

**Attachment 3.5-1**

**San Joaquin County Planning Department Findings**

**Regarding**

**Williamson Act Status**

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**SAN JOAQUIN COUNTY  
COMMUNITY DEVELOPMENT DEPARTMENT**

1810 E. HAZELTON AVE., STOCKTON, CA 95205-0292  
PHONE: 209/468-3121 FAX: 209/468-3163

September 18, 2001

Cheri Davis  
Project Manager  
1516 Ninth Street, M.S. 15  
Sacramento, California 95814-5512

Dear Ms. Davis:

Re: GWF Tracy Peaker Project (APN: 209-240-11)

This letter is in response to your phone conversations and facsimile transmission to Kerry Sullivan of September 12, 2001. In that transmission, and in your phone conversations, you requested a written discussion of the following three items:

- Conformance/consistency with local laws, ordinances, regulations, and standards (LORS)
- Williamson Act contract findings
- Significance of prime Agricultural Land conversion

**Local Laws, Ordinances, Regulations, and Standards**

The site is designated A/G (General Agriculture) on the General Plan and is zoned AG-40 (General Agriculture, 40-acre minimum). Power plants fall under the use type "Utility Services, Major". "Utility Services, Major" may be conditionally permitted in the AG-40 zone with an approved Site Approval application. Section 9-605.6(d) contains special use regulations for power-generating facilities (see attached). The Community Development Department finds that the proposed use is consistent with the Development Title special use regulations as stated in Attachment "A" (Findings). The Community Development Department standard development requirements for a power generating facility are attached (attachment "B").

**Williamson Act Contract**

The Community Development Department finds that this project is consistent with the Williamson Act as stated in Attachment "A" (Findings).

**Prime Agricultural Land**

The Community Development Department finds that the loss of agricultural land will be mitigated to less than significant levels as stated in Attachment "A" (Findings).

Thank you for the opportunity to comment on this project. Please call me at (209) 468-3144 if you have any questions regarding this item.

Sincerely,

BEN HULSE,  
Director

Enclosure: Attachment "A", Findings  
Attachment "B" Standard Dev. Requirements

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# ATTACHMENT A

# FINDINGS

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### FINDINGS

The herein Findings are being made by the San Joaquin County Planning Department in response to the application of GWF Energy LLC, a Delaware limited liability company ("GWF") before the California Energy Commission ("CEC") for the construction and operation of the Tracy Peaker Project ("TPP"). GWF proposes to build and operate the TPP as a 169 megawatt, simple-cycle power plant, on a nine-acre fenced site within a forty-acre parcel in an unincorporated portion of San Joaquin County. The Application for Certification ("AFC") is currently before the CEC. The CEC is requesting the response from the San Joaquin County Planning Department regarding the following issues:

1. The compatibility of the proposed use under the existing Williamson Act Contract and the separate Notice of Non-Renewal.
2. The issue of permitting the project on agricultural land.
3. The issue of the loss of prime agricultural land.

#### 1. WILLIAMSON ACT COMPATIBILITY:

The TPP is compatible with the existing Williamson Act Contract (contract number: 71-C1-377, Attachment A) as a result of the San Joaquin County Development Title 9-1810.3(b)(1)(2), and California Government Code Section 51238.1 which, taken together, provide that Utility Services are allowed as compatible uses. The San Joaquin County Development Title also defines Utility Services at Section 9-115.580(b) as Utility Services involving major structures. The TPP will occupy but 9 acres of the 40-acre site. Linear facilities associated with the project will either be buried or will be above ground and will not interfere with long-term agricultural productivity.

In addition, a Notice of Non-Renewal of the contract for the subject parcel was recorded on August 14, 1992 (Instrument Number 92094252, Attachment B). As such, the contract will thus expire in accordance with state law on March 1, 2002, three months prior to the initiation of commercial operation of the TPP.

Further shortages of, and high prices for electrical supplies have and will adversely impact long-term agricultural productivity

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significantly more than the use of 9 acres of contracted land for a power plant. The 169 MW of energy supplied by this plant will benefit agriculture significantly more than continuing the agricultural use of the subject 9 acres until the expiration of the contract in March 2002. Based upon these facts, the following specific findings can be made:

1. The use of 9 acres of the 40-acre parcel for a power plant will not significantly compromise the long-term productive agricultural capability of the contracted parcel or parcels on other contracted lands.
2. The use of 9 acres of the 40-acre parcel will not significantly displace or impair reasonably foreseeable agricultural operation on the contracted parcel or other contracted lands.
3. The use of the 9 acres of the land as a power plant will not result in significant removal of adjacent contracted lands from agricultural or open-space use.

2. PERMITTING ON AGRICULTURAL LAND:

The TPP is a permitted use in the agricultural zone under both the San Joaquin County General Plan and the Development Title. Section 9-605.6 of the San Joaquin County Development Title provides Special Use Regulations for the TPP. Specifically, Section 9-605.6(d) provides that the approval of a power-generating facility shall be subject to the following three findings:

- (1) The source of the power requires locating the use in an area designated as Agriculture or Resource Conservation in the General Plan;
- (2) The use will not have a significantly detrimental effect on agricultural activities in the vicinity; and
- (3) The site of the use can be rehabilitated for agricultural production or a permitted use in the AG zone if the power source is temporary.

The subfindings under Section 9-605.6(d) can be made. Specifically, item (1) is satisfied as the area is designated as agricultural in the General Plan. The source of power (the TPP) requires locating in this area designated as Agriculture, since the TPP requires access to natural gas, electric transmission interconnection, and water. The proximity of the infrastructure bringing natural gas, electrical interconnection and water to this

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site results in less expense, less environmental impacts, and less impacts to agriculture than another site.

Item (2) is satisfied since only 9 acres are being distributed and the immediate area contains existing industrial uses such as the Tracy Biomass Plant, the Owens-Brockway Glass Container Manufacturing Plant, and the Nutting-Rice Warehouse. Finally, the 169 MW produced by this power plant will benefit agriculture in the vicinity significantly more than any possible adverse impacts from the loss of 9 acres.

Lastly, if 30-year life is considered a temporary use, item (3) is satisfied as the site can be rehabilitated for either agricultural production or a permitted use in the agricultural zone as demonstrated in Section 1.5.8, regarding Facility Closure, of the Executive Summary of the materials submitted by GWF to the CEC.

### 3. LOSS OF PRIME AGRICULTURAL LAND:

The TPP is a temporary conversion of agricultural land and includes a closure plan and the payment of fees to mitigate the conversion as hereinafter provided. The TPP is a specifically permitted use and is compatible with the Williamson Act Contract. The proposed temporary conversion is under ten (10) acres and is balanced by the State of California's critical electricity supply shortage and the consistency with the Governor's recently signed Executive Orders EO D-26-01 and EO D-28-01 and Senate Bill No. 28, all of which direct the CEC and all other state and local agencies to expedite the review of new power generating facilities. GWF has committed to a mitigation fee for the conversion of the nine (9) acres of agricultural land pursuant to the applicable criteria and protocol of the American Farmland Trust (AFT). GWF shall pay to the AFT the appropriate mitigation fee which shall be held by AFT, in trust, in an interest bearing account for a three (3) year period to allow San Joaquin County (SJC) to develop a mitigation program for the loss of agricultural farmland or to select an appropriate mitigation site within SJC. At the end of the three (3) years, AFT shall distribute the funds to SJC, or in the event that SJC has not approved of a program for the loss of agricultural land or selected an approved site within SJC, then AFT shall be allowed to retain the funds. San Joaquin County is satisfied that this will mitigate any potential loss of prime agricultural land.

In closing, the TPP site location is in an area which currently contains the Owens-Brockway glass container manufacturing plant, the Nutting-Rice warehouse, and the Tracy Biomass Power Plant. Given the existing emission reduction credits held by GWF for the San Joaquin Valley Air Pollution Control District, the ability to interconnect to a major substation that has adequate capacity and provides wide access to the electricity market, the

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ability to connect to a natural gas supply and the provisions of the existing Power Purchase Agreement between GWF and DWR, this particular project at this particular site is well within the requirements which would otherwise be applied by San Joaquin County for approval.

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# **ATTACHMENT B**

  

# **STANDARD DEVELOPMENT REQUIREMENTS**

## STANDARD DEVELOPMENT REQUIREMENTS FOR A POWER GENERATING FACILITY

**BUILDING PERMIT:** Submit an "APPLICATION-COMMERCIAL BUILDING PERMIT". The Site Plan required as a part of the building permit must be prepared by a registered civil engineer or licensed architect. This Plan must show drainage, driveway access details including gates, on-site parking, landscaping, signs, existing and proposed utility services, and grading (refer to the "SITE PLAN CHECK LIST" for details). A fee is required for the Site Plan review. (Development Title Section 9-884)

**STORM DRAINAGE:** Stormwater drainage shall be retained on-site. The drainage pattern and corresponding storm drain improvements shall be shown on the Site Plan. Drainage calculations prepared by a registered civil engineer or architect shall be included. (Development Title Section 9-1135)

**PARKING:** Off-street parking shall be provided and comply with the following:

All parking spaces, driveways, and maneuvering areas shall be surfaced and permanently maintained with base material of appropriate depth and asphalt concrete or Portland cement concrete to provide a durable, dust free surface. Bumper guards shall be provided when necessary to protect adjacent structures or properties. (Development Title Section 9-1015.5(e))

A minimum \_\_\_ of parking spaces shall be provided, including \_\_\_ accessible spaces, one of which shall be van accessible. Accessible spaces shall be located as close as possible to the primary entrance (C.C.R. Title 24). (1 space is required for every 1,000 feet of building area.) (Development Title Section 9-1015.5)

**ACCESS AND CIRCULATION:** The following requirements apply and shall be shown on the Site Plan:

Access driveways shall have a width of no less than twenty-five (25) feet for two-way aisles or sixteen (16) feet for one-way aisles, except that in no case shall driveways designated as fire department access be less than twenty (20) feet wide. (Development Title Section 9-1015.5(h)(1))

**LIGHTING:** Lighting shall be provided and comply with the following:

If the parking area is to be used at night, parking lot and security lighting shall be installed. (Development Title Section 9-1015.5(g))

Any lighting shall be designed to confine direct rays to the premises. No spillover beyond the property lines shall be permitted except onto public thoroughfares, provided, however, that such light shall not cause a hazard to motorists. (Development Title Section 9-1015.5(g)(4))

**NOISE LEVELS:** The following noise regulations apply to this project:

This project shall comply with the performance standards specified in Table 9-1025.9 of the Development Title.

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9-1025.9

TABLE 9-1025.9 MAXIMUM ALLOWABLE NOISE EXPOSURE		
PART I: TRANSPORTATION NOISE SOURCES		
Noise Sensitive Land Use (Use Types)	Outdoor Activity Areas <sup>1</sup> dB Ldn	Interior Spaces dB Ldn
Residential	65	45
Administrative Office	—	45
Child Care Services—Child Care Centers	—	45
Community Assembly	65	45
Cultural & Library Services	—	45
Educational Services: General	—	45
Funeral & Interment Services—Undertaking	65	45
Lodging Services	65	45
Medical Services	65	45
Professional Services	—	45
Public Services (excluding Hospitals)	—	45
Public Services (hospitals only)	65	45
Recreation—Indoor Spectator	—	45
Religious Assembly	65	45
PART II: STATIONARY NOISE SOURCES		
	Outdoor Activity Areas <sup>1</sup>	
	Daytime <sup>2</sup> (7 a.m. to 10 p.m.)	Nighttime <sup>2</sup> (10 p.m. to 7 a.m.)
Hourly Equivalent Sound Level (Leq), dB	50	45
Maximum Sound Level (Lmax), dB	70	65
<sup>1</sup> Where the location of outdoor activity areas is unknown or is not applicable, the noise standard shall be applied at the property line of the receiving land use. When determining the effectiveness of noise mitigation measures, the standards shall be applied on the receiving side of noise barriers or other property line noise mitigation measures. <sup>2</sup> Each of the noise level standards specified shall be reduced by 5 dB for impulsive noise, single tone noise, or noise consisting primarily of speech or music.		

(Ord. 3675; Ord. 4036 § 2(part), 1999)