

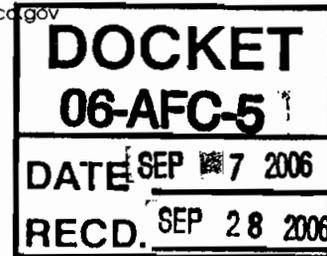


DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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September 7, 2006

VIA FACSIMILE (916) 653-1245

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

Subject: Panoche Energy Center Application for Certification (06-AFC-5) Request for
Comments - Fresno County

Dear Mr. Reede, Jr.:

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 an additional 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 1.1 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 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.

In addition to the subject project and the PG&E substation expansion involving contracted land, the existing Wellhead Power Plant, owned by PAO Investments, LLC is located on the subject contracted parcel. According to the application, it received approval from the County for a conditional use permit. A new Starwood Power Plant is concurrently planned to be located on the subject parcel as well. It is unknown whether the PG&E Panoche Substation is located on contracted land. It is listed as a separate parcel (027-060-61SU).

Williamson Act Lands

The Application states that the PEC is consistent with the County General Plan and is an approved use with a conditional use permit in the AE Zone district. It also states that electric power generation is a compatible use under the Williamson Act pursuant to Government Code § 51238 (pages 5.9-2, 5.9-5 and 5.9-6).

On the contrary, § 51238 refers to compatible uses "within any agricultural preserve." Uses on "contracted lands" must be consistent with the principles of compatibility in § 51238.1. An agricultural preserve is a defined area within which a city or county is willing to enter into individual contracts. The preserve may or may not consist entirely of contracted land. In the Statutes of 1994 (Chapter 1251), the Legislature added the provisions of § 51238.1 in order to clarify the issue of compatible uses and limit the abuses taking place on contracted lands. In Section 1 of the Statutes of 1999 (Chapter 1018), the Legislature found:

- (i) The latitude provided by the Williamson Act to participating local governments is not, and has never been, so great as to make uses that are not inherently related to, or beneficial to, the agricultural or open-space character of contracted land permissible under the compatible use provisions of the Williamson Act.

In the Statutes of 2000 (Chapter 1045), the Legislature recognized the public urgency of siting new power plants but concluded that contract termination, including cancellation, would be appropriate prior to siting power plants on Williamson Act contracted land, adding a now deleted provision for an earlier commencement date on actions involving cancellation related to specified electric generation projects in Kern County.

As to the matter of consistency with the General Plan and allowance of a power plant by conditional use permit, the Department advises that, although the County may establish a contract more restrictive than that required by the Act, it cannot establish a less restrictive contract (§ 51240), which would undermine the enforceable provisions of the

Act and its constitutional authority for a tax benefit to landowners. When local rules, ordinances or zoning conflict with the Williamson Act, the Act is the superseding authority.

It is the Department's conclusion that the subject power plant would not meet the compatibility provisions of § 51238.1 and that, prior to any activity related to placing the PEC on the subject contacted parcel, the involved contract must be terminated by nonrenewal or cancellation for the portion of land involving the plant and access road. We recommend that project approval be conditioned on such nonrenewal or cancellation. We also recommend that the Application or subsequent document include a map of the project site and surrounding area denoting parcels under Williamson Act contract and the locations of existing and planned power plant facilities. As a matter of information, it appears that the Department's conclusion and recommendations would also apply to the application of the Starwood Power Plant involving contracted land.

PG&E Panoche Substation Expansion

The Application states that a lot line adjustment will be filed by PG&E to accommodate the footprint of the substation expansion (page 5.9-2). The Department advises PG&E and the CEC that a lot line adjustment involving Williamson Act contracted land is an agreement between the County and the landowner of the contracted land in conformance with § 51257. In order to effect a lot line adjustment, the Board of Supervisors must make all of several findings under § 51257.

If PG&E were to acquire contracted land without use of its eminent domain authority, the contract would remain in effect, and PG&E's use of the land would be subject to the same conditions of compatibility as discussed above. If it were to acquire the land under its eminent domain authority, prior to acquisition, it must notify the Department under § 51291(b) whenever it appears that Williamson Act land may be required. It must make findings under § 51292 unless an exception under § 51293 applies, and it must acquire the land by eminent domain or in lieu of eminent domain in order to void the contract pursuant to § 51295. Otherwise, the contract will remain in effect and restrict use of the land as discussed above. As part of the notification process, PG&E would be required to consider the Department's comments on the proposed acquisition.

Cumulative Impacts

The Application states in section 5.18 that its cumulative impact analysis should consider past, present and future projects within a five-mile radius of the project site. However, it appears to involve only concurrent projects, of which three are listed. In order to conduct a more comprehensive analysis, the Department recommends that the Application consider past, present and future projects as stated, including the loss of quality farmland to the several power plant facilities existing and planned in the area.

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Within a five-mile radius, considering the several facilities in the area, the subject project may contribute to a growing significant effect.

Thank you for the opportunity to comment on this Application. The Department looks forward to your response. 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: Mr. Ronald W. Watkins, Senior Advisor
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