

December 7, 2021

VIA EMAIL

Mr. Boris Sanchez
Infrastructure Planning and CEQA, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Mr. Michael Manka
ESA
1425 North McDowell Blvd.
Suite 200
Petaluma CA 94954

RE: Response to Data Request #4 for the Gates 500 kV Dynamic Reactive Support Project

Dear Mr. Sanchez and Mr. Manka:

LS Power Grid California (LS Power) is in receipt of the California Public Utilities Commission's (CPUC) Data Request #4 concerning CEQA review for the Gates 500 kV Dynamic Reactive Support Project in Fresno County, California (Project). The request is as follows:

"The Proponents Environmental Assessment (PEA) Section 4.2 references California Government Code Section 5122 [sic] regarding prime agricultural land. Provide clarification regarding the applicability of this code section to the conversion of existing farmland to non-agricultural uses."

Section 4.2 of the PEA, to which Data Request #4 refers, references Cal. Gov. Code Sec. 51222 in support of the assertion that 10 acres is the minimum size a parcel needs to be to sustain agricultural use in the case of prime agricultural land. Specifically, Cal. Gov. Code Sec. 51222 provides as follows:

"[A]gricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land, or (2) at least 40 acres in size in the case of land which is not prime agricultural land."

Cal. Gov. Code Sec. 66474.4(b)(1) of the Subdivision Map Act contains a similar provision:

"[L]and shall be conclusively presumed to be in parcels too small to sustain their agricultural use if the land is (A) less than 10 acres in size in the case of prime agricultural land, or (B) less than 40 acres in size in the case of land that is not prime agricultural land."

In other words, parcels of prime agricultural land less than 10 acres in size are presumed to be too small to support agricultural uses.

The PEA references Cal. Gov. Code Sec. 51222 in support of its conclusion that the Project's impacts to prime agricultural resources will be less than significant without mitigation because the Project will convert less than 10 acres of prime agricultural land to non-agricultural uses.

The CPUC has applied the same 10-acre significance threshold for other projects. For example, the CPUC's [Final EIS/EIR¹](#) for the Devers-Palo Verde No. 2 Transmission Line Project invokes Cal. Gov. Code Sec. 51222 and provides as follows:

“The conversion of Farmland would be considered significant if greater than 10 acres of Prime Farmland is converted to non-agricultural use, and if greater than 40 acres of non-Prime Farmland (Farmland of Statewide Importance or Unique Farmland) is converted. These thresholds are used because they are the minimum acreage requirements for individual parcels able to enter into Williamson Act contracts as stated in Section 51222 of the California Government Code, and represent parcels or areas of agricultural land that are large enough to sustain agricultural uses. . . . Additional factors that determined these threshold limits include the use of 10- and 40-acre minimum mapping units for the important farmland maps. Ten acres is the minimum mapping unit on the DOC FMMP Important Farmland maps In addition, 10 acres is used as the threshold for Prime Farmland because it is commonly used within guidelines utilized by other local agencies in California.” p. D.6-16.

Similarly, the CPUC's [Final EIR/EIS²](#) for the Tehachapi Renewable Transmission Project invokes Cal. Gov. Code Sec. 51222 and provides as follows:

“The conversion of Farmland would be considered significant if greater than ten acres is converted to non-agricultural use. This threshold is used because it is the minimum acreage requirement for individual parcels able to enter into Williamson Act contracts as stated in Section 51222 of the California Government Code, and represent parcels or areas of agricultural land that are large enough to sustain agricultural uses. Ten acres is the minimum mapping unit on the DOC FMMP Important Farmland maps. The minimum mapping unit indicates the spatial scale of the maps and is the smallest unit or feature represented on the maps, with smaller than 10-acre features being absorbed into the surrounding classifications.” p. 3.2-10.

The California Department of Conservation's Division of Land Resource Protection has also recognized the same 10-acre significance threshold in [public comment letters](#),³ consistent with the agricultural viability rationale underlying its 10-acre minimum mapping unit:

“Section 66474.4 of the Subdivision Map Act considers the minimum parcel size for Prime Farmland to be 10 acres and Non-Prime to be 40 acres. Therefore, the Division recommends that the agricultural mitigation program (Mitigation Measure 4.2.1) recognize the difference between Prime and Non-Prime Farmland. It should require mitigation for Prime-Farmland parcels that are 10 acres or larger in size and Non-Prime that are 40 acres or larger in size.” p. 2.0-11.

Local jurisdictions in California have similarly applied a 10-acre significance threshold for impacts to prime agricultural lands based in part on Cal. Gov. Code Sec. 51222. For example, the City of Gilroy's adopted [Thresholds of Significance⁴](#) cites this statute and provides:

¹ Available at https://openei.org/w/images/5/5b/Devers_Palo_Verde_No2-FEIS_D6_Agriculture.pdf.

² Available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

³ Public comment letter on the City of Orland General Plan Final EIR available at <https://www.cityoforland.com/wp-content/uploads/2021/06/OrlandGeneralPlanUpdateFEIRFinalFull.pdf>.

⁴ Available at <https://www.cityofgilroy.org/DocumentCenter/View/3092/Thresholds-of-Significance>.

“**Less than Significant.** Project site is less than 10 acres of prime farmland or less than 40 acres of farmland of statewide importance.” p. 6.

Finally, the California Court of Appeals applied the same reasoning in the unpublished decision *Barnes v. Tehama Cty. Bd. Of Supervisors*, 2005 WL 2746767 (Cal. Ct. App. Oct. 25, 2005):

“Agricultural land is presumed to be in parcels large enough to sustain their agricultural use if the land is at least 10 acres in size in the case of prime agricultural land or at least 40 acres in size in the case of land that is not prime agricultural land.”

The court in that case upheld the Board of Supervisor’s finding that even 50-acre parcels were “too small to sustain agricultural use” based on the circumstances.

The nature of the use that converts Farmland is also relevant, as indicated by the policies underlying the State Legislature’s declaration that electric facilities are compatible uses under the California Land Conservation Act (i.e., Williamson Act). See Cal. Gov. Code Sec. 51238.

Because the California State Legislature has identified 10 acres as the minimum parcel size needed to sustain agricultural use in Cal. Gov. Code Secs. 51222 and 66474.4(b)(1), and because the Project’s impacts to prime agricultural lands will be less than 10 acres, the PEA concludes that the Project’s impacts to agricultural resources will be less than significant without mitigation, consistent with CPUC and other agency precedents.

LS Power hereby revises Section 4.2.4.1 of the Gates PEA to incorporate these clarifications as follows, with deletions in ~~strikethrough~~ and additions in **bold and underline**:

Less-Than-Significant Impact. The Proposed Project would require the permanent conversion of less than 10 acres of Prime Farmland to non-agricultural use to accommodate the STATCOM, switchyard and associated facilities, and ancillary facilities such as a stormwater detention basin, access roads, and parking. The remaining acreage of the 20-acre applicant-owned parcel would not be developed and would remain available for future agricultural use. However, the ~~almost~~ **less than 10**-acre site, after the Proposed Project’s use and decommissioning, is anticipated to be used for infrastructure since it is located adjacent to existing PG&E Gates Substation and infrastructure facilities. ~~The amount of Prime Farmland that would be converted to non-agricultural land is less than 10 acres, which California Government Code Section 51222 recognizes as the minimum size a parcel needs to be to sustain agricultural use in the case of prime agricultural land. LSPGC has included~~ **Applicant Proposed Measure (APM) AGR-1**, as detailed below, and therefore,

The conversion of farmland would be considered significant if greater than 10 acres of Prime Farmland is converted to non-agricultural use. This threshold is used because the California State Legislature has identified 10 acres as the minimum parcel size needed to sustain agricultural use (California Government Code 51222 & 66474.4). It is also the minimum mapping unit in the California Department of Conservation’s Farmland Mapping and Monitoring Program. As a consequence, 10 acres is commonly used by CEQA lead agencies as the significance threshold for the conversion of Prime Farmland. See, e.g., CPUC, Devers-Palo Verde No. 2 Transmission Line Final EIS/EIR at D.6-16 (2006); CPUC Tehachapi Renewable Transmission Project Final EIR/EIS, at 3.2-10 (2009). The nature of the use that converts Farmland is also relevant, as indicated by the policies underlying the

State Legislature's declaration that electric facilities are compatible uses under its California Land Conservation Act (i.e., Williamson Act) program (California Government Code 51238). Because the Proposed Project would convert less than 10 acres of Prime Farmland to non-agricultural use, the Proposed Project would have a less-than-significant impact **on Farmland.** ~~from the conversion of less than 10 acres of Prime Farmland to non-agricultural use.~~

Please do not hesitate to contact me if you have any questions.

Sincerely,



David Wilson
Director of Environmental Permitting

Enclosures

cc: Mark Milburn (LSPGC)
Casey Arcese (LSPGC)
Nicolas Moser (LSPGC)
Aaron Wilson (LSPGC)
Dustin Joseph (KPE/Heritage)
Kenda Pollio (KPE/Heritage)
Patrick Golden (KPE/Heritage)