

Large Solar Energy Project Survives Williamson Act And CEQA Challenge

The Sixth District Court of Appeal has given a boost to utility-scale solar projects by rejecting the types of Williamson Act and CEQA challenges that are often brought against those projects. [Save Panoche Valley v. San Benito County](#), No. HO37599 (6th Dist. June 25, 2013).

The case concerns the Panoche Valley Solar Farm, a solar photovoltaic facility in San Benito County. The project site has been used primarily for cattle grazing, and most of it was under Williamson Act contracts. The county approved a reduced-scale 399-MW alternative designed to mitigate the environmental impacts of the project as proposed. Not satisfied, three local groups -- Save Panoche Valley, the Audubon Society and the Sierra Club -- sued to challenge the approvals. The court of appeal rejected each of their claims.

Need For Renewable Energy Supported Cancellation Of Williamson Act Contract In The Public Interest.

The Williamson Act was designed to protect farmers from the economic pressures of encroaching development. In exchange for entering into a contract with the city or county restricting the property to agricultural uses, the landowner is taxed on the agricultural value of the land, rather than the fair market value (which often accounts for development potential). A contract must have an initial term of ten years, and an additional year is automatically added every year unless one of the parties gives notice the contract will not be renewed.

Contracts may also be cancelled at any time, provided either the cancellation is consistent with the purposes of the Williamson Act or the cancellation is in the public interest. The county cancelled the Panoche Valley contracts on public interest grounds. A public interest cancellation requires two separate findings: (1) other public concerns substantially outweigh the objectives of the Williamson Act and (2) there is no proximate noncontracted land that is available and suitable for the proposed use, or development of the contracted land would provide more contiguous patterns of urban development.

Citing the Global Warming Solutions Act of 2006 and the Renewables Portfolio Standard requirements enacted by the State Legislature, the court had little trouble concluding the county's finding that the public interest in renewable energy outweighed the purpose of the Williamson Act was supported by substantial evidence. "Though completion of the solar project *by itself* will not fulfill the state's renewable energy goals, each additional renewable energy project helps the state advance toward meeting the requirements of the RPS."

The court then addressed the county's finding there was no proximate noncontracted land suitable for the proposed use and again found substantial evidence supporting the county's determination. It noted that "proximate" land under the Williamson Act means "property close enough to the restricted parcel to serve as a practical alternative for the proposed use." The court rejected the opponents' claim that another potential solar project site was a proximate alternative. There was evidence before the county showing the alternative was located approximately 60 miles away, in two different counties, was itself encumbered by Williamson Act contracts, and did not appear to be available in any event.

EIR's Analysis Of Key Issues Found Legally Adequate

Mitigation For Biological Impacts. The court ruled that the EIR did not improperly defer study or mitigation of biological impacts. The EIR called for a protocol survey for blunt-nosed leopard lizard before construction, a 22-acre buffer zone for each individual found, and a zone determined by a biological study to be the largest home range of the lizard. Other mitigation measures required preconstruction surveys for birds, a survey if active nests were found, and a 300-foot buffer around the nests. Preconstruction surveys were required for the San Joaquin coachwhip and coast horned lizard, and relocation of any individuals found. Similar measures were imposed for other species. The court ruled the measures adequate: they did not call for simply adopting the mitigation recommendations of the survey providers, which would be an improper deferred mitigation, but identified specific actions to be taken upon discovery of certain species.

Conservation Easements As Mitigation. The court also weighed in on the debate whether conservation easements, which some argue only preserve the status quo, can serve as mitigation. The court found sufficient evidence to support the county's determination that biological and agricultural impacts would be adequately mitigated by measures that included conservation easements.

In discussing biological impacts, the court acknowledged petitioners' opinion that the measures would not decrease the project's impacts, but ruled that evidence supported the county's determination the measures would adequately mitigate impacts. Citing an earlier court decision, it noted the "mitigation need not account for every square foot of impacted habitat to be adequate" and found sufficient evidence in the record "that conservation of habitat through easements and other methods would mitigate the impact on the biological resources to a less than significant level." With respect to agricultural impacts, the court ruled that CEQA's definition of mitigation "does not necessarily mandate that the County is tasked with creating new habitats." It noted that the EIR called for creation of conservation easements, while also mandating that the applicant restore the site and return the agricultural soils to their original condition at the end of the project's useful life. The court ruled these measures were sufficient, stating: "The goals of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels."

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