project's production of low-carbon energy and its associated benefits may serve as a model to be implemented elsewhere in the world. As such, the finding set forth in Government Code section 51282(c)(1) is satisfied.

As described by the Department of Energy (DOE):

"The Project will be among the cleanest of any commercial solid fuel power plant built or under construction and will significantly exceed the emission reduction targets for 2020 established under the Energy Policy Act of 2005. In addition, emissions from the Project plant will be well below the California regulation requiring baseload plants to emit less greenhouse gases than comparably-sized natural gas combined cycle power plants. The CO_2 captured by the Project will enable geologic storage at a rate of approximately 3 million tons of CO_2 per year and will increase domestic oil production (DOE, 2011)."

Further, according to the DOE:

"A need exists to further develop carbon management technologies that capture and store or beneficially reuse CO_2 that would otherwise be emitted into the atmosphere from coal-based electric power generating facilities. Carbon capture and storage (CCS) technologies offer great potential for reducing CO_2 emissions and mitigating global climate change, while minimizing the economic impacts of

the solution. Once demonstrated, the technologies can be readily considered in the commercial marketplace by the electric power industry." (DOE, 2011)

Among the many public interests the Project will advance at the local, statewide, regional, national, and global levels, are the following:

- **Supplying Low-Carbon Electricity.** The California Energy Commission (CEC) estimates that the State will need to add over 9,000 MW of capacity between 2008 and 2018 to meet demand (CEC, 2007). The Project will meet California's increasing power demands by using hydrogen as a fuel source for electricity, thus providing a new low-carbon alternative source of energy. It will support a reliable power grid by providing baseload, dispatchable power to help back up intermittent renewable power sources, an essential component to meeting California's greenhouse gas-reduction goals for 2020 and beyond. Specifically, the Project will provide approximately 300 MW of new, low-carbon baseload electric-generating capacity, supplying power for over 160,000 homes. The Project has been awarded federal funds by the Department of Energy.

- **Capturing Green House Gas Emissions.** The Project will achieve approximately 90 percent CO_2 capture efficiency and prevent the release of approximately 3 million tons (roughly equivalent to the carbon dioxide output of 500,000 automobiles) per year of greenhouse gases to the atmosphere by sequestering them underground. Existing conventional power plants release carbon dioxide into the atmosphere, rather than capturing and using them for enhanced oil recovery (EOR). The Project will employ state-of-the-art emission control technology to achieve near-zero sulfur emissions and avoid flaring during steady-state operations. This will help California meet its important greenhouse gas reduction targets as set forth and exemplified by AB 32[1], AB 1925[2], and SB 1368[3]. The Project is also designed to support Executive Order S-3-05, which sets a State target of reducing greenhouse gas emissions to 80 percent below 1990 levels by 2050.

- **Water Supply and Quality.** The Project will help restore a local aquifer by using brackish water that currently threatens local agricultural uses. The Project's use of brackish water is expected to improve local lands for agricultural use by physically lowering the brackish water table and allowing fresh water to penetrate agricultural lands. In doing so, the Project will also conserve fresh water sources by using brackish groundwater for Project water needs. The Project will also eliminate direct surface water discharge of industrial waste water and storm water run off through use of Zero Liquid Discharge (ZLD) technology.

---

[1] Assembly Bill 32 (AB 32) was passed to reduce greenhouse gas emissions to 1990 levels by 2020. AB 32 requires the California Air Resources Board ("CARB") to assign emissions targets to each sector in the California economy, and to develop regulatory and market methods to ensure compliance. The California Public Utilities Commission ("CPUC") and CEC have developed specific proposals to CARB for implementing AB 32 in the electricity sector, including a cap-and-trade program.

[2] Assembly Bill 1925 (AB 1925), a law passed in 2006, required the CEC to provide a report to the California legislature by November 2007 "with recommendations for how the State can develop parameters to accelerate the adoption of cost-effective geologic carbon sequestration strategies." This type of legislation clearly demonstrates California's commitment to supporting and encouraging in-state carbon capture and sequestration technology.

[3] Senate Bill 1368 (SB 1368), passed in 2006, establishes an Emission Performance Standard for greenhouse gas emissions from power plants used to serve baseload power in California, which was set by the CPUC at 1,100 pounds of carbon dioxide per megawatt hour of electricity. The intended effect of SB 1368 is to encourage low-carbon power production. The Project's greenhouse gas emissions will be below this threshold requirement.

- **Protecting Energy Security and Domestic Energy Supplies.** The Project will conserve and reduce stress on domestic energy supplies by using petcoke, an energy source that is currently exported overseas for fuel. Petcoke is a by-product from the oil refining process and is abundantly available. The Project will use petcoke in a new and clean manner by converting it to hydrogen, thus increasing energy diversity at a time when California and the nation are largely dependent on natural gas for power generation. In addition, the Project will produce additional energy from existing California oil fields by injecting CO_2 for EOR, helping California extract millions of barrels of oil each year. Conservation of the domestic energy supply will enhance energy security while at the same time reducing the carbon footprint of California's energy supply that would otherwise be increased by oil imports produced in foreign counties and transported across the ocean.

- **Promoting Hydrogen Infrastructure.** The Project will increase the supply of hydrogen available to support the State's goal of energy independence as expressed in California Executive Order S-7-04, which mandates the development of a hydrogen infrastructure and hydrogen transportation in California. The Project is poised to supplement the quantities of hydrogen necessary for these future energy technologies, and support California's role as a world leader in clean energy.

- **Producing Local Low-Cost, Low Carbon Footprint Fertilizer.** The Project will help reduce the carbon footprint of California's agricultural market by supplying an in-state source of low-carbon fertilizer thereby substantially lowering foreign imports of fertilizer to the United States. Currently, the vast majority of all California nitrogen-based fertilizer feedstocks are imported into the State. Due to these transportation costs, California nitrogen-based fertilizers are priced 20 to 30 percent higher than in other United States regions. Therefore, the presence of a nitrogen-based fertilizer producer is likely to benefit California consumers through increased competition and the lowering of transportation costs.

- **Stimulating the Local and California Economy.** The Project will boost the local and California economy with an estimated 2,500 jobs associated with construction and approximately 200 full-time permanent positions associated with Project operations. In addition, estimated indirect and induced effects of construction that will occur within Kern County could result in more than 4,000 jobs. This will represent a long-term economic benefit to Kern County.

Given these significant public concerns that will be advanced by the Project through its numerous public benefits, substantial evidence supports the finding set forth in Government Code section 51282(c)(1) that "other public concerns substantially outweigh the objects of the Williamson Act."

B. <u>There is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put (Gov. Code, § 51282(c)(2))</u>

The Project Site is located in a sparsely populated agricultural area near the Elk Hills Oil Field. The Project Site is contiguous land bounded by Adohr Road to the north, Tupman Road to the east, an irrigation canal to the south, and the Dairy Road right-of-way to the west. There are only a few homes within a mile of the Project Site and the unincorporated community of Tupman is 1.5 miles from the site. Primary access will be from Interstate 5, to Stockdale Highway west, to Dairy Road then south to Adohr Road. The topography of the Project Site is flat. The geology at the Project Site has been determined suitable for power plant construction.

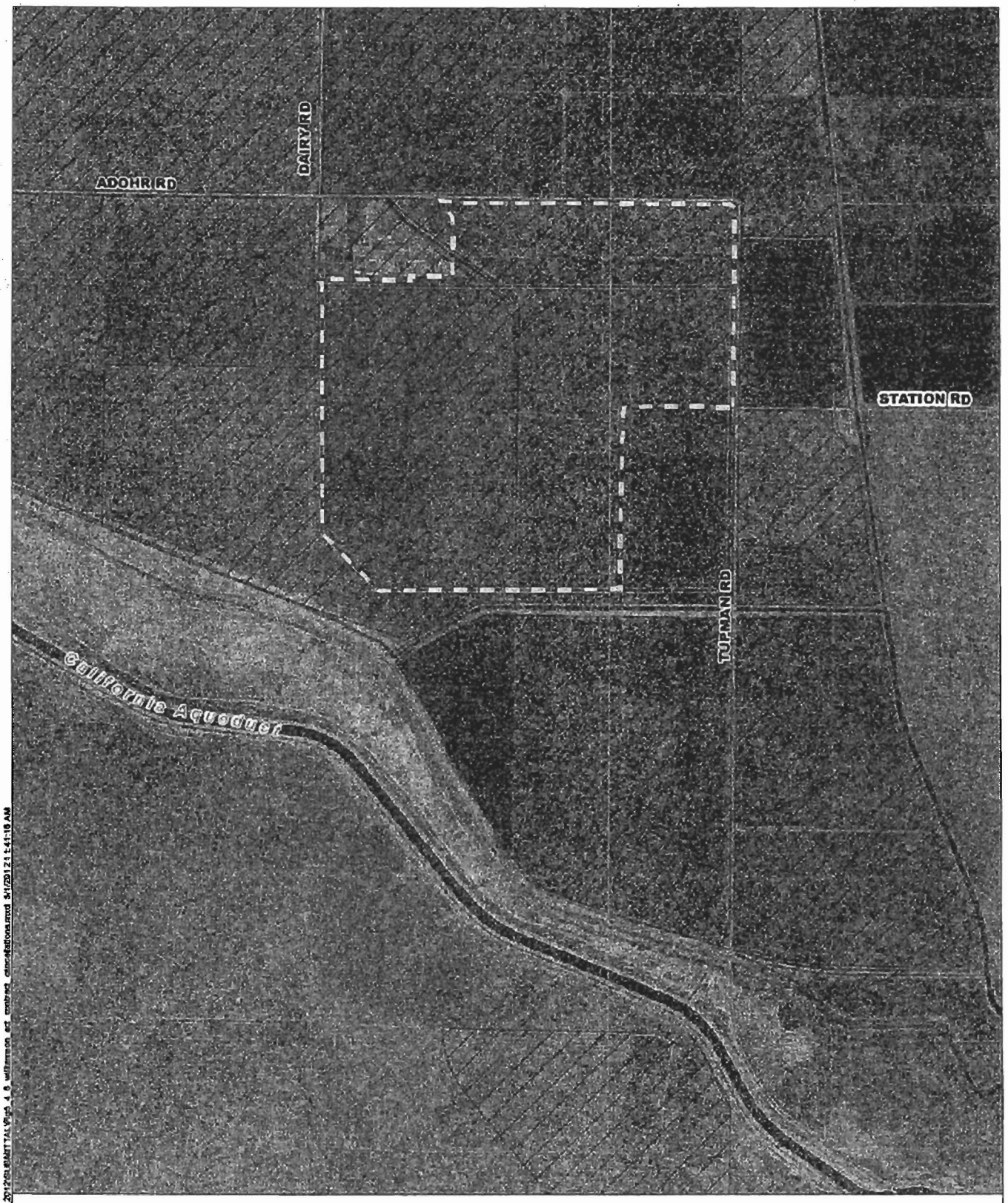
The Project Site was selected based upon, among other things, the available land, proximity to a carbon dioxide storage reservoir, and the existing natural gas transportation, electric transmission, and brackish groundwater supply infrastructure that could support the proposed 300 MW of baseload low-carbon power generation. The Project Site was also chosen for its reasonable proximity to Interstate 5, State Routes (SR) 58 and 119, and Stockdale Highway. The geology in the vicinity of the Project Site makes it one of the premier locations in the United States for CO_2 EOR and sequestration.

There is no noncontracted land proximate to the Project Site which is both available and suitable for the Project. With regard to availability, according to County Planning Department records (including the current Kern County Williamson Act Map), virtually all land in the proximity of the Project Site is either under Williamson Act contract or in the Tule Elk Reserve State Park.

With regard to suitability, as concluded in the 2012 and 2009 Revised Applications for Certification (AFC) for the Project filed with the CEC, there are no alternative sites that meet the highly specific site selection requirements of the Project discussed above. Prior to selecting the Project Site, HECA LLC submitted its initial AFC (08-AFC-8) to the CEC on July 30, 2008, which proposed the Project on a different site. HECA LLC subsequently decided to move the Project when it discovered the existence of previously undisclosed sensitive biological resources at the prior site. As a result, HECA LLC was required to conduct an alternative site analysis to identify an alternative site for the Project, which ultimately identified the general area of the Project Site. In the process, several possible alternative sites in the vicinity of the unincorporated communities of Buttonwillow and Tupman were considered. However, the alternative sites were rejected for various reasons, including (1) topography, (2) distance from the proposed carbon dioxide custody transfer point, (3) lengths of linear facilities, (4) sensitive environmental receptors and/or (5) land availability. In addition, each of these sites (with one exception), like the Project Site, were contracted under the Williamson Act.

In summary, no alternative sites were identified on either contracted or noncontracted land that were both available and suitable for the Project. As such, the finding set forth Government Code section 51282(c)(2) that "[t]here is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put" is satisfied.

EXHIBIT "E"



Project Site

Tentatively Cancelled Williamson Act Contracted Land[1]

Williamson Act Contracted Land

Note:
1. The Kern County Board of Supervisors adopted Resolution 2010-168 on June 29, 2010, approving the tentative cancellation of 491 acres of Williamson Act contracted lands.

N

0 750 1,500 FEET

HECA WILLIAMSON ACT CONTRACT CANCELLATIONS

April 2012 Hydrogen Energy California (HECA)
28068052 Kern County, California

URS

FIGURE 5.4-6

ed U:\GIS\HECA\Projects\HECA_2012\01\DRAFT\AL\Fig5_4_6_williamson_act_contract_cancellations.mxd 5/1/2012 1:41:18 AM

Legal Description

Final Legal

LEGAL DESCRIPTION

EXHIBIT "B"

FOR CANCELLATION OF A LAND USE CONTRACT

That portion of the East Half of the Southeast Quarter of Section 10, Township 30 South, Range 24 East, Mount Diablo Meridian, described as follows:

Commencing at the Point of Beginning (P.O.B.) being the east quarter corner of said Section 10; Thence North 89°24'15" West 1321.11 feet (L3); Thence South 00°44'00" West 2359.90 feet to a point on a line parallel with and 280.00 feet northerly of the southerly line of said Section 10; Thence along said parallel line South 89°27'40" East, 1321.34 feet to a point on the east line of said Section 10; Thence along said east line North 00°43'40" East, 2358.58 feet to said Point of Beginning (P.O.B.)

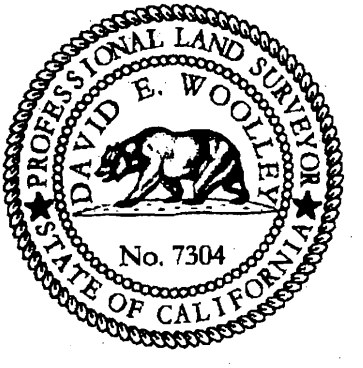
Contains 71.558 acres.

Subject to all matters of record, if any.

See Exhibit "B", Attachment "A" attached hereto and made a part hereof.

This legal description is not intended for use in the division and /or conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description has been prepared by me or under my direction:

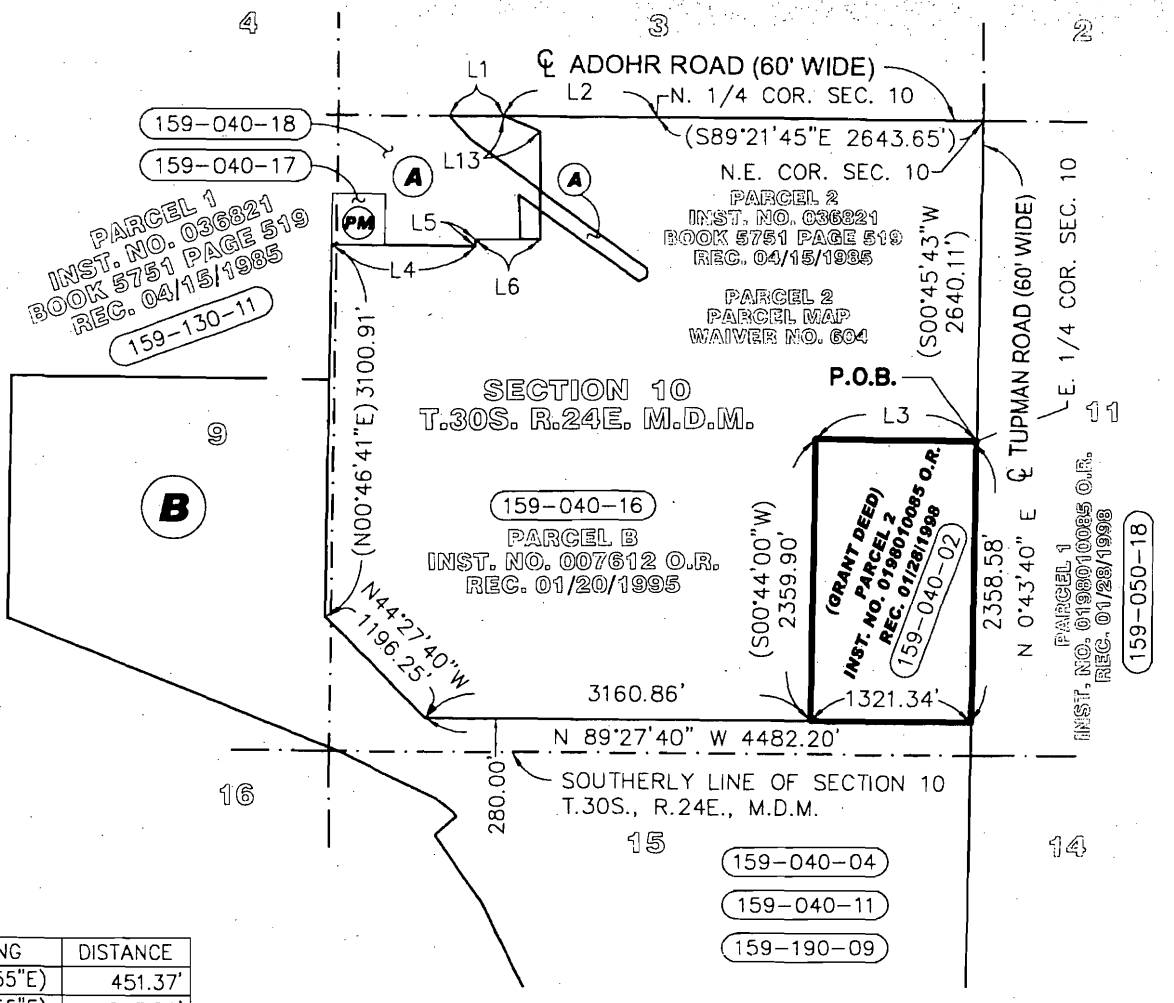


David E. Woolley, P.L.S. 7304 Dated: 12/19/12

This document is preliminary unless signed.

Pursuant to California Business and Professions Code § 8761 the recorded document shall bear the signature and seal hereon.

David E. Woolley, Professional Land Surveyor 7304
D. Woolley & Associates, Inc., 2832 Walnut Avenue, Suite A, Tustin, California 92780
Phone: 714-734-8462 FAX: 714-508-7521
dave@dwoolley.com



LAND AREA

71.558 ACRES

LINE TABLE

LINE	BEARING	DISTANCE
L1	(S89°21'55"E)	451.37'
L2	(S89°21'55"E)	1263.39'
L3	(N89°24'15"W)	(1321.11')
L4	(S89°14'01"E)	(1205.04')
L5	(N00°23'43"W)	(56.24')
L6	(S89°51'55"E)	539.75'

RECORD REFERENCE

( ) INDICATES RECORD DATA PER CERTIFICATE OF COMPLIANCE, REC. 01/20/1995 AS INST. NO. 007612 O.R.

LEGEND

- (A) PARCEL A OF INST. NO. 007612 O.R., REC. 01/20/1995
- (B) PARCEL B OF INST. NO. 007612 O.R., REC. 01/20/1995
- (PM) PARCEL MAP NO. 10341, P.M.B. 49/7-8
- 10 SECTIONAL NUMBER OF T30S, R24E, M.D.M.
- 159-040-02 ASSESSORS PARCEL NUMBER
- LAND USE BOUNDARY LINE
- PROPERTY LINE
- SECTION LINE

0' 800' 1600'

SCALE: 1" = 1600'

PROFESSIONAL LAND SURVEYOR
DAVID E. WOOLLEY
No. 7304
STATE OF CALIFORNIA

Section 10, T30S, R24E, Mount Diablo Meridian County of Kern, State of California	**HECA PROJECT**	Scale:	1" = 1600'
		Date:	11/28/12
D. Woolley & Associates 2832 Walnut Avenue, Suite A Tustin, California 92780 (714) 734-8462 www.dwoolley.com	**EXHIBIT "B", ATTACHMENT "A"** FOR CANCELLATION OF A LAND USE CONTRACT	Drafted:	GFL
		Reviewed:	DEW
		Task No.	DWA-9256
		Sheet:	1 of 1

Land Use Contract

BOOK 4250 PAGE 496

RECORDED AT REQUEST OF:
AND RETURN TO:
CLERK OF THE BOARD
CIVIC CENTER - ROOM 600
BAKERSFIELD, CALIF. - 93301

FEB-28-69 12609 •4200 • D T6 FBk 6.80

Recorded By RAY A. VERCAMMEN, Kern Co. Recorder

LAND USE CONTRACT

(Pursuant to California Land Conservation Act of)
(1965 and Open-Space Land Valuation Law of 1967)

THIS CONTRACT, made and entered into this 27TH day of FEBRUARY, 1969, by and between the COUNTY OF KERN, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and 6 32 MARTIN SNOW, JR., hereinafter referred to as "OWNER",

W I T N E S S E T H :

WHEREAS, Owner is the owner of certain real property situate in the County of Kern, State of California, which is presently devoted to agricultural use, which property is particularly identified and described in Exhibit "A" attached hereto and by this reference incorporated herein and made a part of this Contract; and

WHEREAS, said property is classified as "prime agricultural land" as defined in Section 51201(c) of the Government Code and is located in Agricultural Preserve number 3 heretofore established by Resolution of the Board of Supervisors of the County of Kern, which Preserve contains not less than 100 acres; and

WHEREAS, both Owner and County desire to limit the use of said property to agricultural uses in order to continue in existence a maximum of prime agricultural lands for the production of food and fiber and to discourage premature and unnecessary conversion of such land from agricultural uses, recognizing that such land has definite public value as open space, and that the preservation of such land in agricultural production constitutes an important physical, social, esthetic and economic asset to County and is necessary for the maintenance of the agricultural economy of County and the State of California, and Owner desires to take advantage of the provisions of Chapter 1711, Statutes of 1967; and

WHEREAS, the placement of said property in an Agricultural Preserve

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2-28-69

and the execution and approval of this Contract is deemed to be a determination by all parties concerned that the highest and best use of the property during the term of this Contract and all renewals thereof is for the production of agricultural commodities for commercial purposes;

NOW, THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. This Contract is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code commencing with Section 51200) and is subject to all the provisions thereof and by this reference the provisions of said Act are incorporated herein and made a part hereof.

2. During the term of this Contract or any renewals thereof the above-described land shall not be used for any purpose other than the production of agricultural commodities for commercial purposes and compatible uses in accordance with the land use restrictions included in the Resolution prescribing uniform rules for the administration of the Agricultural Preserve within which the land is located, which uniform rules and land use restrictions are by this reference incorporated in and made a part of this Contract. No structures shall be erected upon said land except such structures as may be directly related to authorized uses of the land. Pursuant to the provisions of Section 423 of the Revenue and Taxation Code (Chapter 1711, Statutes of 1967) it is understood by the parties that the uses of the lands which are the subject of this Contract contemplated by County and legally available to Owner are those uses herein specified to which uses Owner agrees to devote the said land during the period of this Contract.

3. During the term of this Contract, and extensions thereof, the Board of Supervisors of County may add to those agricultural and compatible uses specified in the Resolution prescribing uniform rules for the administration of the Preserve within which the land is located

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2.28.69

or otherwise modify said uniform rules and land use restrictions after calling a hearing thereon and publishing notice pursuant to Section 6061 or the Government Code; provided, however, said Board shall not eliminate a permitted compatible use during the term of this Contract without the written consent of Owner. It is understood that neither the provisions of this Contract nor of any Resolution defining the land uses permitted hereunder can limit or supersede the planning and zoning powers of County.

4. Upon the filing of any action in eminent domain for the condemnation of the fee title of any land described herein, or of less than a fee interest which will prevent said land being used for any authorized agricultural or compatible use, or upon the acquisition in lieu of condemnation of the fee title of any land described herein or such acquisition of less than a fee interest which will prevent the land being used for any authorized use, this Contract is null and void upon such filing or acquisition as to the portion of the land described herein so taken or acquired, and also as to such portion of the herein-described land as is severed by such taking or acquisition in such a manner as to prevent continued use of the severed portion for authorized agricultural or compatible uses, and the condemning agency shall proceed as if this Contract never existed.

5. This Contract shall be effective as of the 28th day of February next succeeding the date which is first mentioned herein, and shall remain in effect for an initial term of ten (10) years therefrom and during renewals of this Contract. Each 28th day of February of each year during which this contract shall be in effect shall be deemed to be the annual renewal date of this Contract, as mentioned in Sections 51244 and 51245 of the Government Code. On said annual renewal date a year shall be added automatically to the initial term aforementioned unless notice of nonrenewal is given as provided in Section 51245 of the Government Code.

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2.28.69

6. Owner hereby waives any obligation of County to make any payments to Owner under this Contract and Owner shall not receive any payment from County in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of the within Contract is the substantial public benefit to be derived therefrom and the advantage which will accrue to Owner as a result of the effect on the method of determining the assessed value of land described herein and any reduction therein due to the imposition of the limitations on its use contained herein.

7. The within Contract shall "run with the land" described herein, and shall be binding upon and inure to the benefit of the heirs, executors, administrators, trustees, successors and assigns of the parties hereto.

8. This Contract may not be cancelled by either Owner or County acting unilaterally and may only be cancelled on the mutual agreement of all parties to the Contract, and the State, proceeding in accordance with the provisions of Section 51280 through Section 51286 of the Government Code.

9. It is agreed that removal of any land under this Contract from an Agricultural Preserve, either by change of boundaries of the preserve or disestablishment of the preserve, shall be deemed the equivalent of a notice of nonrenewal by County for purposes of Section 422 of the Revenue and Taxation Code.

10. Notices to be given to Owner pursuant to this Contract may be sent by U. S. Mail addressed to Owner at the address shown below Owner's signature hereinbelow. Notices to County may be sent by U. S. Mail addressed to Board of Supervisors, County of Kern, Kern County Civic Center, 1415 Truxtun Avenue, Bakersfield, California.

By the means mentioned in this paragraph a party may give notice of a new address, after which notices to be given to such party shall be sent by U. S. Mail addressed to such party at such new address.

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2.28.69

IN WITNESS WHEREOF, the parties hereto have executed the within Contract the day and year first above written.

COUNTY OF KERN

By _____
Chairman, Board of Supervisors

ATTEST:
Vera K. Gibson, County
Clerk and ex-Officio Clerk
of the Board of Supervisors

By _____
Deputy

OWNER

_____

_____

Address: RTE 1, Box 41

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2-28-69

BOOK 4250 PAGE 501

ACKNOWLEDGMENTS

County of Kern

STATE OF CALIFORNIA)
COUNTY OF KERN) ss

On this _____ day of FEB 28 1969, in the year 19___, before me, E. F. Kimball, Deputy Clerk, Board of Supervisors of the County of Kern, personally appeared JOHN HOLT, known to me to be the Chairman of the Board of Supervisors of the County of Kern, and known to me to be the person who executed the within instrument on behalf of said County, and acknowledged to me that such County executed the same.

WITNESS my hand and Official Seal of the Kern County Board of Supervisors.

VERA K. GIBSON
Clerk, Board of Supervisors
By E. F. Kimball
Deputy Clerk

Owner(s)

STATE OF CALIFORNIA)
COUNTY OF KERN) ss

On this 27th day of February, in the year 1969, before me, the undersigned, a Notary Public in and for the State of California, with principal office in the County of Kern, duly commissioned and sworn, personally appeared Martin Snow, Jr. known to me to be the person described in, whose name is, subscribed to and who executed the within instrument, and acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Marella Williams
Notary Public in and for the
State of California.

MARELLA WILLIAMS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
KERN COUNTY
Commission Exp. Aug. 23, 1972

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2.28.69

BOOK 4250 PAGE 502

EXHIBIT "A"

Identification and Description of Real Property

+2.45 ac Cavalier Alg

PARCEL 159-050-04-01 95 ACRES
S ½ LYING W'LY OF C/L OF EASTSIDE CANAL, SECS 10/11 T30 R24

PARCEL 159-040-02 73 ACRES
E ½ OF SE ¼ SECS 10/11 T30 R24

FILED
BOOK
PAGE
FEB 23 11 15 AM
BY

126

2.28.69

Kern County Assessor Memo

JAMES W. FITCH
ASSESSOR-RECORDER

ANTHONY ANSOLABEHERE
Assistant Assessor

JEANI SMITH
Assistant Recorder

ASSESSOR'S OFFICE
Telephone (661) 868-3485
1115 Truxtun Avenue
Bakersfield, CA 93301-4639

RECORDER'S OFFICE
Telephone (661) 868-6400
1655 Chester Avenue
Bakersfield, CA 93301-5232

February 5, 2013

Board of Supervisors
Administration Building
1115 Truxtun Avenue
Bakersfield, California 93301

Re: Cancellation of Land Use Contract
Applicant: Hydrogen Energy International LLC
Assessor's Parcel Number: 159-040-02 (71.56 Acres)
Williamson Act Cancellation: 13-01 PP12328

Honorable Board:

In accordance with provisions of Section 51283 of the Government Code, the Assessor certifies the fair market value and cancellation fee for the above property or a portion thereof.

CANCELLATION VALUE	CANCELLATION FEE
$644,040	$80,505

The Department of Conservation and or owner may request a formal review from the Assessor of the certified value as specified in Section 51203 of the Government Code. Any request must be made within 45 days of the date of this notice.

Sincerely,

JAMES W. FITCH
Kern County Assessor-Recorder

Jerel E. Hansen, Senior Appraiser
Agricultural Division

cc: Department of Conservation
cc: Hydrogen Energy California LLC
cc: Manatt Phelps & Phillips, LLP
cc: County Planning Department

Previously Approved Cancellation

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF KERN, STATE OF CALIFORNIA

In the matter of: Resolution No. 2010-168

TENTATIVE CANCELLATION OF LAND USE RESTRICTIONS, LAND CONSERVATION ACT (WILLIAMSON ACT) (GOV. CODE § 51282); (HYDROGEN ENERGY CALIFORNIA, LLC by MANATT, PHELPS, AND PHILLIPS, LLP)

I, **KATHLEEN KRAUSE,** Clerk of the Board of Supervisors of the County of Kern, State of California, do hereby certify that the following resolution, on motion of Supervisor Maben, seconded by Supervisor Rubio, was duly passed and adopted by said Board of Supervisors at an official meeting hereof this 29th day of June, 2010, by the following vote, to wit:

AYES: McQuiston, Maben, Maggard, Watson, Rubio

NOES: None

ABSENT: None

KATHLEEN KRAUSE
Clerk of the Board of Supervisors
County of Kern, State of California

Judy A. Denney
Deputy Clerk

BOARD OF SUPERVISORS KERN COUNTY, CA

RESOLUTION

Section 1. WHEREAS:

(a) Hydrogen Energy California, LLC, by Manatt, Phelps, and Phillips, LLP, has filed with this Board a petition for cancellation of contractual land use restrictions contained in a contract recorded on February 26, 1971, in Book 4495, Page 523, which restrictions were entered into under the Land Conservation Act of 1965 (Williamson Act)

#2010-168

on the land herein described, located in Agricultural Preserve No. 3 under authority of Government Code section 51282; and

(b) The parcel of land as to which such cancellation is asked consists of approximately 491 acres, located at the south side of Adohr Road, west of Tupman Road, northwest of Tupman, California; and

(c) The Planning and Community Development Department has investigated possible environmental impacts of the cancellation and found the cancellation to be Statutorily Exempt from the requirements for preparation of environmental documents pursuant to Section 15271 of the State CEQA Guidelines; and

(d) The petitioner asks such cancellation on the grounds or for the purposes following: The proposed cancellation is being sought in order to facilitate approval and construction of an integrated gasification combined cycle power generating facility by the applicant; and

(e) Notice of hearing on said matter has been duly given in accordance with law and section 51284 of the Government Code, including sending a copy of the hearing notice and landowner's petition for cancellation to the Director of Conservation for the State of California, and said hearing has been duly conducted and evidence having been received, and all persons desiring to be heard in said matter having been given an opportunity to be heard; and

(f) No owner of any property located in the County of Kern has protested the proposed cancellation; and

(g) Pursuant to the provisions of section 51283 of the Government Code, the County Assessor has determined the full cash value of the parcel of land with respect to which cancellation is requested, as though it were free of the contractual restriction, and has certified to this Board that the amount thereof is $2,455,750 and that the most recently announced County assessment ratio is 100%, and that the cancellation fee is 12.5% of this value, or $306,969, and has certified that there are no additional deferred taxes under Government Code section 51283; and

(j) Staff has recommended that the cancellation shall not become effective until the California Energy Commission issues a permit following its environmental review for Project Docket No. O8-AFC-8.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Supervisors of the County of Kern, State of California, as follows:

1. This Board finds the facts recited herein are true, further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution, and hereby incorporates and makes all the findings recommended by Staff, whether verbally or in their written reports pertaining hereto.

2. This Board finds and determines that the applicable provisions of the California Environmental Quality Act of 1970, the State CEQA Guidelines and the Kern County Guidelines have been duly observed in conjunction with said hearing and the considerations of this project and all of the previous proceedings related hereto.

3. This Board finds and determines that this project is Statutorily Exempt under Section 15271 of the State CEQA Guidelines.

4. In accordance with subdivision (e) of Government Code section 51282, the petition for cancellation was accompanied by a proposal for a specified alternative use of the land, as mentioned in recital (d) above.

5. Pursuant to the provisions of subdivision (a) (2) of Government Code section 51282, this Board finds and determines that the proposed cancellation is consistent with the purposes of sections 51280 et seq. and further finds and determines:

(a) Other public concerns, which include public concerns of energy supply, energy security, global climate change, water supply, hydrogen infrastructure, substantially outweigh the objectives of the Williamson Act Land Use Contract;

(b) There is no available and suitable proximate noncontracted land for the use proposed on the contracted land and the site was selected based upon the proximity to a carbon dioxide storage reservoir, existing natural gas transportation, electric transmission, and brackish groundwater supply infrastructure that could support the proposed power generation.

As used in this section, "proximate, noncontracted land" means land not restricted by contract pursuant to the Williamson Act, which is sufficiently close to the contracted land that it can serve as a practical alternative for the use which is proposed for the contracted land; "suitable for the proposed use" means that the salient features of the proposed use can be served by land not restricted by contract pursuant to the Williamson Act, whether a single parcel or a combination of contiguous or discontiguous parcels; and "contracted land" means the land subject to the proposed cancellation.

6. This Board does hereby determine that the amount of the cancellation fee which the owner shall pay to the County Treasurer as deferred taxes upon such cancellation, in accordance with paragraph (b) of section 51283 of the Government Code,

is the sum of $306,969.00 and does hereby certify said sum to the County Auditor; and finds and determines there are no additional deferred taxes due under section 51283.1 of the Government Code.

7. Pursuant to the provisions of Government Code section 51283.4, this Board does hereby establish the following conditions and contingencies, and declares that a certificate of cancellation of contract with respect to said parcel of land will be issued and recorded within thirty (30) days after being notified by the landowner that each and all of said conditions and contingencies is satisfied:

(a) Payment in full of the cancellation fee hereinabove mentioned;

(b) Unless said cancellation fee is fully paid, or a certificate of cancellation is issued, within one year from the date of recordation of the certificate of tentative cancellation, such fee shall be recomputed as of the date the landowner notifies this Board that he has satisfied the conditions and contingencies, as provided in subdivision (b) of Government Code section 51283.4, and the landowner shall pay any additional fee arising from such re-computation as a further condition to issuance of a certificate of cancellation; provided, however, that the landowner shall not be entitled to refund of any cancellation fee previously paid even if the recomputed fee is less;

(c) Landowner shall obtain all permits necessary to commence the project of the proposed alternative use, including a permit issued by the California Energy Commission following its environmental review for Project Docket No. O8-AFC-8.

8. Pursuant to subdivision (c) of Government Code section 51283.4, if the landowner has been unable to satisfy the foregoing conditions and contingencies, he shall notify this Board of the particular conditions or contingencies he is unable to satisfy; and within thirty (30) days after receipt of such notice, and upon a determination by this Board that the landowner is unable to satisfy the foregoing conditions and contingencies, this Board shall execute a certificate of withdrawal of said tentative approval of the cancellation fee previously paid.

9. Pursuant to subdivision (a) of Government Code section 51283.4, this Board may, at the request of the landowner, amend the tentatively approved specified alternative use mentioned in paragraph 3 above, if it finds that such amendment is consistent with all findings made pursuant to subdivision (2) of Government Code subsection 51282(a).

10. The real property to which the foregoing tentative cancellation proceedings applies is situated in the County of Kern, State of California, and is described in Exhibit "A" attached hereto and made a part hereof by this reference.

11. The Clerk of this Board shall execute the form of the Certificate of Tentative Cancellation prepared by County Counsel, and cause it to be filed for record, all in accordance with subdivision (a) of Government Code section 51283.4.

12. The Clerk of this Board shall cause a Notice of Exemption as required by CEQA, prepared by County Counsel, to be filed with the County Clerk upon request.

13. The Clerk of this Board shall publish a Notice of Decision as required by Government Code section 51284, and send a copy of the published Notice of Decision to the California State Director of Conservation at 801 "K" Street, Sacramento, California 95814.

14. The Clerk of this Board shall also transmit copies of this Resolution to the following:

(a) Assessor
(b) Auditor-Controller
(c) Treasurer
(d) Director of Planning Department
(e) County Counsel
(f) Hydrogen Energy California, LLC
(g) Manatt, Phelps, and Phillips, LLP

BD/kjw
#194711v2
10.2750

COPIES FURNISHED:
See above
7-13-10

LEGAL DESCRIPTION

EXHIBIT "A"

FOR CANCELLATION OF A LAND USE CONTRACT

Parcel 1:

That portion of Parcel B of Certificate of Compliance, in the County of Kern, State of California, recorded January 20, 1995 as Instrument No. 007612, Official Records of said county, being described as those portions of Sections 9 and 10, Township 30 South, Range 24 East, Mount Diablo Meridian, described as follows:

Commencing at the Point of Beginning (P.O.B.) of said Parcel B, as depicted on Exhibit "B", Attachment "A"; thence along the northerly line of said Parcel B South 89°21'55" East 451.37 feet (L1) to the **True Point of Beginning (T.P.O.B.)**; thence along the northerly and easterly lines of said Parcel B the following five courses:

1) South 89°21'55" East 1263.39 feet (L2) to the north quarter corner of said Section 10;
2) Thence South 89°21'45" East 2643.65 feet to the northeast corner of said Section 10;
3) Thence South 00°45'43" West 2640.11 feet to the east quarter corner of said Section 10;
4) Thence North 89°24'15" West 1321.11 feet (L3);
5) Thence South 00°44'00" West 2359.90 feet to a point on a line parallel with and 280.00 feet northerly of the southerly line of said Section 10;

thence leaving said easterly line of Parcel B North 89°27'40" West 3160.86 feet; thence North 44°27'40" West 1196.25 feet to a point on the southerly prolongation of that certain course described as "North 00°46'41" East 1108.72 feet" in Parcel B of said Certificate of Compliance; thence along said course and its southerly prolongation North 00°46'41" East 3100.91 feet; thence along the southerly line of said Parcel A the following two courses:

6) South 89°14'01" East 1205.04 feet (L4);
7) Thence North 00°23'43" West 56.24 feet (L5);

thence along said southerly line of Parcel A and its easterly prolongation South 89°51'55" East 539.75 feet (L6); thence North 00°00'00" East 233.53 feet (L7) to its intersection with a point on the Southwesterly line of Parcel A described in said Instrument No. 007612 as "North 54°20'18" West, 1215.43 feet" said point of intersection being referred to hereafter as Point "A" for this description;

thence along the southwesterly, southeasterly and northeasterly lines of said Parcel A the following three courses:

8) South 54°20'18" East 998.71 feet (L8);

9) Thence North 64°12'24" East 75.09 feet (L9);

10) Thence North 02°38'35" West 70.34 feet (L10);

thence North 53°45'12' West 1085.95 feet (L11) to its intersection with the northerly prolongation of the aforementioned line described as "North 00°00'00' East 233.53 feet (L7)"; thence along said prolongation North 00°00'00" East 482.28 feet (L12); thence North 67°30'00" West 333.64 feet (L13) to the **True Point of Beginning**.

Contains 488.067 acres.

See Exhibit "B", Attachment "A" attached hereto and made a part hereof.

Parcel 2:

That portion of Parcel A of Certificate of Compliance, in the County of Kern, State of California, recorded January 20, 1995 as Instrument No. 007612, Official Records of said county, being described as those portions of Sections 9 and 10, Township 30 South, Range 24 East, Mount Diablo Meridian, describes as follows:

Beginning at the aforementioned Point "A" as described hereinabove and depicted on Exhibit "B", Attachment "B"; thence along the southwesterly, southeasterly and northeasterly lines of said Parcel A the following three courses:

1) South 54°20'18" East 998.71 feet (L8);

2) Thence North 64°12'24" East 75.09 feet (L9);

3) Thence North 02°38'35" West 70.34 feet (L10);

thence North 53°45'12' West 1085.95 feet (L11) to its intersection with the northerly prolongation of the aforementioned line described as "North 00°00'00' East 233.53 feet (L7)" of Parcel 1 hereinabove described; thence along said prolongation South 00°00'00" West 162.77 (L14) feet to the **Point of Beginning.**

Contains 3.081 acres.

See Exhibit "B", Attachment "B" attached hereto and made a part hereof.

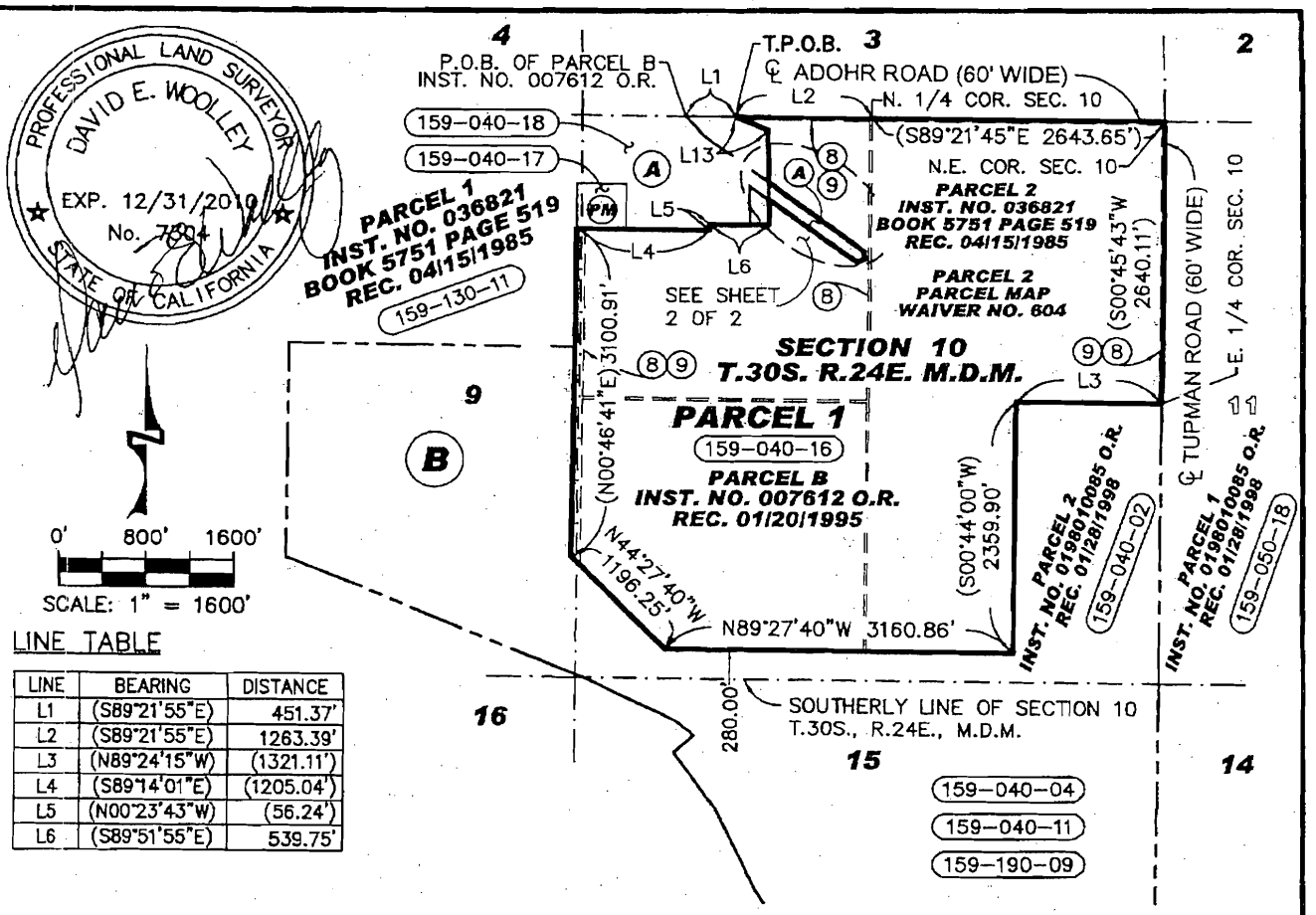
This legal description is not intended for use in the division and /or conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description has been prepared by me or under my direction:

David E. Woolley, P.L.S. 7304

07/12/2010
Date

PROFESSIONAL LAND SURVEYOR
DAVID E. WOOLLEY
EXP 12-31-10
NO. 7304
STATE OF CALIFORNIA



LINE TABLE

LINE	BEARING	DISTANCE
L1	(S89°21'55"E)	451.37'
L2	(S89°21'55"E)	1263.39'
L3	(N89°24'15"W)	(1321.11')
L4	(S89°14'01"E)	(1205.04')
L5	(N00°23'43"W)	(56.24')
L6	(S89°51'55"E)	539.75'

RECORD REFERENCE

( ) INDICATES RECORD DATA PER CERTIFICATE OF COMPLIANCE, REC. 01/20/199 AS INST. NO. 007612 O.R.

LEGEND

(A) PARCEL A OF INST. NO. 007612 O.R., REC. 01/20/1995

(B) PARCEL B OF INST. NO. 007612 O.R., REC. 01/20/1995

(PM) PARCEL MAP NO. 10341, P.M.B. 49/7-8

10 SECTIONAL NUMBER OF T30S, R24E, M.D.M.

(159-040-16) ASSESSORS PARCEL NUMBER

LAND USE BOUNDARY LINE

PROPERTY LINE

SECTION LINE

AFFECTING EASEMENT LINES, SEE EASEMENT NOTES.

EASEMENT NOTES

BY: FIRST AMERICAN TITLE COMPANY
9201 CAMINI MEDIA, SUITE 100
BAKERSFIELD, CA 93311
(661) 617-1468

COMMITMENT NO. 1003-3112060
TITLE OFFICER – TONY DAMO
DATED: JULY 22, 2008

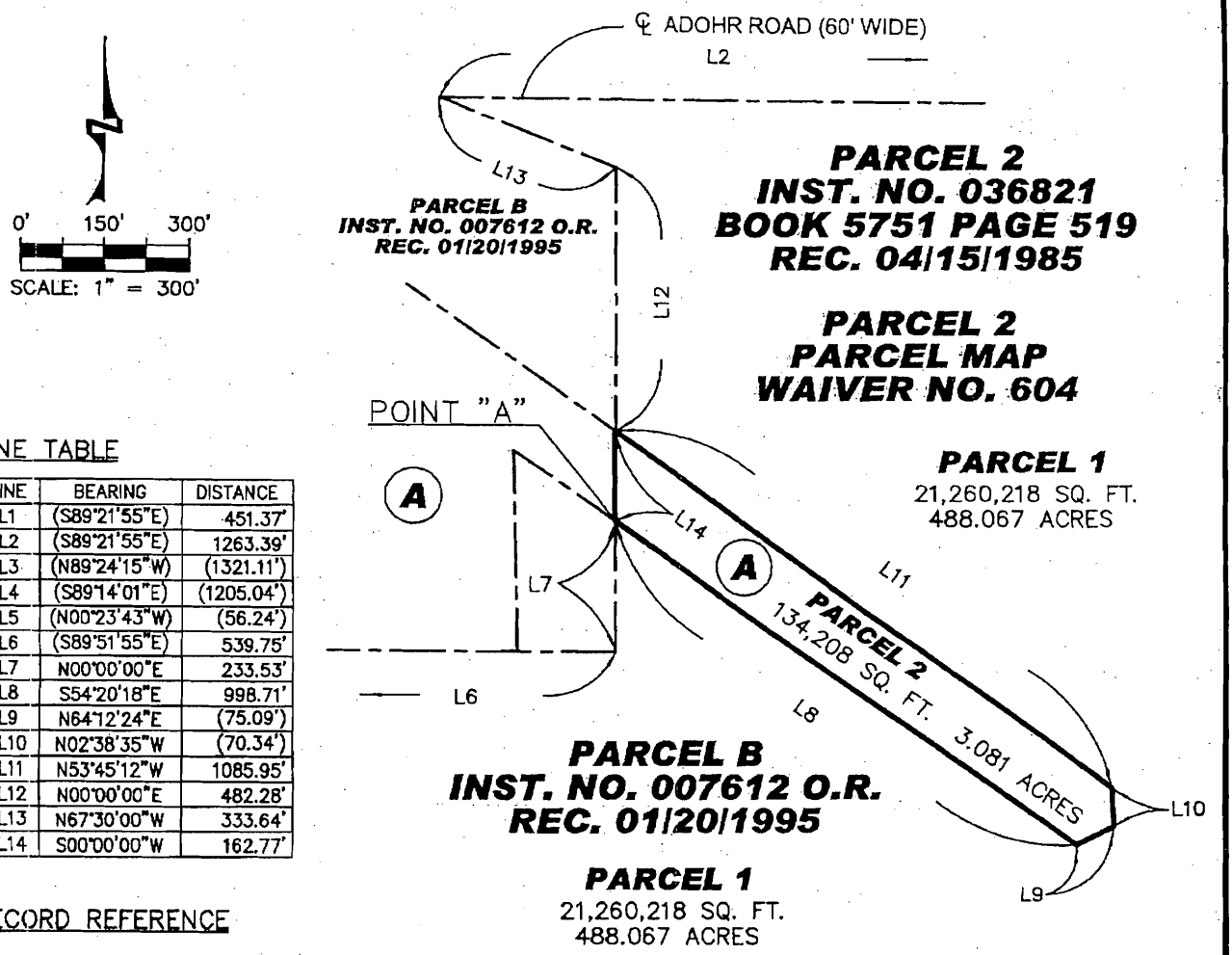
THE FOLLOWING ITEMS WERE FOUND IN SAID COMMITMENT AND ARE REFERENCED ON THIS MAP. PLOTTABLE ITEMS ARE INDICATED HEREON.

(8)– PROPERTY AND PROPERTY RIGHTS IN FAVOR OF MILLER & LUX, INC., A CORPORATION, DATED JULY 30, 1936, RECORDED OCTOBER 10, 1936 IN BOOK 666, PAGE 250, OFFICIAL RECORDS. THIS ITEM AFFECTS THE SUBJECT PROPERTY AND IS PLOTTED HEREON.

(9)– EASEMENT FOR PUBLIC ROADS AND INCIDENTAL PURPOSES, RECORDED MAY 16, 1939 IN BOOK 871, PAGE 98 OF OFFICIAL RECORDS. THIS ITEM AFFECTS THE SUBJECT PROPERTY AND IS PLOTTED HEREON.

ITEM #'S SHOWN HEREON ARE STATED AS EXCEPTIONS ON ABOVE REFERENCED COMMITMENT. NO RESPONSIBILITY FOR THE COMPLETENESS, ACCURACY, OR CONTENT OF SAID REPORT IS ASSUMED BY THIS MAP. ALL EASEMENTS NOT AFFECTED, NON PLOTTABLE AND BLANKET, CONTAINED IN THE ABOVE REFERENCED REPORT ARE NOT SHOWN OR INDICATED HEREON.

Sections 9 and 10, T30S, R24E, Mount Diablo Meridian County of Kern, State of California	**HECA PROJECT**	Scale: 1' = 1600'
		Date: 02/17/10
		Drafted: BJM
D. Woolley & Associates 2832 Walnut Avenue, Suite A Tustin, California 92780 (714) 734-8462 www.dwoolley.com	EXHIBIT "B", ATTACHMENT "A" FOR CANCELLATION OF A LAND USE CONTRACT	Reviewed: DEW
		Task No. DWA-8255
		Sheet: 1 of 2



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L4	(S89°14'01"E)	(1205.04')
L5	(N00°23'43"W)	(56.24')
L6	(S89°51'55"E)	539.75'
L7	N00°00'00"E	233.53'
L8	S54°20'18"E	998.71'
L9	N64°12'24"E	(75.09')
L10	N02°38'35"W	(70.34')
L11	N53°45'12"W	1085.95'
L12	N00°00'00"E	482.28'
L13	N67°30'00"W	333.64'
L14	S00°00'00"W	162.77'

RECORD REFERENCE

( ) INDICATES RECORD DATA PER CERTIFICATE OF COMPLIANCE, REC. 01/20/199 AS INST. NO. 007612 O.R.

LEGEND

(A) PARCEL A OF INST. NO. 007612 O.R., REC. 01/20/1995

SECTIONAL NUMBER OF T30S, R24E, M.D.M.

LAND USE BOUNDARY LINE

PROPERTY LINE

SECTION LINE

AFFECTING EASEMENT LINES, SEE EASEMENT NOTES.

PROFESSIONAL LAND SURVEYOR
DAVID E. WOOLLEY
EXP. 12/31/2010
No. 7304
STATE OF CALIFORNIA

Sections 9 and 10, T30S, R24E, Mount Diablo Meridian County of Kern, State of California	**HECA PROJECT**	Scale: 1' = 300' Date: 02/17/2010
D. Woolley & Associates 2832 Walnut Avenue, Suite A Tustin, California 92780 (714) 734-8462 www.dwoolley.com	EXHIBIT "B", ATTACHMENT "B" FOR CANCELLATION OF A LAND USE CONTRACT	Drafted: BJM Reviewed: DEW Task No. DWA-8255 Sheet: 2 of 2

Resolution

BEFORE THE PLANNING COMMISSION

COUNTY OF KERN, STATE OF CALIFORNIA

In the matter of:

RESOLUTION NO. ***

APPLICATION FOR CANCELLATION NO. 13-01, MAP NO. 120

PETITION FOR CANCELLATION OF LAND USE RESTRICTIONS;
LAND CONSERVATION ACT (WILLIAMSON ACT)
(GOVERNMENT CODE SECTION 51282)

West of Tupman Road, south of Adohr Road, west of Interstate 5, northwest of Tupman area
Hydrogen Energy International, LLC by Manatt, Phelps, and Phillips, LLP (PP12328)

FINDINGS AND DETERMINATION

I, Lorelei H. Oviatt, Secretary of the Planning Commission of the County of Kern, State of California, do hereby certify that the following resolution, proposed by ***, seconded by ***, was duly passed and adopted by said Planning Commission at an official meeting hereof this **13th** day of **June, 2013**, by the following vote, to wit:

AYES: ***

NOES: ***

ABSTAINED: ***

ABSENT: ***

SECRETARY OF THE PLANNING COMMISSION
COUNTY OF KERN, STATE OF CALIFORNIA

RESOLUTION

SECTION 1. WHEREAS:

(a) Hydrogen Energy International, LLC by Manatt, Phelps, and Phillips, LLP (PP12328), has filed a petition for cancellation of contractual land use restrictions contained in a contract recorded on February 28, 1969, Book 4250, Page 496, Official Records, which restrictions were entered into under the Land Conservation Act of 1965 (Williamson Act) on the land herein described, located in Agricultural Preserve No. 3 under authority of Government Code Section 51282; and

DRAFT

(b) Said parcel of real property is described as follows:

APN: 159-040-02

Section 10, T30S, R24E, MDB&M, County of Kern, State of California, County of Kern, State of California (A complete legal description is on file with the Kern County Planning and Community Development Department); and

(c) The parcel of land proposed for cancellation consists of approximately 72 acres, located West of Tupman Road, south of Adohr Road, west of Interstate 5, northwest of Tupman area; and

(d) The petitioner asks such cancellation on the grounds or for the purposes following: for an integrated gasification combined cycle power plant; and

(e) The Secretary of this Commission has caused a notice of public hearing on this matter in accordance with law and Section 51284 of the Government Code, including sending a copy to the Director of Conservation for the State of California; and

(f) The Planning and Community Development Department has recommended approval of the cancellation and has determined that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and this Commission concurs with this determination and that, therefore, under the provisions of Special Situation, Section 15271 of the State CEQA Guidelines, such activity is not covered by the requirements set forth in the California Environmental Quality Act, and that the State CEQA Guidelines concerning the evaluation of projects and preparation and review of environmental documents do not apply thereto, for which reasons it is proposed to dispense with any environmental impact report in consideration of such matter; and

(g) Pursuant to the provisions of Section 51283 of the Government Code, the County Assessor has determined the full cash value of the parcel of land with respect to which the cancellation is requested, as though it were free of the contractual restriction, and has certified to this Commission that the amount thereof is $644,040, and that the most recently announced County assessment ratio is 100 percent, and that the cancellation penalty fee is 12 1/2 percent of this value, or $80,505, and has certified that there are no additional deferred taxes under Government Code Section 51283; and

(h) A hearing has been duly and timely conducted, during which the proposal was explained by a representative of the Planning and Community Development Department and all persons so desiring were duly heard; and

(i) This Commission has considered the recommendation of the Planning and Community Development Department and all the testimony presented during said public hearing, after which said public hearing was concluded.

SECTION 2. NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the County of Kern, as follows:

(a) This Commission finds that the facts recited above are true and that this Commission has jurisdiction to consider the subject of this resolution; and

(b) After careful consideration of all facts and evidence as presented at said hearing, it is the decision of the Planning Commission that the application herein described be recommended for **A P P R O V A L**, subject to the payment of the penalty fee, as recommended by Staff, by the Board of Supervisors, for the reasons specified in this Resolution; and

(c) The findings of this Commission upon which its decision is based are as follows:

(1) This Commission finds that the applicable provisions of the California Environmental Quality Act, the State CEQA Guidelines, and the Kern County Guidelines have been duly observed in conjunction with said hearing in the consideration of this matter and all of the previous proceedings relating thereto.

(2) This Commission finds and determines the project to be statutory exempt from the requirement for preparation of environmental documents pursuant to, Section 15271 of the State CEQA Guidelines.

(3) This Commission has determined that pursuant to Public Resources Code Section 21166 and 21083.3, and Section 15271 of the State CEQA Guidelines, said project qualifies as a special situation and does not require preparation of further environmental documents under the requirements of the Environmental Quality Act of 1970.

County Staff has reviewed the Environmental Information Form submitted by the applicant, and it has been determined there are no project-specific significant effects for the Hydrogen Energy International, LLC, (HECA) project. Pursuant to the California Environmental Quality Act (CEQA) and the Guidelines for the Implementation of CEQA, Section 15271, after a review of the proposed project and in light of the evidence in the record, Staff has made the determination that the requested actions for the HECA project do not require the preparation of subsequent environmental documentation based on the following:

- As a result of the requested actions, no substantial changes are proposed in the project that will require major revisions to the Kern County General Plan Final Environmental Impact Report because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects.

- As a result of the requested actions, no substantial changes will occur with respect to the circumstances under which the project will be undertaken that will require major

revisions to the Kern County General Plan Final Environmental Impact Report because of the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects.

- There is no new information of substantial importance that was not known or could not have been known at the time the Kern County General Plan Final Environmental Impact Report was certified, and no new significant effects as a result of the requested actions will occur that were not addressed in the Kern County General Plan Final Environmental Impact Report.

- The requested actions initiate the implementation of a project addressed in the Kern County General Plan and previously analyzed in the Kern County General Plan Final Environmental Impact Report, and the requested actions are in substantial conformance with that plan.

- The requested actions do not require the preparation of subsequent environmental documentation as the conditions identified in Section 15162 do not occur.

(4) In accordance with Subdivision (e) of California Government Code Section 51282, the petition for cancellation was accompanied by a proposal for a specified alternative use of the land.

(5) In accordance with Subdivision (a)(2) of California Government Code Section 51282, a landowner may petition the Kern County Board of Supervisors for cancellation of the subject Williamson Act Contracts; and the Board may grant tentative approval for the cancellation of the contracts if the Board finds that the requested cancellation is in the public interest.

Therefore, in accordance with Section 51282(c) of the California Government Code, this Commission finds the requested cancellation is within the public interest as follows:

(a) Based on facts presented by the applicant, this Commission finds that other public concerns, which include public concerns regarding energy supply, energy security, global climate change impacts, hydrogen infrastructure and job creation, substantially outweigh the objectives of the Williamson Act; and,

(b) Based on facts presented by the applicant, this Commission finds that there is no proximate noncontracted land that is both suitable and available for the use proposed on the contracted land because the project site was selected based upon its size, the proximity to existing electric transmission and carbon dioxide storage reservoir, existing natural gas transportation, and brackish groundwater supply infrastructure that could support the proposed power generation; and that development of the contracted land would not provide more contiguous patterns of urban development than development of proximate noncontracted land.

(6) This Commission does hereby determine that the amount of the cancellation fee which the owner shall pay to the County Treasures as deferred taxes upon such cancellation, in accordance with Paragraph (b) of Section 51283 of the Government Code is in the sum of $80,505 and does hereby certify said sum to the County Auditor; and finds and determines there are no additional deferred taxes due under Section 51283.1 of the Government Code.

(7) Pursuant to the provisions of Government Code Section 51283.4, this Commission does hereby establish the following conditions and contingencies, and declares that a certificate of contract

with respect to said parcel of land will be issued and recorded within thirty (30) days after being notified by the landowner that each and all of said conditions and contingencies is satisfied:

(a) Payment in full of the cancellation fee hereinabove mentioned;

(b) Unless said cancellation fee is fully paid, or a certificate of cancellation is issued, within one year from the date of recordation for the certificate of tentative cancellation, said fee shall be recomputed as of the date the landowner notifies the Board of Supervisors that she or he has satisfied the conditions and contingencies, as provided in subdivision (b) of Government Code Section 51283.4, and the landowner shall pay any additional fee arising from such recomputation as a further condition to issuance of a certificate of cancellation; provided, however, that the landowner shall not be entitled to refund of any cancellation fee previously paid even if the recomputed fee is less;

(c) Landowner shall obtain all permits necessary to commence the project of the proposed alternative use, including a permit issued by the California Energy Commission following its environmental review for Project Docket No. 08-AFC-8A; and

(d) The Secretary of this Commission shall cause copies of this resolution to be transmitted to the following:

Hydrogen Energy International, LLC by Manatt, Phelps, and Phillips, LLP (PP12328) (agent) (1)
Hydrogen Energy International, LLC (owner) (1)
File (3)

sc