



# DEPARTMENT OF CONSERVATION

## DIVISION OF LAND RESOURCE PROTECTION

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August 5, 2005

Ms. Rhonda Reed  
California Bay Delta Authority  
650 Capital Mall, 5<sup>th</sup> Floor  
Sacramento, CA 95814

Subject: Sacramento River- Chico Landing Subreach Habitat Restoration Project,  
SCH# 2004112024, Butte and Glenn Counties

Dear Ms. Reed:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act, California Farmland Conservancy Program, and other agricultural land conservation programs. The Williamson Act was enacted in 1965, and the law has succeeded in keeping large amounts of agricultural land in production by providing long-term, enforceably restricted contracts and property tax benefits to participating farmers and ranchers.

The Department of Fish and Game is collaborating with the Nature Conservancy (TNC) to restore the riparian habitat on three project sites acquired by the U.S. Fish and Wildlife Service to be included as part of the Sacramento River National Wildlife Refuge. The sites include Pine Creek, Capay and Dead Man's Reach and total 836 acres. These sites have historically been in agricultural production. We understand that the project sites were subject to repeated flooding and were acquired from willing sellers.

We offer the following comments:

Section 4.2.2 Regulatory Setting: Consistency With Federal And State Farmland Protection Policies

This section of the DEIR discusses the Land Evaluation Site Assessment Model, which is a tool to determine level of significance of an impact on agricultural resources under the California Environmental Quality Act. An explanation of why the model was not used was included in this section. There is a federal model for riparian and wildlife

C-1

habitat projects at <http://www.itc.nl/~rossiter/docs/nrcs/lesa> Appendix C, page 161. Was the federal LESA model used, as required by the Code of Federal Regulations?

The property was acquired by the federal government in 2003, and was under Williamson Act contract. Although a public acquisition may nullify a contract, the statute requires that the notification provisions be complied with, as per Government Code section 51291. As we have no written record of the acquisition, please include verification of any notification of the acquisition of the subject property in the response to comments. Because the Department was not afforded the statutorily-required opportunity to review acquisition, we cannot ascertain whether the restrictions in the contract are still in force.

C-1 (Cont.)

#### Consistency with County General Plans

The projects sites are in Glenn County and Butte County. The project sites are currently zoned Agricultural. Are habitat restoration projects consistent with the zoning?

C-2

#### Impact Analysis

The subject property was acquired by the federal government in 2003. Was a Notice of Exemption filed? It appears that the "whole of the project", which is the CEQA standard for review, involves a substantial conversion of prime agricultural lands to habitat uses. In cases where it is clear that the project includes not only acquisition, but also restoration (or other) activities, conversion of agricultural lands must be addressed as a potentially significant environmental impact. CEQA discourages "piecemealing" or segmenting a project to in order avoid a comprehensive analysis of impacts. We do, however, acknowledge that some of the mitigation measures identified in Section 7.1 of the CALFED EIS/R Record of Decision were included in the document as avoidance measures.

C-3

In the future, we ask that we be provided with the necessary notification when any project that involves acquisition of agricultural lands currently under a Farmland Security Zone or Williamson Act contract. This will allow us to provide the necessary information and assistance to the lead agency, ensure that our statutory requirements are complied with, and to allow a proposed project to proceed smoothly.

Thank you for the opportunity to review this document. Please contact Jeannie Blakeslee at (916) 323-4943 if you have any questions regarding these comments.

Sincerely,



Dennis O'Bryant  
Acting Assistant Director

**LETTER C**  
**DENNIS O'BRYANT, ACTING ASSISTANT DIRECTOR**  
**CALIFORNIA DEPARTMENT OF CONSERVATION**  
**DIVISION OF LAND RESOURCE PROTECTION**

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**Response C-1** The comment asks whether the federal LESA model was used to assess agricultural land effects. Use of the federal LESA model is a requirement under the National Environmental Policy Act (NEPA) in accordance with the federal Farmland Protection Policy Act (FPPA) for development projects that might affect farmland. There is not a requirement to apply the federal LESA model to non-federal projects or restoration projects. Therefore, the federal LESA model was not used in the environmental analysis for the proposed project.

The comment also mentions a “federal model for riparian and wildlife habitat” within LESA and cites a Web site for that model. A “federal model for riparian and wildlife habitat projects” was not found at the noted Web site, although Appendix C of “Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural lands,” (Pease and Coughlin, n.d.) addresses LESA adaptations for other uses including riparian zones, rural residential sites, gravel sites and wetlands. This appendix states that its purpose is to “provide some ideas for those interested in developing rating systems for other resources and land uses.” The application of LESA to riparian zones references a study by Fry et al. (1994) that ranks river segments based on natural functions, values, and benefits, using an adaptation of the LESA system. The ranking is used to set priorities for protection and enhancement of riparian areas, as well as to determine buffer widths for stream corridor protection. In this study, the LESA system is renamed the Riparian Evaluation and Site Assessment (RESA) system. While the proposed project will provide improved stream corridor protection and enhancement, it is not appropriate to apply the RESA system to this project, as it is neither presented as a requirement nor approved for use by California or federal agencies.

The comment further questions whether Williamson Act contract restrictions are still in force on SRNWR property. Within the project area, only the Pine Creek Unit had a Williamson Act contract. Acquisition of the property by USFWS constituted a federal action taken prior to developing the proposed project. Per Government Code 51295, upon acquisition by the federal government or any person, instrumentality, or agency acting under the authority or power of the federal government, the contract is deemed null and void for all land acquired.

**Response C-2** The commenter asks whether the proposed restoration project would be consistent with county zoning. The proposed project is not required to be consistent with local government zoning because it is located on federal property; however, both TNC and USFWS routinely coordinate and cooperate with local governments on SRNWR projects. As the initial study for the proposed project identified (Appendix B of the Draft EIR), the project would be consistent with zoning in Glenn County and inconsistent with zoning in Butte County. The three project sites, in both counties, are in agricultural zones. The zoning ordinances for Butte and Glenn Counties are silent regarding the use of agriculturally-zoned land for open space or habitat restoration (Butte County 2005, Glenn County 2005), leaving it to County staff to interpret the code. Habitat restoration projects in Glenn County are considered allowable uses in agriculturally zoned areas primarily because land not in agricultural use would remain vegetated (Walker, pers. comm., 2005). The Butte County zoning code does not provide for agriculturally zoned lands to be used for open space, habitat or recreation (Breedon, pers. comm., 2005). As noted, lands in the proposed project area are under federal ownership, so they are not subject to the local zoning codes.

**Response C-3** The comment refers to federal action taken to acquire SRNWR property, indicating the opinion that the federal action should be part of the “whole of the project” under CEQA for the proposed project. Federal agency actions are not projects under CEQA; rather, only “public agency” activities can be a CEQA project, and the definition of “public agency” in the CEQA guidelines excludes federal agencies (see Section 15379). USFWS appropriately met NEPA requirements for both acquisition and proposed habitat restoration within the SRNWR. A federal action completed prior to the proposal of the current project would not be part of the current CEQA *project* definition. The acquisition was also completed prior to the current proposal; therefore, it is an established existing condition as CBDA considers the proposed habitat restoration project.

CBDA will ensure that all required notifications occur prior to land acquisitions it approves. The request for notification in the event of acquisition of lands subject to a Farmland Security Zone or Williamson Act is also noted herein for consideration by other agencies.