

Starwood

# County of Fresno



Department of Public Works and Planning  
Alan Weaver, Director

## Agricultural Land Conservation Committee Staff Report Agenda Item No. 4 April 4, 2007

**SUBJECT:** Review and make recommendation to forward to the Board of Supervisors regarding PARTIAL CANCELLATION of AGRICULTURAL LAND CONSERVATION CONTRACT NO. 367 (RLCC NO. 843)

**STAFF CONTACT:** Jared Nimer, Planner  
(559) 262-4846

Margie McHenry, Senior Planner  
(559) 262-4870

<b>DOCKET</b> <b>06-AFC-10</b>	
<b>DATE</b>	APR 04 2007
<b>RECD.</b>	JUN 11 2007

### RECOMMENDATION:

Staff believes that the required findings can be made and recommends that application for Partial Cancellation of Agricultural Land Conservation Contract No. 367 be forwarded to the Board of Supervisors with a recommendation for approval, subject to the following conditions:

1. Payment in full of the cancellation fee.
2. Unless the cancellation fee is paid or a Certificate of Cancellation of Contract is issued within one year from the date of the recording of this certificate, the cancellation fee shall be recomputed as of the date of notice by the landowner to the Board of Supervisors required by Government Code Section 51283.4.
3. The landowner shall obtain all permits necessary to commence the project.

### BACKGROUND:

The Agricultural Land Conservation Committee reviews requests for Cancellation of Agricultural Land Conservation Contracts for consistency with the purposes of the Williamson Act, pursuant to Section 51282 of the Government Code. Action to approve or deny an application for contract Cancellation becomes a recommendation to the Board of Supervisors.

PAO Investments, LLC (Applicant) filed an application for Partial Cancellation of Agricultural Land Conservation Contract (ALCC) No. 367. The proposal seeks to remove 6.16 acres of prime agricultural land from Contract restrictions for development of a 120-megawatt thermal power plant. This application has been assigned RLCC No. 843.

The subject property is located on the south side of Panoche Road, between Interstate 5 and Fairfax Avenue, approximately 12.6 miles southwest of the City of Mendota. (See Location Map *Exhibit 'A'*, Zoning Map *Exhibit 'B'*, and Land Use Map *Exhibit 'C'*).

DISCUSSION:

In order to approve a cancellation request, the Board of Supervisors must determine that the action is consistent with the Land Conservation Act of 1965. The law requires that five findings be made. Staff analysis of the required findings is as follows:

1. *That the cancellation is for land on which Notice of Nonrenewal has been served pursuant to Section 51245 of the Government Code.*

An executed Notice of Partial Nonrenewal for ALCC No. 367 was accepted by the County Recorder on November 6, 2006, and was assigned Document No. 2006-0236374. Nonrenewal was initiated on the entire 128 acres that comprise APN 027-060-78s.

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

The subject property and adjacent parcels are currently devoted to agricultural uses, with the exception of the existing PG&E substation located on a separate parcel adjacent to the southwest of the area proposed for Williamson Act cancellation. The applicant has stated that the proposed location of the thermal power plant is ideal due to the existing infrastructure installed at the existing Pacific Gas & Electric substation and by the existing high-volume natural gas lines and 115 kilovolt transmission lines located on the subject parcel. Two power generation facilities already exist next to the PG&E substation. The existing infrastructure allows for efficient interconnection, which minimizes impacts, specifically environmental impacts.

Staff agrees that the proposed use of the property for a thermal power plant would not cause any disruption to adjacent parcels and would not result in restrictions on the use of adjacent parcels. While it is possible that adjacent land may be removed from agricultural use, for development of additional power plants, this would be due to the clustering of the necessary infrastructure for efficient interconnection with existing facilities and resources rather than the development of the proposed thermal power plant.

3. *That the cancellation is for an alternative use that is consistent with the provisions of the County General Plan.*

The subject property is designated Agriculture in the Fresno County General Plan. The proposed alternate use of the property is development of a thermal power plant. Permitting for this use is issued through the State of California, so no land use applications would be processed by the County of Fresno during development of the thermal power plant. Nevertheless, the County's General Plan allows for development of certain non-agricultural uses in areas designated for Agriculture.

According to information provided by the applicant, the location of a power generation facility within an urban environment has the potential to impact sensitive receptors such as schools and hospitals in addition to greater land use conflicts with residences. Further, the applicant indicated that the site selection investigation that was performed looked for land that was in sufficient proximity to the infrastructure listed above. The

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applicant reported that no less productive agricultural lands were identified as a result of the site selection investigation. Based on the information provided by the applicant, staff believes that the proposed alternate use is consistent with the General Plan. Based on this information, this finding can be made.

4. *That the cancellation will not result in discontinuous patterns of urban development.*

The proposed use of the property for a thermal power plant would not be considered urban development. Based on this, staff believes this finding can be made.

5. *That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed that 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.*

The applicant conducted an analysis of proximate non-contracted land, to determine if any non-contracted land was both available and suitable for the proposed alternate use. The applicant stated that in order to be suitable for development, of the proposed power plant would require that the land be in close proximity to the existing PG&E substation and to high-volume natural gas lines. Parcels within three miles of the subject property were examined by the applicant, but were all either subject to Williamson Act Contract or were too distant from the existing PG&E substation and/or high-volume natural gas lines to be considered feasible alternatives to the subject property.

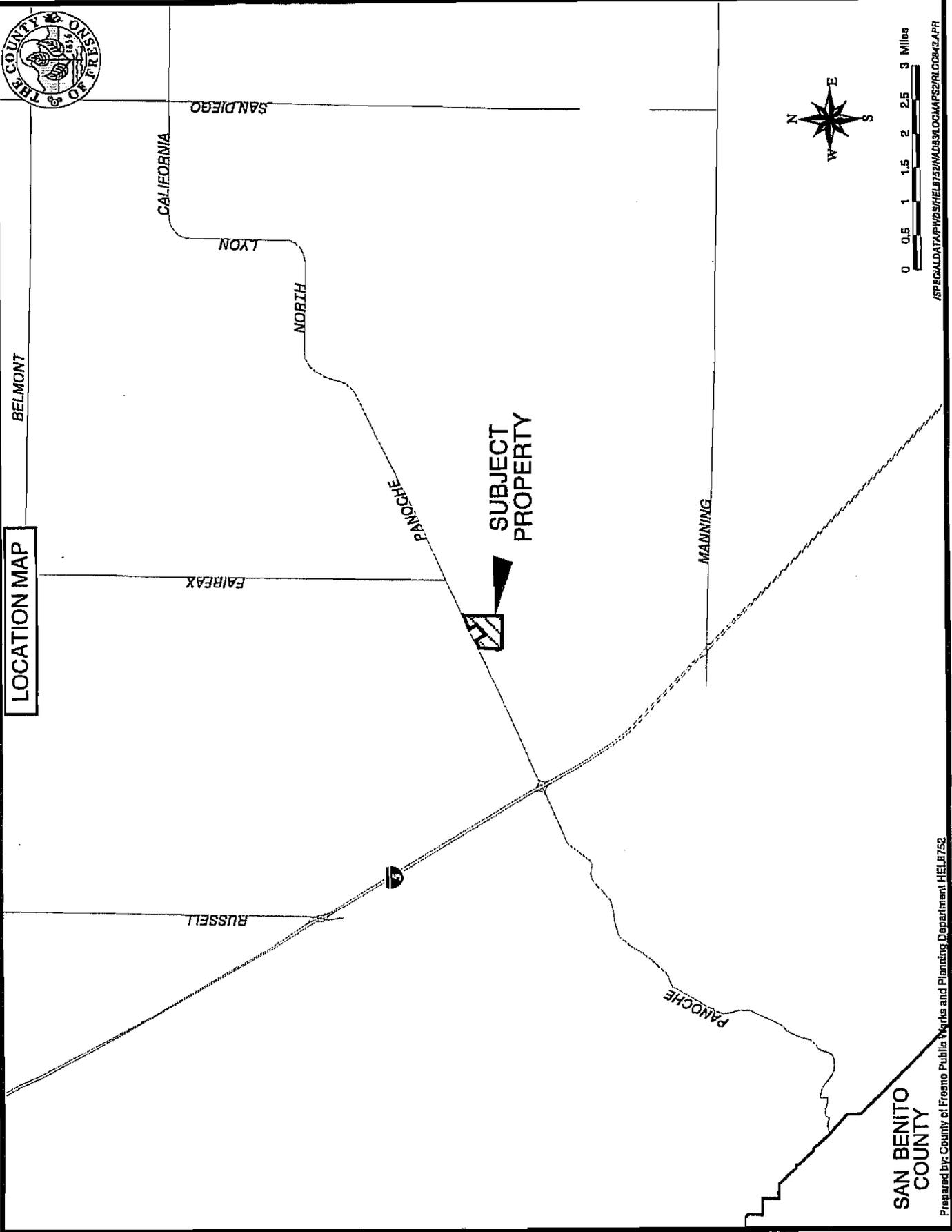
ENVIRONMENTAL DETERMINATION:

It has been determined that the project proposal is considered statutorily exempt from CEQA, under Section 15271, Early Activities Related to Thermal Power Plants. A copy of the County's CEQA Determination memo is included as Exhibit 'D'.

OTHER REVIEWING AGENCIES:

As of January 1, 2001, Government Code Section 51284.1(a) requires notification to be provided by the County to the Director of the State Department of Conservation (the Director) once a cancellation application has been accepted as complete. Under Government Code Section 51284.1(c), the Director's comments are required to be considered by the Board of Supervisors before acting on the proposed cancellation. Pursuant to the Director's January 19, 2007, letter providing comments on the applicant's information related to the required findings, the Department of Conservation stated that the Board of Supervisors has a basis to find cancellation of the 12.82-acre portion of the Contract consistent with the purposes of the Williamson Act. The Director's comments are attached as Exhibit E.

EXHIBIT 'A'

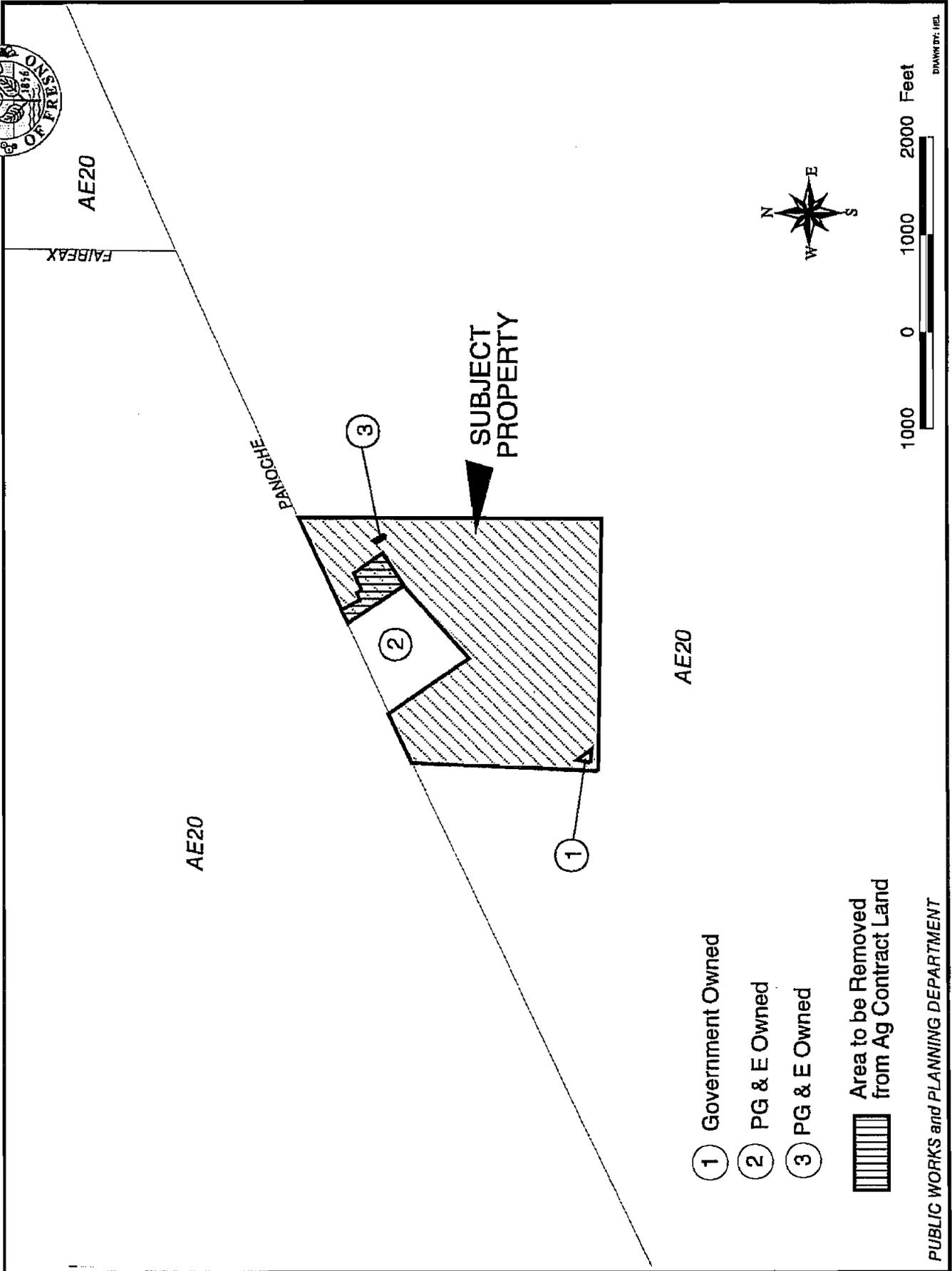


RLCC 843  
STR: 06 - 15/13

# EXISTING ZONING MAP



## EXHIBIT 'B'



PUBLIC WORKS and PLANNING DEPARTMENT

DRAWN BY: JEL



EXHIBIT 'C'

EXISTING LAND USE MAP

RLCC 843

Legend	
[Pattern]	AP1 - APARTMENT
[Pattern]	FC - FIELD CROP
[Pattern]	ORC - ORCHARD
[Pattern]	SF# - SINGLE FAMILY RESIDENCE
[Pattern]	V - VACANT
[Pattern]	VIN - VINEYARD

Subject Property  
 Ag Contract Land  
 Area to be Removed from Ag Contract Land

- ① Government Owned
- ② PG&E Owned

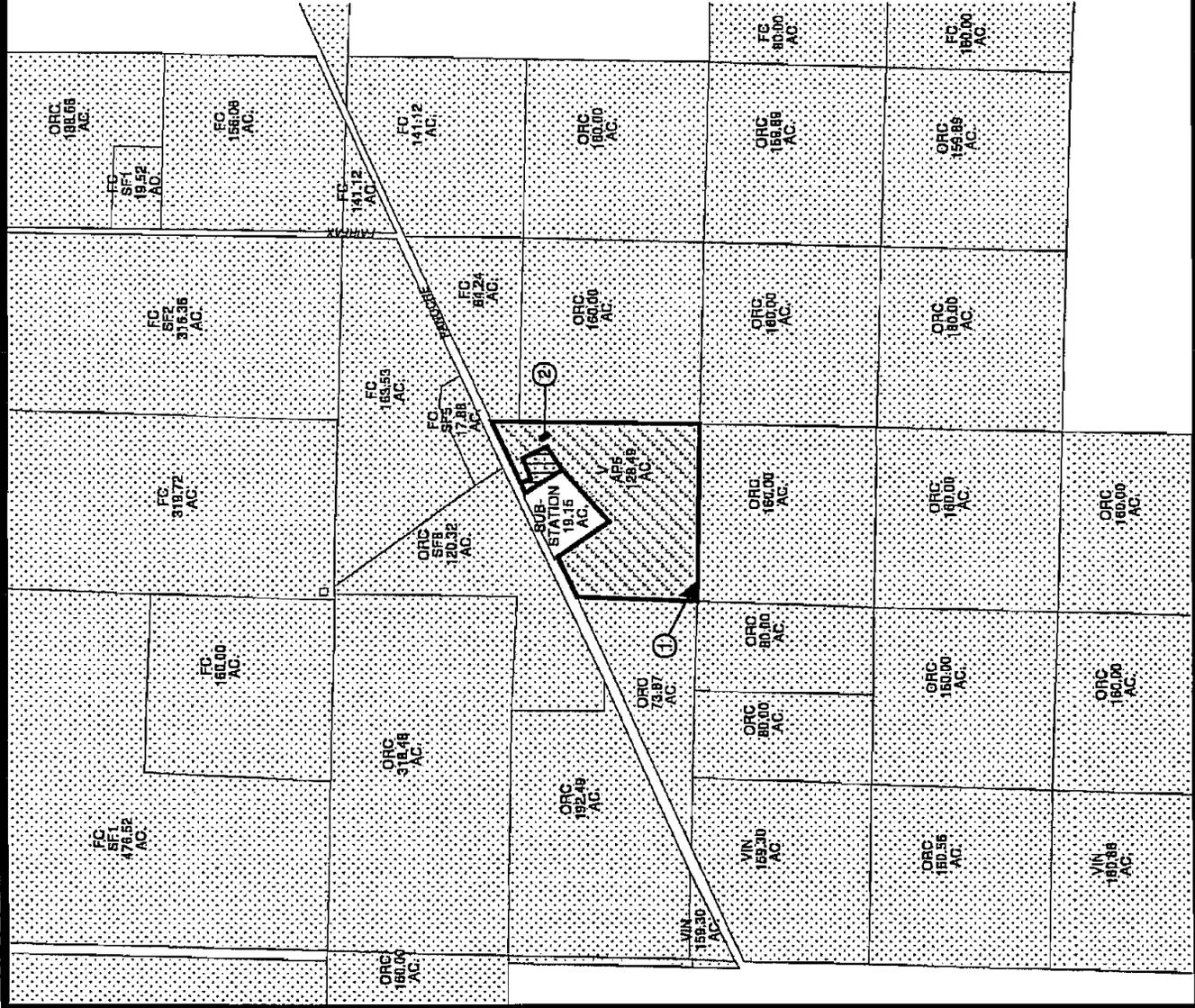




EXHIBIT 'D'  
Inter Office Memo

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DATE: March 14, 2007  
TO: PAO Investments, LLC  
FROM: Briza Sholars, Development Services *BS*  
SUBJECT: CEQA Determination  
Environmental Review No. 5786 (45499 Panoche Road)

**Project Description:**

The project proposes a partial cancellation of Williamson Act Contract No. 367 on 6.16 acres of a 128 acre parcel of land in the AE-20 (Exclusive Agriculture, 20-acre minimum lot size) Zone District. The project is located on the south side of Panoche Road between South Brannon Avenue and South Fairfax Avenue in an unincorporated area of Fresno County.

**Determination**

The proposed project is considered Statutory exempt from the California Environmental Quality Act (CEQA), under Section 15271, Early Activities Related to Thermal Power Plants. The following supports this determination:

1. The intent of Section 15271 of the CEQA Guidelines is to exempt or delay early activities related to thermal electric power plants which 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 Resources Code Section 21080.5, which will be prepared by:
  - (a) The State Energy Resources Conservation and Development Commission,
  - (b) The Public Utilities Commission, or
  - (c) The city or county in which the power plant and related facility would be located.
2. Cancellation of Williamson Act Contract No. 367 is required for development of the proposed thermal power plant and is therefore, determined to an early activity required for the project.
3. The cancellation of Williamson Act Contract No. 367 as an early activity will be further analyzed as part of an EIR, Negative Declaration, or other

document prepared for the proposed thermal power plant site or facility, as required under Section 15271.

4. The division of land is proposed in accordance with the County's General Plan and Zoning Ordinance. The project will not result in any adverse impacts to the environment.

The proposed project meets the criteria for Section 15271 and is exempt from the provisions of CEQA.

If you have any questions, please call me at 262-4454.

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# 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](http://conservation.ca.gov)

March 8, 2007

### VIA FACSIMILE (559) 262-4166

Mr. Jared Nimer, Planner II  
Fresno County Department of Public Works and Planning  
Development Services Division  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721

Subject: Partial Cancellation of Land Conservation (Williamson Act) Contract ALCC  
No. 367 (RLCC 843); APN 027-060-78s portion - PAO Investments

Dear Mr. Nimer:

Thank you for submitting notice to the Department of Conservation (Department) as required by Government Code section 51284.1 for the above referenced matter.

The petition proposes to cancel a 6.16-acre portion of the parcel's 128.49 prime agricultural acres subject to Contract No. 367 for development of a 120-megawatt thermal power plant. The Department previously commented on a cancellation petition submitted for a 12.82-acre portion of APN 027-606-78s on January 19, 2007. The parcel's remaining acreage is currently undergoing the nonrenewal process for contract termination.

The site is located south and adjacent to West Panoche Road, approximately 3/4 of a mile west of the intersection of Fairfax Avenue and West Panoche Road in Fresno County.

### Cancellation Findings

Government Code Section 51282 states that tentative approval for cancellation may be granted only if the local government makes one of the following findings: 1) cancellation is **consistent** with purposes of the Williamson Act or 2) cancellation is in the **public interest**. The Department has reviewed the petition and information provided and offers the following comments.

Cancellation is consistent with the purposes of the Williamson Act

For the cancellation to be consistent with purposes of the Williamson Act, the Fresno County Board of Supervisors must make all of the following five findings: 1) a notice of nonrenewal has been served, 2) removal of adjacent land from agricultural use is unlikely, 3) the alternative use is consistent with the County's General Plan, 4) discontinuous patterns of urban development will not result, and 5) that there is no proximate noncontracted land which is available and suitable for the use proposed on the contracted land or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

Provided the information received is accurate and correct, the Department concurs the Board has a basis to find cancellation of the 6.16-acre portion of the contract consistent with the purposes of the Williamson Act.

The landowner served a notice of nonrenewal. The 128.49-acre portion of Contract No. 367 (APN 027-060-78s) is scheduled to expire on December 31, 2016. Development of the proposed power generation facility will not negatively affect adjacent agricultural lands or cause their removal from agricultural use.

The proposed alternative use appears consistent with the agricultural land use policies contained in the Fresno County General Plan. The proposed alternative use will not produce discontinuous patterns of urban development and due to the location of the existing PG&E substation, the Department would concur that there is not proximate noncontracted land that is suitable or available for the alternative use proposed.

Cancellation is in the Public Interest

For the cancellation to be in the public interest, the Council must make findings with respect to all of the following: (1) other public concerns substantially outweigh the objectives of the Williamson Act and (2) that there is no proximate noncontracted land which is available and suitable for the use proposed on the contracted land or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land. Our comments have already addressed the second finding required under public interest finding above.

In order to find that "other public concerns substantially outweigh the objectives of the Williamson Act," the Supreme Court has directed that the Board must consider 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 their parochialism. Moreover, the paramount 'interest' involved is the preservation of land in agricultural production. In providing for cancellation, the Legislature has recognized the relevance of other interests, such as housing, needed services, environmental protection through developed uses, economic growth and employment. However, it

must be shown that open space objectives, explicitly and unequivocally protected by the act, are substantially outweighed by other public concerns before the cancellation can be deemed "in the public interest" (Sierra Club v City of Hayward (1981), 28 Cal. 3d. 840, 857).

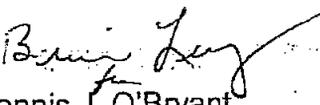
As a general rule, land can be withdrawn from Williamson Act contract through the nine-year nonrenewal process. The Supreme Court has opined that cancellation is reserved for extraordinary situations (Sierra Club v. City of Hayward (1981), 28 Cal.3d 840).

Lastly, legislation effective January 1, 2005, requires the county assessor to send notice to the Department and landowner of the current fair market value of the land and of the opportunity to request a formal review from the assessor prior to any action giving tentative approval to the cancellation of any contract. (SB 1820, Machado, Chapter 794, Statutes of 2004 (Section 51283(a)). To date, the Department has not received the required notice of the parcel's cancellation valuation.

Provided that the information presented is complete and accurate, it appears that the Board has an adequate basis to support the findings required to cancel the proposed parcel of contracted land.

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 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 the tentative cancellation pursuant to section 51284. If you have any questions concerning our comments, please contact Adele Lagomarsino, Program Analyst at (916) 445-9411.

Sincerely,

  
Dennis J. O'Bryant  
Program Manager