



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

DIVISION OF LAND RESOURCE PROTECTION

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CCOPY

November 17, 2011

VIA FACSIMILE (209) 656-2180

Brian S. Borum, Survey and Right-of-Way Manager
Turlock Irrigation District (TID) Water and Power
333 East Canal Drive
P.O. Box 949
Turlock, CA 95381-0949

BOARD OF SUPERVISORS
2011 NOV 28 A 10:23

RE: Acquisition of Preserve Land for Hughson-Grayson 115 kV Transmission Line, Stanislaus County

Dear Mr. Borum:

Thank you for your notification letter advising the Department of Conservation (Department) that Turlock Irrigation District (TID) intends to acquire property located in an agricultural preserve to construct a new substation, the Grayson Substation, near the existing Almond Power Plant between TID's Lower Lateral 2 and East Grayson Road, south of the city of Ceres. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs and offers the following comments in accordance with the provisions of Government Code (GC), §51291 (b).

The letter states that the TID Board of Directors passed Resolution 2010-72 certifying the Final Environmental Impact Report and Resolution 2010-73 selecting the route for the Hughson-Grayson 115 kV Transmission Line and Substation Project. This statement and the copy of the Resolution included in your letter appears to indicate that TID knew as early as November 2010 that it intended to acquire the properties and is just now noticing the Department of the planned acquisition.

Please note that pursuant to §51291(b), TID must notify the Department whenever it appears that Williamson Act land may be required for a public improvement. In determining placement of future TID projects, TID should review the Williamson Act contractual status of any potential land acquisitions at the beginning of the site selection process in order to avoid Williamson Act land and provide the notice to the Department that is required by statute.

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Project Description

TID intends to acquire 0.47 acres of prime agricultural land on which to construct a new substation transmission line. The proposed transmission line alignment would span the unincorporated area between the cities of Hughson and Ceres in Stanislaus County. Surrounding land uses are generally agricultural and residential in nature.

The Land Conservation (Williamson) Act (GC §51291) requires a public agency to notify the Director of the Department of Conservation of any intention to acquire land located in an agricultural preserve for a public improvement, when a public agency first considers purchasing land enrolled in a Williamson Act contract for a public use.

The letter states that the route selected will result in the greatest public benefit and least private harm, and that there are no other lands within or outside the preserve on which it is feasible to locate this public improvement, but did not provide any information in support of these statements.

Required Findings

With some limited exceptions, the Williamson Act prohibits public agencies from locating public improvements in agricultural preserves (Gov. Code, §51291.) unless the following specific findings are made by the public agency (Gov. Code, §51292.):

- (a) The location is not based primarily on a consideration of the lower cost of acquiring the land in an agricultural preserve.

The letter states that the particular alignment (the transmission alignment crosses the westerly portion of Assessor Parcel Number 041-039-022) was selected because it is the most direct and economical route to the Ceres Main Canal, and because it is an ideal location crossing under an existing 230 kV transmission line. Based on the foregoing statement, it does not appear that TID has provided sufficient documentation in support of the statement that the location of the proposed project is not based primarily on the lower cost of acquiring the land in an agricultural preserve.

- (b) If the land is agricultural land covered under a contract pursuant to this chapter for a public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.

The Department advises public agencies considering land within an agricultural preserve for a public improvement to be mindful of the State's policy to preserve the maximum amount of agricultural lands (GC §51220), and to avoid, whenever practicable, the location of any public improvements and the acquisition of land for them in agricultural preserves in accordance with (GC 51290). The Department also advises public agencies that, if, it becomes necessary to locate a public improvement on land within a agricultural preserve, the public agency should provide documented evidence it

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conducted a search for other properties not located within the preserve or restricted by Williamson Act contract on which to site its public improvement before making its decision (GC §51292).

The letter did not provide any documentation to support a finding that there is no other land within or outside the preserve on which it is reasonably feasible to locate the proposed transmission line and substation. In addition, it does not appear from the information provided in the Notice that TID considered properties that were not restricted by Williamson Act contracts in its search for the appropriate project site. The Department requests TID submit a revised notification letter providing supporting documentation that there is no non-contracted site on which it is feasible to locate the project as proposed, for the Department to review and to complete the administrative record.

Eminent Domain

The letter does not address the matter of voiding the subject contracts upon acquisition pursuant to Government Code §51295, as the letter did not provide evidence that TID intends to acquire the property through the use of eminent domain authority or in lieu of eminent domain. The Department does not provide counsel regarding eminent domain law but encourages TID to obtain legal counsel for this purpose.

A Williamson Act contract is an enforceable restriction pursuant to Article XIII, §8 of the California Constitution and Government Code §51252. Assuming other necessary requirements are met, acquisition of Williamson Act contracted land must meet the requirements of eminent domain law for acquisition by eminent domain or in lieu of eminent domain (e.g., Code of Civil Procedure §1230.010 et seq. and Government Code §7260 et seq.) in order to void the contract pursuant to §51295. If the acquisition does not void the contract, then TID's use of the contracted property will be affected and limited by the terms of the contract and provisions of the Act. To assist our review, the Department requests documentation from TID in the form of copies of any filings for eminent domain and the property appraisal and offer made to the landowner pursuant to Government Code §§7267.1 and 7267.2.


Potential Future Additional Notification

After a public entity completes an actual acquisition of property located in an agricultural preserve, it must notify the Director of the Department of Conservation within ten days of completing the transaction (Gov. Code, §51291, subd. (c)). In addition, Gov. Code, §51291 subd. (d.) also states that the Department must be notified of any proposed, significant changes to the proposed project. If TID determines not to locate the project as proposed on the subject property, subsequent to acquisition, it must notify the Department and Stanislaus County. These notifications are in addition to any notifications required by the California Environment Quality Act.

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Thank you for your notification letter. I hope that the foregoing information will be helpful as TID proceeds with its intention to acquire property on which to site its project as proposed. If you have questions on our comments or require technical assistance or information, please contact Jacquelyn Ramsey, Environmental Planner, at (916) 323-2379 for assistance.

Sincerely,



John M. Lowrie
Program Manager
Williamson Act Program

cc: Board of Supervisors
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