



DEPARTMENT OF CONSERVATION

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

October 12, 2007

Mr. James W. Reede, Jr., Ed.D, Project Manager
California Energy Commission
1516 9th Street, MS-15
Sacramento, CA 95814

DOCKET 06-AFC-5
DATE <u>OCT 12 2007</u>
RECD. <u>OCT 16 2007</u>

Subject: Panoche Energy Center (06-AFC-5) Final Staff Assessment (FSA) Request for Comments - Fresno County

Dear Dr. Reede:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Application for the referenced 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 is an Application to the California Energy Commission (CEC) by Panoche Energy Center, LLC (PEC) to construct and operate a 400 megawatt, simple-cycle, gas-fired power plant. The facility will be located on a 12.8-acre portion of a 128-acre parcel (027-060-78S) enforceably restricted by Williamson Act contract. The project includes a temporary eight-acre construction area, a 400-foot access road, 2,400 linear feet of new gas pipeline and a 300-foot transmission line to tie into the Pacific Gas and Electric (PG&E) Panoche Substation, which plans to expand 2.5 acres south onto the subject parcel to accommodate the project. The PEC leases the project site from the owners of the Williamson Act parcel, which is in pomegranate tree production, and is contracted with PG&E for the power plant. The project will require removal of a portion of the existing orchard. However, the eight-acre construction area will be replanted with pomegranate trees upon completion of the anticipated 13-month construction period plus three months of initial operation.

The project site is located south of West Panoche Road in western Fresno County (County) adjacent to the Panoche Hills, approximately 12 miles southwest of

Mr. James W. Reede, Jr., Ed.D, Project Manager
October 12, 2007
Page 2

Mendota, 16 miles south-southwest of Firebaugh and approximately 2 miles east of Interstate 5. Surrounding land is primarily agricultural with nearby power facilities. The project site and surrounding land are designated Prime Farmland or Farmland of Statewide Importance according to the Application.

The Department has commented on the Application for Certification on September 28, 2006, on a petition for cancellation of the 12.8-acre portion on January 19, 2007 and on the Preliminary Staff Assessment on July 26, 2007.

Mitigation of Agricultural Impacts

The CEC staff has utilized the Land Evaluation and Site Assessment (LESA) model and concluded that the conversion of 15.3 acres of Prime Farmland for the new power plant and expansion of the PG&E substation is significant in its direct and cumulative effects. A proposed condition of certification is that the project owner must pay a mitigation fee to an agricultural land trust such as the San Joaquin River Parkway and Conservation Trust or other approved land trust. The fee will be determined by an independent appraisal paid for by the project owner for the purchase of 15.3 acres of prime farmland or easements to be farmed in perpetuity. The fee must be paid and the land or easements purchased within three years of the start of operation. If no available land or easements can be purchased in Fresno County, purchase in other Central Valley counties is acceptable.

The Department supports the above mitigation proposal. However, we recommend that fee payment be required prior to development activity to better ensure compliance.

Williamson Act Contract Cancellation

As noted above, the Department has commented on the County's Notice of Cancellation for the 12.8 – acre portion of the involved contract and has received the required cancellation fee. The FSA states that the County will record the Final Certificate of Cancellation when all permits to commence the project have been obtained.

PG&E Panoche Substation Expansion Lot Line Adjustment

The FSA states that a lot line adjustment will be filed by PG&E to accommodate the footprint of the substation expansion. As advised in its comments on the AFC, the Department again advises PG&E and the CEC that a lot line adjustment involving Williamson Act contracted land requires an agreement between the County and the landowner of the contracted land in conformance with Government Code §51257.

Mr. James W. Reede, Jr., Ed.D, Project Manager
October 12, 2007
Page 3

In order to effect a lot line adjustment, the Board of Supervisors must make all of several findings under §51257. Otherwise, expansion onto the 2.5 acres of contracted land will first require termination of the contract for that portion by nonrenewal or cancellation. We recommend that this advisory be made a part of the FSA and a condition of certification.

Thank you for the opportunity to comment on this FSA. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Bob Blanford at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 327-2145.

Sincerely,

Dennis J. O'Bryant
Program Manager

cc: Fresno County Planning
Fresno County Plaza
2220 Tulare Street, Annex A & B
Fresno, CA 93721