



DEPARTMENT OF PLANNING AND BUILDING

THIS IS A NEW PROJECT REFERRAL

DATE: 2/20/2013

TO: _____

FROM: Terry Wahler, Development Review

PROJECT DESCRIPTION: AGP2012-00012 FINLEY FAMILY TRUST- SOLAR USE EASEMENT RESCINDING LAND CONSERVATION CONTRACT. 117 acre site located off El Pomar Drive in Templeton. APN: 033-231-026

Return this letter with your comments attached no later than: 14 days from receipt of this referral. Thank you.

PART 1 - IS THE ATTACHED INFORMATION ADEQUATE TO COMPLETE YOUR REVIEW?

- YES (Please go on to PART II.)
- NO (Call me ASAP to discuss what else you need. We have only 10 days in which we must obtain comments from outside agencies.)

PART II - ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?

- YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter)
- NO (Please go on to PART III)

PART III - INDICATE YOUR RECOMMENDATION FOR FINAL ACTION.

Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial.

IF YOU HAVE "NO COMMENT," PLEASE SO INDICATE, OR CALL.

_____ Date

_____ Name

_____ Phone



WILLIAMSON ACT PROGRAM APPLICATION FORM

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

Promoting the Wise Use of Land • Helping to Build Great Communities

APPLICATION TYPE

FILE NUMBER _____

- Agricultural Preserve - Establish or Amend
 Amend existing Preserve & Contract (e.g.: add land or amend Preserve & Contract)
 Enter into Contract or amended Contract for property in existing Preserve
 Notice of Non-renewal (staff review and assistance)

APPLICANT INFORMATION *Check box for contact person assigned to this project*

Landowner Name Vida Finley Family Trusts Daytime Phone (805) 610-3885
Mailing Address 630 El Pomar Dr, Templeton, CA Zip 93465
Email Address: _____

Applicant Name Vintner Solar, % Chris Little Daytime Phone (651) 268-2053
Mailing Address 222 S 9th St, Suite 1600, Mpls, MN Zip 55402
Email Address: chris.little@ecosrenewable.com

Agent Name Chris Little Daytime Phone (651) 268-2053
Mailing Address 222 S 9th St, Suite 1600, Mpls, MN Zip 55402
Email Address: chris.little@ecosrenewable.com

PROPERTY INFORMATION

Total Size of Site: 117 acres +/- Assessor Parcel Number(s): 033-231-026

Legal Description: See attached Exhibit A

Address of the project (if known): 630 El Pomar Dr, Templeton, CA

Directions to the site - describe first with name of road providing primary access to the site, then nearest roads, landmarks, etc.: Located north of El Pomar Dr, approximately 1.57 miles east of Highway 101 in Templeton, CA

Describe current uses, existing structures, and other improvements and vegetation on the property:

Current uses include dry farming, nursery, outdoor storage and open space/fallow land. Buildings include 2 dwellings and 4 outbuildings for farming/storage use.

COMMENTS

LEGAL DECLARATION

I, the owner of record of this property have completed this form accurately and declare that all statements here are true. I do hereby grant official representatives of the county authorization to inspect the subject property.

Property owner signature _____

Date 2-29-13

FOR ORCHARDS OR VINEYARDS: Not applicable

Orchard Vineyard Year Planted N/A

Commercial production at present N/A tons per acre AND Anticipated production at full bearing N/A tons per acre

FOR DRY FARM GRAIN AND HAY:

Planted every year? Yes No OR Once every 2 years

GRAZING:

Type of Livestock: Cattle

Number of head normally grazed on property: 70 units

Is the property fenced? Yes No Water source(s) for livestock: Domestic Well

Is the property grazed yearlong? Yes No If no, what months is the land grazed: _____ through _____.

OTHER USES:

Other animal, nursery or specialty uses? Nursery

Any proposed changes to the agricultural uses in the near future? Yes No

If yes, please describe: _____

OPERATOR:

The farm or ranch is operated by: Owner Lessee Lessee Name: _____

LEGAL DECLARATION

I, the owner of record of this property have completed this form accurately and declare that all statements here are true. I do hereby grant official representatives of the county authorization to inspect the subject property.

Property owner signature  Date 2-28-13



WILLIAMSON ACT PROGRAM SUPPLEMENTAL FORM

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

Promoting the Wise Use of Land • Helping to Build Great Communities

FILE NUMBER _____

OWNERSHIP INTEREST

List all landowners not shown on the General Permit Application, as well as all Trust Deed Beneficiaries and/or Mortgagees (all of whom will need to sign the contract after the preserve is established or the amendment is approved):

NAME/INTEREST	ADDRESS	TYPE OF OWNERSHIP
Robert Finley, Trustee of the Finley Family Trust of March 22, 1982 Exemption Trust		32.36%
Robert Finley, Trustee of the Finley Family Trust of March 22, 1982 - Qualified Terminable Interest Trust		17.64%
Robert Finley, Trustee of the Finley Family Trust of March 22, 1982 - Survivor's Trust		50%
630 El Pomar Dr, Templeton, CA 93465		

EXISTING LAND USES

	TYPE	ACRES
IRRIGATED CROPS	None - Nursery 5	0
DRY FARM CROPS	Oat Hay	47.36
DRY LAND GRAZING	Open Grassland	8.44
	Moderate Tree Cover	0
	Dense Woodland or Chaparral	0
OTHER USES (MINING, RECREATION, ETC.)	Nursery (4.63ac), Dwellings/Buildings (3.06ac) River Bed (12.0ac), mining (4.0ac)	
UNUSED (OPEN SPACE) / STORAGE		36.51

EXISTING AGRICULTURAL INFORMATION Not applicable

FOR IRRIGATED LAND:

Irrigation well production: N/A gpm Well depth: N/A feet
 Storage tank capacity: N/A gal OR Other water impoundments: N/A acre feet
 Irrigation Method: Furrow Sprinkler Drip
 Multiple cropping: Number of irrigated crops harvested on same acreage each year. N/A

CONSENT OF LANDOWNER

San Luis Obispo County Department of Planning and Building File No _____

I (we) the undersigned owner of record of the fee interest in the parcel of land located at (print address): 630 El Pomar Dr, Templeton, CA identified as Assessor Parcel Number 033-231-026 for which a construction permit, land use permit, land division, general plan or ordinance amendment, or LAFCo application referral is being filed with the county requesting an approval for: photovoltaic (solar) project specify type of project, for example: addition to a single family residence; or general plan amendment), do hereby certify that:

1. Such application may be filed and processed with my (our) full consent, and that I (we) have authorized the agent named below to act as my (our) agent in all contacts with the county and to sign for all necessary permits in connection with this matter.

2. I (we) hereby grant consent to the County of San Luis Obispo, its officers, agents, employees, independent contractors, consultants, sub-consultants and their officers, agents, and employees to enter the property identified above to conduct any and all surveys and inspections that are considered appropriate by the inspecting person or entity to process this application. This consent also extends to governmental entities other than the county, their officers, agencies, employees, independent contractors, consultants, sub-consultants, and their officers agents or employees if the other governmental entities are providing review, inspections and surveys to assist the county in processing this application. This consent will expire upon completion of the project.

3. If prior notice is required for an entry to survey or inspect the property. Please contact:
Print Name: Bob Finley
Daytime Telephone Number: (805) 610-3885

4. I (we) hereby give notice of the following concealed or unconcealed dangerous conditions on the property None, but access inside any buildings is not allowed without prior consent of landowner.

Person or entity granting consent:

Print Name: Bob Finley
Print Address: 630 El Pomar Dr, Templeton CA 93465
Daytime Telephone Number: (805) 610-3885

Signature of landowner:  Date: 2-28-

Authorized agent:

Print Name: Christopher Little
Print Address: 222 S 9th St, Minneapolis, MN 55402
Daytime Telephone Number: (651) 268-2053

Signature of authorized agent:  Date: 1/28/13

INFORMATION DISCLOSURE FORM

San Luis Obispo County Department of Planning and Building

File No _____

.....
TIME LIMITS FOR PROCESSING AND PUBLIC NOTICE DISTRIBUTION REQUIREMENTS - California state law (California Government Code Section 65941.5) requires that the county provide the following information to applicants when a permit application is filed:

Not later than 30 days after a land use or land division application is received, the county must notify the project applicant or designated representative in writing either that the application is complete, or that items are necessary to complete the application. If you are not notified in writing, the application is considered complete. Any land use or land division application must be approved or denied within three months of adoption of the Negative Declaration or determination that the project is exempt, or within six months of the certification of an Environmental Impact Report. The County of San Luis Obispo processes the land use application and the environmental review concurrently, so these decisions are made simultaneously. (Government Code Sections 65943 and 65950 et. seq.)

A project applicant may make a written request to the county, to receive notice of any proposal to adopt or amend the general plan and the land use, real property division, building and construction, road name and addressing, and growth management ordinances which might reasonably be expected to affect that applicant's project. The county offers a subscription service for notification of either: (1) all applications received by the county, or (2) Planning Commission agendas. The cost for each of these services is established by the county fee ordinance. (Government Code Section 65945, 659453, and 659455)

When a property was created through recordation of a final or parcel map, and it is within five years of recordation, the county can not withhold or condition the issuance of building permits for residential units based on conformance with conditions that could have been imposed as conditions of the tentative map except where: (1) A failure to do so would place subdivision residents or residents in the immediate area in a condition perilous to health, safety or both; or (2) The condition is required in order to comply with state or federal law. (Government Code Section 65961)

Copies Government Code Sections are available at the County of San Luis Obispo Law Library, County Government Center, San Luis Obispo, Ca.

RIGHT TO FARM DISCLOSURE - The County of San Luis Obispo recognizes the statewide policy to protect and encourage Agriculture. Sections 3482.5 and 3482.6 of the California Civil Code and Chapter 5.16. of the San Luis Obispo County Code protect certain, pre-existing agricultural production and processing operations ("agricultural operation") from nuisance claims. If your property is near a protected agricultural operation, you may be subject to certain inconveniences and/or discomforts which are protected by law. In order for the agricultural operation to be protected, the following requirements of Civil Code sections 3482.5, and 3482.6 must be satisfied:

(1)The agricultural operation must be conducted or maintained for commercial purposes; (2)The agricultural operation must be conducted or maintained in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in the same locality; (3)The agricultural operation predated the affected use(s) on your property; (4)The agricultural operation has been in existence for more than three years, and (5)The agricultural operation was not a nuisance at the time it began.

If your property is near an agricultural operation in the unincorporated area of the County, which satisfies the above requirements, you may at times be subject to one or more inconveniences and/or discomfort arising from that operation. Such inconveniences may include (depending upon the type of agricultural operation protected), but are not necessarily limited to, the following: noise, odors, fumes, dust, legal pesticide use, fertilizers, smoke, insects, farm personnel and truck traffic, visual impacts, night time lighting, operation of machinery and the storage, warehousing and processing of agricultural products or other inconveniences or discomforts associated with the protected agricultural operations. For additional information pertaining to this disclosure and the Right to Farm Ordinance, or concerns with an agricultural operation, please contact the San Luis Obispo County Agricultural Commissioners Office."

HAZARDOUS WASTE AND SUBSTANCE SITES AND LANDFILL DISCLOSURE - Please verify whether your project is on the Known Hazardous Waste and Substances Sites List pursuant to AB 3750 and if you are within 1/2 mile of certain landfills (see back of sheet)

PLEASE COMPLETE AND SIGN BELOW

I acknowledge that I have read and understand the information and policy and detailed above: (1) Time Limits for processing and (2) Public Notice Distribution requirements and (3) the Right to Farm Disclosure.

AND I acknowledge that I have reviewed the list of Identified Hazardous Waste and Substances Sites List and the landfill disclosure on the back of this form and find the following: (1) The site is not shown on the list of Identified Hazardous Waste and Substances Site; (2) The site is shown on the list dated April 1998, or any later list published by the State Office of Planning and Research and (3) I have read the disclosure statement on landfill operations.

Signature 

Date 7-28-13

San Luis Obispo County Identified Hazardous Waste Sites - April 1998

IMPACT CITY: ARROYO GRANDE

Site: Union Oil Co - Santa Maria refinery
Location: Willow Rd. north of Guadalupe
City: Arroyo Grande Zip: 93420
Source: DHS1

Zip: 93023
Source: WRCB Problem; Tank Leak

Source: WRCB Problem: Tank Leak

IMPACT CITY: CAMBRIA

Site: Hampton Hotel
Location: 2601 Main Street
City: Cambria Zip: 93428
Source: WRCB Problem: Tank Leak

IMPACT CITY: NIPOMO

Site: Hemerick
Location: 600 Hill St
City: Nipomo Zip: 93444
Source: WRCB Problem; Tank Leak

Site: Pacific Beverage
Location: 22255 El Camino Real
City: Santa Margarita Zip: 93453
Source: WRCB Problem: Tank Leak

Site: Cambria General Store
Location: 850 Main Street
City: Cambria Zip: 93428
Source: WRCB Problem: Tank Leak

IMPACT CITY: OCEANO

Site: Bell Craig (form serv station)
Location: 1899 Cienega
City: Oceano Zip: 93445
Source: WRCB Problem; Tank Leak

IMPACT CITY: TEMPLETON

Site: Templeton Mobile
Location: 701 Las Tablas
City: Templeton Zip: 93465
Source: WRCB Problem: Tank Leak

Site: Chevron
Location: 2194 Main Street
City: Cambria Zip: 93428
Source: WRCB Problem: Tank Leak

IMPACT CITY: PASO ROBLES

Site: Camp Roberts Site 936
Location: Highway 101
City: San Miguel Zip: 93451
Source: WRCB Problem; Tank Leak

LANDFILL OPERATIONS

DISCLOSURE EL POMAR/ESTRELLA PLANNING AREA

If your site is located within 1/2 mile of either the Paso Robles Municipal or the Chicago Grade Landfills (see maps on file with the Department of Planning and Building), this acts to notify you of your proximity to a landfill operation and all of the associated inconveniences and discomforts resulting from the continuing and future operation of such landfill, including possible expansions. Persons living near landfills may contact the California Integrated Waste Management Board (916) 341-6413 to seek available remedies concerning any improper or unlawful activities at the landfill.

IMPACT CITY: CAYUCOS

Site: Chevron
Location: 12 N Ocean Blvd
City: Cayucos Zip: 93430
Source: WRCB Problem: Tank Leak

Site: San Paso Truck & Auto
Location: Wellsona Road
City: Paso Robles Zip: 93446
Source: WRCB Problem; Tank Leak

Site: Bob's Corner Store
Location: 198 N Ocean Blvd
City: Cayucos Zip: 93430
Source: WRCB Problem: Tank Leak

IMPACT CITY: SAN LUIS OBISPO

Site: Unocal Tank Farm Facility
Location: 276 Tank Farm Rd
City: SLO Zip: 93401
Source: WRCB Problem: Tank Leak

Site: Hearn Trucking
Location: 4902 Edna Rd
City: SLO Zip: 93401
Source: WRCB Problem: Tank Leak

IMPACT CITY: CHOLAME

Site: Hearst Corp
Location: Highway 46
City: Cholame Zip: 93431
Source: WRCB Problem: Tank Leak

Site: Camp San Luis Obispo
Location: Hwy. 1 west of Hwy. 101
City: San Luis Obispo Zip: 93401
Source: WRCB Problem: Tank Leak

IMPACT CITY: LOS OSOS

Site: Los Osos Valley Garage
Location: 1099 Los Osos Valley Road
City: Los Osos Zip: 93402
Source: WRCB Problem: Tank Leak

Site: SLO Golf & Country Club
Location: 255 Country Club
City: San Luis Obispo Zip: 93401
Source: WRCB Problem: Tank Leak

Site: Los Osos Landfill
Location: Turri Road
City: Los Osos Zip: 93402
Source: CIWMB Problem: Grndwt

IMPACT CITY: SAN SIMEON

Site: Chevron
Location: 9540 Castillo Drive
City: San Simeon Zip: 93452
Source: WRCB Problem: Tank Leak

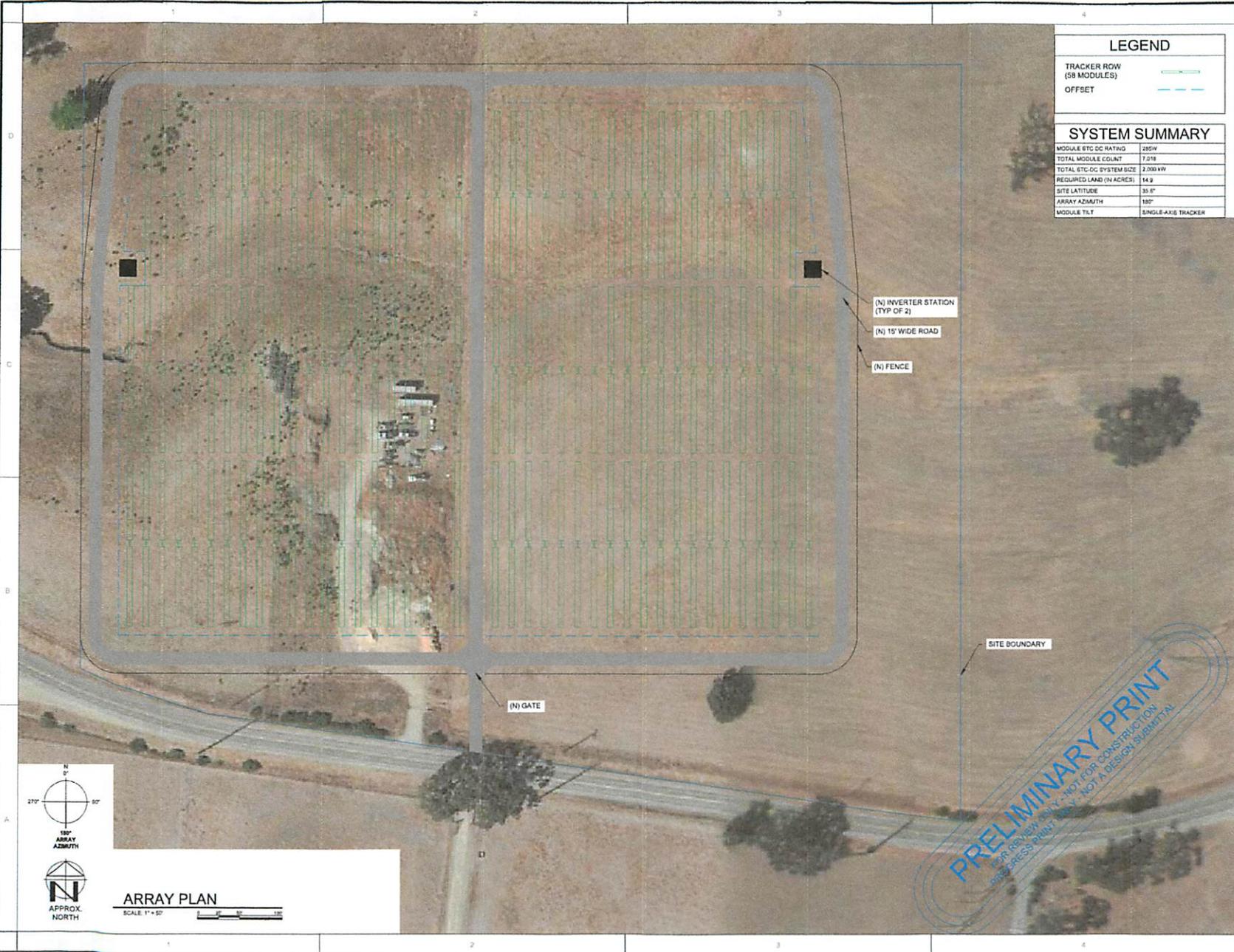
IMPACT CITY: LOS PADRES

Site: Ozena Station
Location: Highway 33

IMPACT CITY: SANTA MARGARITA

Site: Kaiser Sand & Gravel
Location: El Camino Real
City: Santa Margarita Zip: 93453

DATE: 08/01/2024 TIME: 10:45:00 AM BY: J. [Name]



LEGEND

TRACKER ROW (58 MODULES)	
OFFSET	

SYSTEM SUMMARY

MODULE ETC DC RATING	285W
TOTAL MODULE COUNT	7,018
TOTAL ETC-DC SYSTEM SIZE	2,000 kW
REQUIRED LAND (IN ACRES)	14.9
SITE LATITUDE	35.8°
ARRAY AZIMUTH	190°
MODULE TILT	SINGLE-AXIS TRACKER

NOTES:
1.

KEYED NOTES:
① NONE

CONFIDENTIALITY STATEMENT:
THIS DRAWING IS THE PROPERTY OF BLUE OAK ENERGY, INC. THIS INFORMATION IS CONFIDENTIAL AND IS TO BE USED ONLY IN CONNECTION WITH WORK DESCRIBED BY BLUE OAK ENERGY, INC. NO PART IS TO BE DISCLOSED TO OTHERS WITHOUT WRITTEN PERMISSION FROM BLUE OAK ENERGY, INC.

PRELIMINARY
NOT FOR
CONSTRUCTION

REV. NO.	DESCRIPTION	DATE	BY

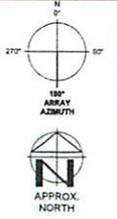
BLUE OAK ENERGY
1560 Drew Avenue, Davis, CA 95618
www.blueoakenergy.com - Phone: 530.747.2028

ecos ENERGY

PROJECT SITE:
VINTNER SOLAR PROJECT
1050 EL POMAR DRIVE
TEMPLETON, CA 93465

DRAWING: ARRAY PLAN

DRAWING NO: W-111



ARRAY PLAN
SCALE: 1" = 50'



December 10, 2012

Ryan Hostetter
Project Manager
Department of Planning and Building
San Luis Obispo County
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Re: DRC2011-00062

Dear Ms. Hostetter,

We appreciate your patience with regard to the receipt of the information requested in your letter dated March 28, 2012. While we work to prepare the requested and required materials, we are hereby submitting the information/application required for a solar use easement required by the Department of Conservation with respect to Senate Bill 618 (SB618).

While we are submitting an application for a solar use easement under SB618, we believe that the path of obtaining a solar use easement should not be necessary as the project is a statutorily designated compatible use under the Williamson Act. Much of the information that is enclosed with respect to a solar use easement is also relevant in assisting the County to conclude that an Environmental Impact Review ("EIR") is not warranted.

We have also included in our packet a completed LESA model (included in the solar use easement application), which is the standard used under CEQA to determine the environmental significance of the proposed project. Because of the type of soils, the LESA score is 35.76, which equates to a finding of no significant impact. For that reason, the project should be approved without the necessity of an EIR. Any other environmental impacts such as related to aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards & hazardous materials, noise, population/housing, public services/utilities, recreation, transportation/circulation, wastewater, water, land use, mandatory findings of significance will be either not applicable, insignificant or an impact that can and will be mitigated.

The solar facility will occupy 14.8 acres (or approximately 13.7%) of the 108 acre site. As a result it should not be viewed as a significant impact on the overall potential agricultural production of the site. Furthermore approximately 1 acre of the 14.8 acres has historically been used as an open storage area and not used for any crop production. As a result the 13.7% drops to 12.7%.



With respect to the Williamson Act, as discussed in the attached memorandum, the proposed facility is a statutorily defined compatible use under Government Code Section 51238.

The Williamson Act is permissive, not mandatory, and cities and counties are under no obligation to make use of it as a mechanism to preserve agricultural, recreational and open space lands. *Kelsey v. Colwell*, 30 Cal. App. 3d 590 (1973). Government Code section 51243 states in pertinent part: "Every [Williamson Act] contract shall: (a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract." A "compatible use" is defined by

Government Code section 51201 subdivision (e) to be "any use determined . . . by this act to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract."

Government Code section 51238 provides:

"Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities are hereby determined to be compatible uses within any agricultural preserve. No land occupied by gas, electric, water, or communication utility facilities shall be excluded from an agricultural preserve by reason of such use."

The County has made no such independent finding under the Williamson Act, with respect to utility facilities. Indeed to do so would not only require the eliminate of solar electric generating plants but also electric transmission facilities, as Section 51238 does not permit the differential of sub-types of electric utility facilities. Government Code section 51238 makes it clear that the proposed solar electric facility is a compatible use.

Moreover, even if Government Code Section 51238 did not apply, Table 2, of the County of San Luis Obispo, Rules of Procedure to Implement the California Land Conservation Act of 1965, provides that "Utility Facilities", which the solar facility will be, are compatible uses on Williamson Act land. On this latter point we note that the Referral Response dated March 27, 2012, from Terry Wahler states that "Electric generating plants" are not listed as compatible uses according to Table 2. While Table 2 does not list "electric generating plants", an electric generating plant such as the proposed solar facility is included within Table 2 as "Utility Facilities". Mr. Wahler's conclusion is contrary to the plain language of the statute and the history of the Williamson Act. As discussed in the attached memorandum, in 1992 there was an attempt to limit the "Utility Facility" statutory compatible use to transmission facilities only, but



that attempt was rejected by the legislature. That rejection further reinforces the plain meaning of the statute and that Mr. Wahler's conclusion is incorrect.

Furthermore, the Williamson Act contract executed in 1975 is the primary document that governs the use of the property. The contract was executed at a time when there was no doubt that electric generating plants such as the proposed solar facility were considered compatible uses. Exhibit B to the Williamson Act contract dated April 28, 1975, and recorded May 8, 1975, specifically permits "public utility structures", which the solar facility is. The inclusion of public utility structures as a specifically permitted use is consistent with other permitted uses such as churches, schools, airports, etc. that serve the purpose of providing infrastructure and support for the entire community, as opposed to only narrowly looking at what type of facilities might serve only the specific parcel subject to the Williamson Act contract.

For these reasons, and the relatively small size of the facility, we believe that it would be appropriate for the environmental coordinator to find that

- (i) the proposed project is a compatible use under the Williamson Act, and
- (ii) the proposed project COULD NOT have a significant effect on the environment, and a negative declaration should be prepared.

Sincerely yours,

A handwritten signature in cursive script that reads "Christopher Little".

Christopher Little

MEMORANDUM REGARDING WILLIAMSON ACT LAND

I. THE PROPOSED SOLAR FACILITY IS A STATUTORILY DEFINED COMPATIBLE USE.

The Act's Legislative History of Compatible Uses¹

As initially chaptered in 1965, the Williamson Act allowed the city or county to determine what was a "compatible use," but also provided that the following were recognized as compatible uses by statute: "the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities, unless the governing board makes a finding after notice and hearing that any or all such facilities are not a compatible use."²

At the same time, the Legislature defined "agricultural preserve" to mean "an area devoted to agricultural and compatible uses as designated by a city or county...".³ In 1978, AB 1625 removed "compatible uses" from the "agricultural preserve" definition, thereby requiring that agricultural preserves be established solely on the basis of the agricultural, open space or recreational use of the land in question, and not based upon a compatible use.⁴ The apparent concern was that some jurisdictions were establishing agricultural preserves on properties where only a compatible use, as defined by the jurisdiction, was occurring. AB 1625 provided that once a proper agricultural preserve was established, in addition to the Legislatively-defined compatible uses, the city or county may then enumerate the compatible uses that will be permitted within the preserve.⁵ Thus, compatible uses were allowed to exist within a preserve, but could not serve as the basis for the formation of the preserve.

Apparently, there was a concern that cities and counties were allowing "compatible uses" beyond those identified in the Act, which some believed were not consistent with the agricultural and open space preservation goals of the Act. In response, the Legislature adopted AB 2663 in 1994, which required that if a city or county allows compatible uses in agricultural preserve beyond those expressly identified by the Act, those uses normally must be consistent with the three "principles of compatibility" enumerated in Williamson Act Section 51238.1 (added by AB 2663, and explained in more detail below).

Legislative History of Electric Facilities as Compatible Uses

In 1969, AB 1178 modified the "compatible use" definition of Section 51201(e) and renumbered it to new Section 51238:

Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing

¹ This discussion is excerpted from a memorandum prepared by the Allen Matkins law firm.

² § 50201(e), Ch. 1443, p. 3378 (1965 Regular Session).

³ § 50201(d), Ch. 1443, p. 3377 (1965 Regular Session).

⁴ Ch. 1120, p. 3426 (1977-78 Regular Session).

⁵ § 51231

makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities are hereby determined to be compatible uses within any agricultural preserve. No land occupied by gas, electric, water, or communication utility facilities shall be excluded from an agricultural preserve by reason of said use.⁶

In 1991 and 1992, the California Department of Conservation introduced legislation that would have replaced Section 51238 with provisions that would require a local agency to submit any draft adopted or amended compatible use ordinance to the Department for review and comment regarding its compliance with new principles of compatibility set forth in new Section 51238.1.⁷ Notwithstanding these limitations, proposed new Section 51238.2 essentially replicated the statutorily-enumerated compatible uses from 1969's AB 1178, thereby underscoring the Department's recognition that the statutorily-enumerated compatible uses such as electric facilities were not subject to any principles of compatibility.⁸ Also noteworthy is that during the amendment process, there was an attempt to limit Section 51238 to facilities related to the transmission of gas, electric, water and communication services, but that attempt was withdrawn, and there remains no qualifier that the uses in Section 51238 be limited to transmission facilities. Both bills died on November 30, 1992.⁹

AB 2663¹⁰ went through six versions before it was signed into law in 1994, and established the current relevant provisions of compatible use law, including the three "principles of compatibility" in new Section 51238.1. Each version of the bill contained a provision maintaining the statutory compatible use status of electrical facilities. The last amended version¹¹ of AB 2663 also introduced the separate compatibility standards for non-prime lands¹² that was the compromise that made passage of the bill possible. In addition, the final bill included uncodified intent language (Section 8) stating that "the goal of preserving the maximum amount of non-prime agricultural land can be met by allowing other compatible uses, in compliance with Section 51238.1(c) ... that sustain the economic viability of these lands while maintaining their open space quality."

⁶ AB 1178, Ch. 1372, p. 2809 (1969 Regular Session).

⁷ AB 1770, AB 3406 (1991-1992 Regular Session).

⁸ *Id.*

⁹ *Id.*

¹⁰ Ch. 1251 (1994 Regular Session)

¹¹ August 25, 1994.

¹² § 51238.1(c).

In 1999, AB 1505 renumbered the subparagraphs of Section 51238 into (a)(1), (a)(2), and (b), reflecting its current structure.¹³

Application of the Act's Current Compatible Use Provisions to Electric Facilities

Section 51201(e)¹⁴ expressly recognizes that a compatible use may be either established: (1) by a city or county, so long as it meets the Act's compatible use parameters; or (2) by the Act itself, including agricultural, open space, or recreational uses, and those uses identified in Section 51238(a)(1), which identifies electric facilities as statutory compatible uses.¹⁵ As reflected in the legislative history, statutory compatible uses such as electric facilities are separate from, and are not subject to, the separate "principles of compatibility" set forth in Section 51238.1.

II. EVEN IF THE STATUTORY DEFINITION IN SECTION 51238 WERE IGNORED, THE PROPOSED SOLAR FACILITY IS LISTED AS A COMPATIBLE USE BY THE COUNTY OF SAN LUIS OBISPO.

Table 2, of the County of San Luis Obispo, Rules of Procedure to Implement the California Land Conservation Act of 1965, provides that "Utility Facilities", which the solar facility will be, are compatible uses on Williamson Act land. As a result, San Luis Obispo County's implementation of the Williamson Act specifically recognizes the proposed solar electric facility as a compatible use.

III. EVEN IF POINTS I AND II ABOVE WERE IGNORED, THE SOLAR FACILITY WOULD SATISFY THE PRINCIPLES OF COMPATIBILITY UNDER SECTION 51238.1

¹³ Ch. 967 (1999 Regular Session).

¹⁴ § 51201(e): "Compatible use" is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238 or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. "Compatible use" includes agricultural use, recreational use, or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter. (Underscoring added.)

¹⁵ § 51238(a)(1): Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, communication and agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve.

(2) No land occupied by gas, electric, water, communication, or agricultural laborer housing facilities shall be excluded from an agricultural preserve by reason of that use.

(b) The board of supervisors may impose conditions on lands or land uses to be placed within preserves to permit and encourage compatible uses in conformity with Section 51238.1, particularly public outdoor recreational uses. (Underscoring added.)

In addition to the statutorily defined compatible uses, Section 51238.1 provides the local government with the necessary flexibility to consider and approve projects that the agency determines is compatible with the Williamson Act and beneficial to the community.¹⁶

Under Section 51238.1,¹⁷ the typical analysis is to first determine if the use is consistent with the three principles of compatibility set forth in subsection (a) of Section 51238.1; if so, that ends the inquiry. If

¹⁶ Section 51238(b), for example, allows the legislative body to “impose conditions on lands or land uses to be placed within preserves to permit and encourage compatible uses in conformity with Section 51238.1....”

¹⁷ § 51238.1(a): Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

(1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

(2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

(3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

In evaluating compatibility a board or council shall consider the impacts on noncontracted lands in the agricultural preserve or preserves.

(b) A board or council may include in its compatible use rules or ordinance conditional uses which, without conditions or mitigations, would not be in compliance with this section. These conditional uses shall conform to the principles of compatibility set forth in subdivision (a) or, for nonprime lands only, satisfy the requirements of subdivision (c).

(c) In applying the criteria pursuant to subdivision (a), the board or council may approve a use on nonprime land which, because of onsite or offsite impacts, would not be in compliance with paragraphs (1) and (2) of subdivision (a), provided the use is approved pursuant to a conditional use permit that shall set forth findings, based on substantial evidence in the record, demonstrating the following:

(1) Conditions have been required for, or incorporated into, the use that mitigate or avoid those onsite and offsite impacts so as to make the use consistent with the principles set forth in paragraphs (1) and (2) of subdivision (a) to the greatest extent possible while maintaining the purpose of the use.

(2) The productive capability of the subject land has been considered as well as the extent to which the use may displace or impair agricultural operations.

(3) The use is consistent with the purposes of this chapter to preserve agricultural and open-space land or supports the continuation of agricultural uses, as defined in Section 51205, or the use or conservation of natural resources, on the subject parcel or on other parcels in the agricultural preserve. The use of mineral resources shall comply with Section 51238.2.

(4) The use does not include a residential subdivision.

the use does not satisfy subsection (a), the next level of analysis is to determine whether conditions could be imposed on the use in order to make it comply, as provided in subsection (b). If the use cannot be considered a compatible use after applying subsections (a) and (b), and if the use is located on non-prime land, then the final step in the analysis is to determine whether or not the use complies with the requirements of subsection (c). Compatibility determinations pursuant to Section 51238.1 must be made on a case-by-case basis.

As described in the documentation related to the solar-use easement, (i) the use of the land for the proposed solar facility will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves, (ii) the use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves, and (iii) the use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

IV. THE PARCEL'S WILLIAMSON ACT CONTRACT SPECIFICALLY PERMITS UTILITY STRUCTURES.

The Williamson Act contract executed in 1975 is the primary document that governs the use of the property. The contract was executed at a time when there was no doubt that electric generating plants such as the proposed solar facility were considered compatible uses. Exhibit B to the Williamson Act contract dated April 28, 1975, and recorded May 8, 1975, specifically permits "public utility structures", which the solar facility is. The inclusion of public utility structures as a specifically permitted use is consistent with other permitted uses such as churches, schools, airports, and other statutorily compatible uses in Section 51238, etc. that serve the purpose of providing infrastructure and support for the entire community, as opposed to only narrowly looking at what type of facilities might serve only the specific parcel subject to the Williamson Act contract.

For the purposes of this section, a board or council may define nonprime land as land not defined as "prime agricultural land" pursuant to subdivision (c) of Section 51201 or as land not classified as "agricultural land" pursuant to subdivision (a) of Section 21060.1 of the Public Resources Code.

Nothing in this section shall be construed to overrule, rescind, or modify the requirements contained in Sections 51230 and 51238 related to noncontracted lands within agricultural preserves. (Underscoring added.)