



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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November 18, 2009

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

DOCKET**08-AFC-12**

DATE NOV 18 2009

RECD NOV 19 2009

Dear Mr. Mtunga:

Subject: Petition for Partial Cancellation of Land Conservation (Williamson Act)
Contract ALCC No. 3219 (RLCC 888), APN 085-030-55s, 57s, 58s, -
William J. Mouren Farming, Inc.

The Department of Conservation (Department) has reviewed the petition and other information submitted by the Fresno County Planning & Public Works (County) regarding the above-named applicant's request (petition) for a partial cancellation of Land Conservation (Williamson Act) Contract ALCC No. 3219 (RLCC 888). The Department offers the following comments regarding the above-referenced petition as required by Government Code (GC) § 51284.1.

The petition proposes to cancel 468.88 agricultural acres subject to Williamson Act Contract No. 3219 for development of a solar hybrid plant containing both solar and biomass facilities. The subject parcel is located three miles west of Interstate 5 and West Jayne Avenue, approximately six miles east of the City of Coalinga within Fresno County.

Government Code § 51282 states that tentative approval for cancellation may be granted only if the local government makes either of the following set of findings:

- 1) that the cancellation is consistent with purposes of the Williamson Act, or
- 2) that the cancellation is in the public interest.

It is the Department's understanding that Fresno County Board of Supervisors' Resolution 85754 (Oct. 26, 1971), requires both consistency and public interest findings be made before tentative approval may be granted for contract cancellation. This requirement, though more restrictive than GC § 51282, is not superseded by State law, and is fully enforceable. If the Department is incorrect in its understanding then please provide us with a copy of the County's local rules to that effect or a copy of the Board of Supervisors' Resolution that overrides the Oct. 26, 1971, resolution. If the requirement that the petitioner must meet both finding is still in effect then the petition should be amended to address the Public Interest finding requirement.

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At this time, the Department provides its comments based on the County's position that the proposed cancellation is consistent with the purposes of the Williamson Act, and the County's findings as required by GC § 51282, subdivision (b). Those findings are:

- a) that a notice of nonrenewal has been served,
- b) that cancellation is not likely to result in removal of adjacent land from agricultural use,
- c) that the alternative use is consistent with the County General Plan,
- d) that cancellation will not result in discontiguous patterns of urban development,
- e) that there is no proximate non-contracted 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 non-contracted land.

Department Comments on Findings:

a) Notice of Nonrenewal has been served:

The Department concurs that the Notice of Nonrenewal has been recorded on April 14, 2009.

b) Removal of adjacent land from agricultural use not a likely result:

The petition asserts that the parcel is adjacent to an existing State Prison and State Hospital, and therefore the adjacent lands are already being used for non-agricultural purposes. The Department concurs with the petition's assertion, but does urge the County to consider the pattern of land use for this area in general as it considers this proposed project, and other future projects.

c) Alternative use is consistent with County General Plan:

The petition asserts that the project constitutes an alternative proposed use that is consistent with the County's General Plan, Policy LU-A.3, which allows for development of certain non-agricultural uses, such as electrical generation facilities, in areas designated for agricultural use. The Department offers no comment on this aspect of the petition, or the project's consistency with the County's General Plan.

d) Discontiguous patterns of urban development will not result:

The petition asserts that the parcel will not result in a discontiguous pattern of urban development because the proposed use as a solar hybrid plant is not urban development and is a type of use that discourages residential or most commercial uses. The Department offers no comment on this aspect of the petition.

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e) There is no available and suitable proximate non-contracted land for the use proposed on the contracted land:

The petition states the applicant evaluated all parcels within a seven-mile radius of the subject parcel. The search revealed 54 parcels with the 'right' size and/or configuration for the proposed project, of which none were available or suitable. The Department does not offer any comment on this aspect of the petition at this time.

Based on information provided, it appears that cancellation of the solar hybrid plant containing both solar and biomass facilities meets the required consistency findings.

Department Comment Regarding Necessary Mitigation

Under California Environmental Quality Act (CEQA), the County is required to avoid or reduce environmental impacts from projects when possible by conditioning the project upon implementation of mitigation measures (Cal. Code Regs., tit. 14, § 15002(a)(2) and (3)). The County is urged to review CEQA Guidelines § 15206 (b)(3), which establishes that the loss of 100 acres of land subject to a Williamson Act contract is a matter of "statewide significance." The staff report does not implement any mitigation measures to compensate for the loss of important farmland affected by the Project, nor does it address other impacts from the project that could result in the conversion of adjacent agricultural land to non-agricultural use.

The Department is recommending a 1:1 ratio be used to mitigate direct losses of agricultural land. The lands to be protected are typically placed under an agricultural conservation easement, or fee title to the lands can be transferred to an agricultural conservation entity, for permanent protection. If a suitable entity cannot be found to work with the County and the project proponents to accomplish these protection objectives, please let the Department know and we will be happy to assist the County in this regard.

California Environmental Quality Act requires mitigation of impacts from projects, and because agricultural resources are of paramount importance to the people of the State of California and the County of Fresno's residents, the loss of any agricultural lands should be mitigated or avoided. The Department urges the County to fully consider all of the issues involved in the Project, to make every effort to avoid the loss of farmland, and to adopt adequate mitigation measures to address the loss of farmland caused by the Project.

Department Comment Regarding Required Notice of Cancellation Valuation

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 (GC § 51283(a)). To date, the Department has not received the required notice of the parcel's cancellation valuation from the County Assessor.

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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 GC § 51284. If you have any questions concerning these comments, please contact Sharon Grewal, Environmental Planner at (916) 327-6643.

Sincerely,



Dan Otis
Program Manager
Williamson Act Program

cc: California Energy Commission
Adams Broadwell Joseph & Cardozo
Baker Manock & Jensen