



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

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October 12, 2009

VIA FACSIMILE (305) 788-2413

John McKenzie
San Luis Obispo County
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Dear Mr. McKenzie:

Subject: San Luis Obispo Excelaron LLC Conditional Use Permit Notice of Preparation
SCH# 2009091046

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Notice of Preparation (NOP) 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 purpose of the Excelaron LLC Conditional Use Permit (CUP) project is the phased development to re-establish oil production on a previously explored oil well. The 243.3-acre project site is located on the west side of Huasna Townsite Road, approximately 1.5 miles south of Huasna Road, and 12 miles east of the City of Arroyo Grande. The project site does not contain Prime Farmland, Farmland of Statewide Importance, or Unique Farmland. However, a portion of the project site is under a Williamson Act contract. Therefore, the Division recommends that the Draft Environmental Impact Report address the following items to provide a comprehensive discussion of potential impacts of the project on agricultural land and activities:

Mitigation Measures

The loss of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department recommends the use of permanent agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. If Williamson Act contracts are terminated, or if growth inducing or cumulative agricultural impacts are involved, the

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Department recommends that this ratio of conservation easements to lost agricultural land be increased. Conservation easements will protect a portion of those remaining land resources and lessen project impacts in accordance with CEQA Guideline §15370. The Department highlights this measure because of its acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should be conducted regionally or statewide, and not limited strictly to lands within the project's surrounding area.

The Department also has available a listing of approximately 30 "conservation tools" that have been used to conserve or mitigate project impacts on agricultural land. This compilation report may be requested from the Division at the email address or phone number below. General information about agricultural conservation easements, the Williamson Act, and provisions noted above is available on the Department's website:

<http://www.conservation.ca.gov/dlrp/index.htm>

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

Williamson Act Lands

Under California Code of Regulations §15206(b)(3), a project is deemed to be of statewide, regional or area-wide significance if it would result in the cancellation of a Williamson Act for any parcel of 100 or more acres. The public agency responsible for such a project, must submit a Draft Environmental Impact Report or Negative Declaration to the State Clearinghouse and the appropriate metropolitan area council of governments for review and comment. In either of these two CEQA documents, the Department recommends that the following information be provided and/or discussed:

- A map detailing the location of agricultural preserves and contracted land within each preserve. The CEQA document should also tabulate the number of Williamson Act acres, according to land type (e.g., prime or non-prime agricultural land), which could be impacted directly or indirectly by the project.
- A discussion of Williamson Act contracts that may be terminated in order to implement the project. The CEQA document should discuss the probable impacts on nearby properties resulting from the termination of adjacent Williamson Act contracts. For example, a termination of a Williamson Act contract may have a growth-inducing impact. In other words, a termination may

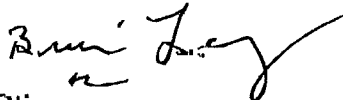
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- not only lift a barrier to development, but also result in higher property taxes, and thus, an incentive to shift to a more intensive land use, such as urban development.
- As a general rule, land can only be withdrawn from a Williamson Act contract through the nine-year non-renewal process. Immediate termination via cancellation is reserved for "extraordinary circumstances" (See Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 852-855). Under Government Code §51282, the city or county must approve a request for cancellation and base that approval on specific findings that are supported by substantial evidence. When cancellation is proposed, the Department recommends that a discussion of the findings be included in the CEQA document. Finally, a notice of the hearing to approve the tentative cancellation and a copy of the landowner's petition must be mailed to the Director of the Department ten working days prior to the hearing. (The notice should be mailed to Bridgett Luther, Director, Department of Conservation, c/o Division of Land Resource Protection, 801 K Street MS 18-01, Sacramento, CA 95814-3528.)
 - Under Government Code §51243, if a city annexes land under a Williamson Act contract, the city must succeed to all rights, duties, and powers of the county under the contract. However, under §51243.5, a city may exercise its option not to succeed to the contract if certain conditions are met. LAFCO must notify the Department within 10 days of a city's proposal to annex land under a contract (Government Code §56753.5). Additionally, LAFCO must not approve a change to a sphere of influence or annexation of contracted land to a city unless certain conditions are met (see Government Code §§51296.3, 56426, 56426.5, 56749 and 56856.5).
 - If portions of the planning area are under Williamson Act contracts (and will continue to be under contract after project implementation) the CEQA document should discuss the proposed uses for those lands. Uses of contracted land must meet compatibility standards identified in Government Code §§51238 - 51238.3. Otherwise, contract termination (see paragraph above) must occur prior to the initiation of the land use.
 - An agricultural preserve is a zone authorized by the Williamson Act and established by the local government to designate qualified land to be placed under the Williamson Act's 10-year contracts. Preserves are also intended to create a setting for contract-protected lands that is conducive to continuing agricultural use. Under Government Code §51230, "An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning, including appropriate minimum parcel sizes that are at a minimum consistent with this chapter, in such a way as not to be incompatible with the agricultural use of the land." Therefore, the CEQA document should also discuss any proposed general plan designation or zoning within agricultural preserves affected by the project.

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Thank you for giving us the opportunity to comment on this NOP. If you have questions regarding our comments, or require technical assistance or information on agricultural land conservation, please contact Elliott Lum, Environmental Planner, at 801 K Street, MS 18-01, Sacramento, CA 95814; phone: (916) 324-0869; e-mail: Elliott.Lum@conservation.ca.gov.

Sincerely,



Dan Otis
Program Manager
Williamson Act Program

cc: State Clearinghouse