



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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July 26, 2007

VIA FACSIMILE (916) 654-4365

James W. Reede, Jr., Ed.D
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET
06-AFC-5
DATE JUL 26 2007
RECD. JUL 30 2007

Subject: Preliminary Staff Assessment for the Panoche Energy Center Project (06-AFC-5); APN 027-060-78S; Fresno County

Dear Mr. Reede,

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Preliminary Staff Assessment (PSA) for the Panoche Energy Center Project (Project). The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's impacts on agricultural land and resources.

Project Description

The project area is located in an unincorporated area of western Fresno County (County), adjacent to the Panoche Hills. The site is approximately 12 miles southwest of the city of Mendota, 16 miles south-southwest of the city of Firebaugh and approximately 2 miles east of Interstate 5, adjacent to the Pacific Gas & Electric (PG&E) existing Panoche Substation. The proposed site and substation are located south of West Panoche Road. The facility site will be located on a 12.8-acre site within a 128-acre parcel. The construction laydown area, including laydown and parking, consists of an 8-acre portion of the 128-acre parcel immediately south of the 12.8-acre plant site. The plant site and construction area are leased by the applicant from the property owners. The 128-acre parcel is currently in agricultural production with pomegranate trees and is subject to a Williamson Act Contract. The landowner applied for partial cancellation of the Williamson Act Contract to cover the proposed project site. The cancellation was approved by the County Board of Supervisors on April 24, 2007. Offsite improvements associated with the project include a new 400-foot paved, 24-foot wide access road south of West Panoche Road to the plant site, 2,400 linear feet of new gas pipeline, and a 300-foot transmission tie line into the Panoche Substation.

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A project related activity is PG&E's planned expansion of its Panoche Substation by approximately 2.2 acres south of the existing substation boundary.

The PSA notes that there would be a significant impact to agricultural resources, as the project would convert approximately 15 acres (facility site plus the 2.2-acre expansion project) of Prime Farmland to non-agricultural uses. Therefore, the Division recommends that the any subsequent CEQA-related documentation address the following items to provide a comprehensive discussion of potential impacts of the project on agricultural land and activities.

Agricultural Setting of the Project

- Location and extent of Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and other types of farmland in and adjacent to the project area.
- Current and past agricultural use of the project area. Please include data on the types of crops grown, and crop yields and farm gate sales values.

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

Project Impacts on Agricultural Land

- Type, amount, and location of farmland conversion resulting directly and indirectly from project implementation and growth inducement, respectively.
- Impacts on current and future agricultural operations; e.g., land-use conflicts, increases in land values and taxes, vandalism, etc.
- Incremental project impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project, as well as impacts from past, current, and likely projects in the future.

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

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

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Mitigation Measures

The loss of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the County will require the project owner to mitigate for the loss of 15 acres of Prime Farmland at a one-to-one ratio. To further this mitigation effort, the Department recommends the use of agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. If a Williamson Act contract is terminated, or if growth inducing or cumulative agricultural impacts are involved, the Department recommends that this ratio of conservation easements to lost agricultural land be increased. Conservation easements will protect a portion of those remaining land resources and lessen project impacts in accordance with CEQA Guideline §15370. The Department highlights this measure because of its acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

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

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

- Protecting farmland in the project area or elsewhere in the County through the use of less than permanent long-term restrictions on use such as 20-year Farmland Security Zone contracts (Government Code section 51296 et seq.) or 10-year Williamson Act contracts (Government Code section 51200 et seq.).
- Directing a mitigation fee to invest in supporting the commercial viability of the remaining agricultural land in the project area, County or region through a mitigation bank that invests in agricultural infrastructure, water supplies, marketing, etc.

The Department also has available a listing of approximately 30 "conservation tools" that have been used to conserve or mitigate project impacts on agricultural land. This compilation report may be requested from the Division at the address or phone number below. General information about agricultural conservation easements, the Williamson Act, and provisions noted above is available on the Department's website, or by contacting the Division at the address and phone number listed below. The Division's website address is:

<http://www.conservation.ca.gov/dlrp/index.htm>

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Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

Williamson Act Lands

Under California Code of Regulations Section 15206(b)(3), a project is deemed to be of statewide, regional or area-wide significance if it will result in cancellation of a Williamson Act contract for a parcel of 100 or more acres. Since lands under Williamson Act contracts and/or in agricultural preserves exist in the project area, the Department recommends that the following information be provided in any subsequent CEQA-related documentation (such as a draft EIR):

- A map detailing the location of agricultural preserves and contracted land within each preserve. The documentation should also tabulate the number of Williamson Act acres, according to land type (e.g., prime or non-prime agricultural land), which could be impacted directly or indirectly by the project.
- A discussion of Williamson Act contracts that may be terminated in order to implement the project. The documentation should discuss the probable impacts on nearby properties resulting from the termination of adjacent Williamson Act contracts. For example, a termination of a Williamson Act contract may have a growth-inducing impact. In other words, a termination may not only lift a barrier to development, but also result in higher property taxes, and thus, an incentive to shift to a more intensive land use, such as urban development.
- As a general rule, land can only be withdrawn from a Williamson Act contract through the nine-year non-renewal process. Immediate termination via cancellation is reserved for "extraordinary circumstances" (See: Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 852-855). Under Government Code section 51282, the city or county must approve a request for cancellation and base that approval on specific findings that are supported by substantial evidence. When cancellation is proposed, the Department recommends that a discussion of the findings be included in the documentation. Finally, a notice of the hearing to approve the tentative cancellation and a copy of the landowner's petition must be mailed to the Director of the Department ten working days prior to the hearing. (The notice should be mailed to Bridgett Luther, Director, Department of Conservation, c/o Division of Land Resource Protection, 801 K Street MS 1E-01, Sacramento, CA 95814-3528.)
- Under Government Code Section 51243, if a city annexes land under a Williamson Act contract, the city must succeed to all rights, duties, and powers of the county under the contract. However, under Section 51243.5, a city may exercise its option not to succeed to the contract if certain conditions are met. LAFCO must notify the Department within 10 days of a city's proposal to annex land under a contract (Government Code Section 56753.5). Additionally, LAFCO must not approve a change to a sphere of influence or annexation of contracted

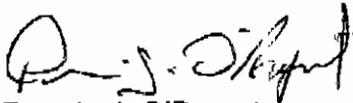
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land to a city unless certain conditions are met (see Government Code Sections 51296.3, 56426, 56426.5, 56749 and 56856.5).

- If portions of the planning area are under Williamson Act contracts (and will continue to be under contract after project implementation) the documentation should discuss the proposed uses for those lands. Uses of contracted land must meet compatibility standards identified in Government Code Sections 51238 - 51238.3. Otherwise, contract termination (see paragraph above) must occur prior to the initiation of the land use.
- An agricultural preserve is a zone authorized by the Williamson Act and established by the local government to designate qualified land to be placed under the Williamson Act's 10-year contracts. Preserves are also intended to create a setting for contract-protected lands that is conducive to continuing agricultural use. Under Government Code Section 51230, "An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning, including appropriate minimum parcel sizes that are at a minimum consistent with this chapter, in such a way as not to be incompatible with the agricultural use of the land." Therefore, the documentation should also discuss any proposed general plan designation or zoning within agricultural preserves affected by the project.

Thank you for giving us the opportunity to comment on this PSA. If you have questions on our comments, or require technical assistance or information on agricultural land conservation, please contact Elliott Lum, Environmental Planner, at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 324-0869.

Sincerely,



Dennis J. O'Bryant
Program Manager