STATE OF CALIFORNIA, RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

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

DOCKET 06-AFC-5

DATE JAN 19 2007

RECD. FEB 23 2007

RECEIVED JAN 25 2007 FRESNO COUNTY DEPT. OF PUBLIC WORKS & PLANNING

January 19, 2007

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 838); 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 12.82-acre portion of the parcel's 128.49 prime agricultural acres subject to Contract No. 367 for development of a 200-megawatt thermal power plant. The parcel's remaining 115 acres are currently undergoing the nonrenewal process for contract termination.

The site is located south and adjacent to West Panoche Road, approximately ¾ 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

PROOF OF SERVICE (REVISED 12/8/06) FILED WITH ORIGINAL MAILED FROM SACRAMENTO ON 2/23/06

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) discontiguous 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 12.82-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 discontiguous 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.

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

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE PANOCHE ENERGY CENTER	**Docket No. 06-AFC-5 PROOF OF SERVICE (Revised 12/19/06)**

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

Gary R. Chandler
Panoche Energy Center, LLC
P.O. Box 95592
South Jordan, UT 84095-0592

APPLICANT CONSULTANTS

Maggie Fitzgerald, Program Manager
URS
2020 East First Street, Suite 400
Santa Ana, CA 92705

COUNSEL FOR APPLICANT

Allan Thompson
21 "C" Orinda Way, No. 314
Orinda, CA 94563
allanori@comcast.net

INTERESTED AGENCIES

Larry Tobias
Ca. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

INTERVENORS

CURE
Gloria D. Smith
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
gsmith@adamsbroadwell.com

CURE
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com

ENERGY COMMISSION

JEFFREY D. BYRON
Presiding Member
jbyron@energy.state.ca.us

JAMES D. BOYD
Associate Member
jboyd@energy.state.ca.us

Paul Kramer, Jr.
Hearing Officer
pkramer@energy.state.ca.us

James Reede
Project Manager
jreede@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Margret J. Kim
Public Adviser
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Geoff Carter, declare that on February 23, 2007, I deposited copies of the attached Partial Cancellation of Land Conservation (Williamson Act) Contract ALCC No. 367 (RLCC 838); APN 027-060-78s poertion – PAO Investments, in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Original Signed in Dockets
[signature]