

CH2MHILL

CH2M HILL
2485 Natomas Park Drive
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Sacramento, CA 95833
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February 18, 2010

382914

Mr. Craig Hoffman
Project Manager
California Energy Commission
1516 Ninth Street, MS 15
Sacramento, CA 95814-5512

Subject: Mariposa Energy Project (09-AFC-03)
Robert Sarvey Data Response Set 1, Responses to Robert Sarvey
Data Requests 1 through 8

Dear Mr. Hoffman:

Attached please find one hard copy and one electronic copy on CD-ROM of the Mariposa Energy Project's Robert Sarvey Data Response Set 1. This Data Response Set was prepared in response to Mr. Robert Sarvey's Data Requests 1 through 8 for the Application of Certification for the Mariposa Energy Project (MEP) (09-AFC-03) dated January 29, 2010.

If you have any questions about this matter, please contact me at (916) 286-0348.

Sincerely,

CH2M HILL

Doug Urry
AFC Project Manager

Attachment

cc: B. Buchynsky, Mariposa Energy, LLC.

DOCKET
09-AFC-3

DATE FEB 18 2010

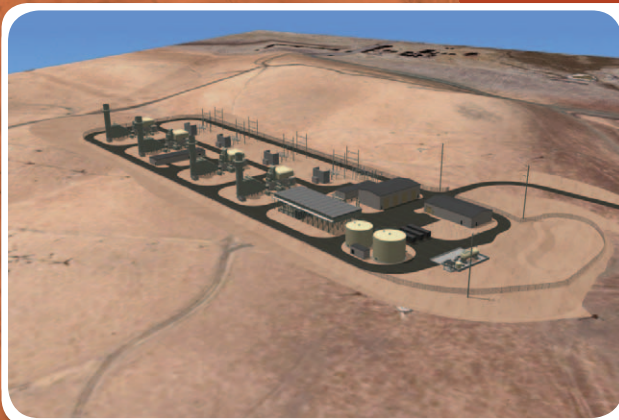
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APPLICATION FOR CERTIFICATION
ROBERT SARVEY DATA RESPONSES, SET 1
(RESPONSE TO DATA REQUESTS 1 TO 8)



SUBMITTED TO THE
California Energy Commission

FOR THE
Mariposa Energy Project



SUBMITTED BY


Mariposa Energy, LLC

TECHNICAL ASSISTANCE BY

 **CH2MHILL**

FEBRUARY 2010

Mariposa Energy Project

(09-AFC-03)

Robert Sarvey Data Responses, Set 1

(Response to Data Requests 1 to 8)

Submitted to
California Energy Commission

Submitted by
Mariposa Energy, LLC

With Assistance from

CH2MHILL
2485 Natomas Park Drive
Suite 600
Sacramento, CA 95833

February 2010

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- RSDR4-1 Letter from Allen Matkins to Alameda County
- RSDR4-2 Letter from Mariposa Energy to California Department of Conservation

Introduction

Attached are Mariposa Energy's responses to Mr. Robert Sarvey's Data Request Set 1 (numbers 1 through 8) regarding the Mariposa Energy Project (MEP) (09-AFC-03) Application for Certification (AFC).

The responses are grouped by individual discipline or topic area. Within each discipline area, the responses are presented in the same order as Mr. Robert Sarvey presented them and are keyed to the Data Request numbers (1 through 8). New or revised graphics or tables are numbered in reference to the Data Request number. For example, the first table used in response to Mr. Robert Sarvey's Data Request 36 would be numbered Table RSDR 36-1. The first figure used in response to Mr. Robert Sarvey's Data Request 42 would be Figure RSDR 42-1, and so on.

Additional tables, figures, or documents submitted in response to a data request (supporting data, stand-alone documents such as plans, folding graphics, etc.) are found at the end of each discipline-specific section and are not sequentially page-numbered consistently with the remainder of the document, though they may have their own internal page numbering system.

Air Quality (1-3)

Data Requests

RSDR1. Please provide a copy of the mitigation agreement with San Joaquin Valley Air Pollution Control district that provides \$644,000 to the SJVAPCD for air quality programs. Provide the detailed analysis, work papers, and the mitigation plan for the funding.

Response:

A copy of the fully executed mitigation agreement between Mariposa Energy, LLC, and the SJVAPCD is provided as Attachment RSDR1-1. The details of the methodology used to determine the mitigation values and the associated calculations are included as attachments to the fully executed agreement. A copy of the agreement may also be found in the list of consent items on the SJVAPCD December 2009 board meeting agenda (Consent Item 22), available online at: http://www.valleyair.org/Board_meetings/GB/governing_board_schedules.htm.

RSDR2. Please provide details of the emissions from the Byron Cogen Plant that is on the same parcel as the proposed Mariposa Project.

Response:

Based on the Bay Area Air Quality Management District (BAAQMD) operating permit, the Byron Power Cogen Plant consists of five natural-gas-fired Waukesha 7042 GSI engines with a total electric generating capacity of 6.5 megawatts and the following emission limits: 0.3 grams per brake horsepower-hour (g/bhp-hr) NO_x; 0.6 g/bhp-hr precursor organic compounds (POC); and 0.5 g/bhp-hr carbon monoxide (CO). A copy of the permit is included as Attachment RSDR2-1. The Applicant previously submitted a public records request to the BAAQMD requesting the annual hours of operation for each engine over the past 4 years. Based on the response from the BAAQMD, we understand that the owner is not required to routinely provide annual hours of operation to the BAAQMD (Attachment RSDR2-2). Therefore, the annual hours of operation are not available via the BAAQMD.

Byron Power Partners, L.P., and JRW Associates, L.P. - San Joaquin (collectively referred to as "Norcals") are wholly owned subsidiaries of Ridgewood Electric Power Trust III (SEC, 2009¹). According to the September 2009 Securities Exchange Commission 10-Q Filing, *"the Norcals suspended their operations in the fourth quarter of 2008 and both Byron and San Joaquin remain closed as of November 6, 2009. The Trust's management is continuing to evaluate as to when the Norcals will resume operations, if at all. As a result, in the 2009 period, neither San Joaquin nor*

¹ Reference: United States Securities Exchange Commission (SEC). 2009. Form 10-Q for the Quarterly Period Ended September 30, 2009, November 6.

Byron is expected to operate at their minimum rated capacities which will likely result in lower capacity payments if the Norcals were to resume operations.” (SEC, 2009)

Therefore, there are no current exhaust emissions from the Byron Power Cogen Plant.

RSDR3. Please provide the details of the emissions from the PG&E natural gas compressor station near the project.

Response:

The Applicant previously submitted a public records request to the BAAQMD for a copy of PG&E's Bethany Compressor Station permit application, current operating permit, and AB2588 Inventory Report. In response, the BAAQMD provided a permit indicating the only source at the facility is a stationary emergency standby engine with a limit of 100 hours per year for reliability-related activities (Attachment RSDR3-1). No additional information was provided. Our understanding is that the compressor station is powered with electrically driven motors with power supplied from the adjacent Kelso Substation, which was built contemporaneously with the gas compression station.

CH2M HILL staff spoke with BAAQMD staff on February 10, 2009, to request any additional available source or emissions information; as of the date of this publication no further information has been received. If additional information is provided by the BAAQMD, it will be filed at a later date.

Attachment RSDR1-1
SJVAPCD Agreement



December 21, 2009

Mariposa Energy LLC
c/o Diamond Generating Corporation
ATTN: Mr. Bohdan "Bo" Buchynsky, Executive Director
333 S. Grand Ave., Suite 1570
Los Angeles, CA 90071

Dear Mr. Buchynsky,

Enclosed please find the fully executed agreement titled "Mariposa Energy LLC Peaking Power Plant Project Air Quality Mitigation Settlement Agreement", dated December 17, 2009. I have also enclosed a copy of the Agenda Memo for this agreement which was approved by our Governing Board on December 17, 2009.

Should you have any questions, or need any further assistance please do not hesitate to contact me at our Fresno Office at (559) 230-6001.

Sincerely,

Michelle L. Franco
Operations and Program Support Supervisor

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95358-8718
Tel: (209) 557-8400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6081

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: 661-392-5500 FAX: 661-392-5585

MARIPOSA ENERGY LLC PEAKING POWER PLANT PROJECT
AIR QUALITY MITIGATION SETTLEMENT AGREEMENT

This Air Quality Mitigation Settlement Agreement (“Agreement”) is entered into this 17th day of December, 2009 by and between Mariposa Energy LLC (“Mariposa”), and the San Joaquin Valley Unified Air Pollution Control District (the “District”). Mariposa and the District may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, on June 15, 2009, Mariposa filed an Application for Certification (“AFC”) with the California Energy Commission (“CEC”) for the Mariposa Energy Project, a nominal 200 megawatt simple cycle electrical generating facility (the “Project”). Mariposa is seeking approval from the CEC to construct and operate the Project; and

WHEREAS, the Project site is located on a 10-acre portion of a 158-acre parcel southeast of the intersection of Bruns Road and Kelso Road, in Alameda County within the Bay Area Air Quality Management District (“BAAQMD”); and

WHEREAS, though the Project site is located within the BAAQMD, the Project will be positioned near the border of the Northern Region of the San Joaquin Valley Air Basin (the “Northern Region”); and

WHEREAS, the District is concerned about the general migration of air pollutants from the BAAQMD region and the migration’s effect on the ability of the District to meet its air quality attainment goals; and

WHEREAS, the District believes that due to the proximity of the Project to the District, the emissions from the Project will mostly impact the District without corresponding benefits from offsets provided from sources within the BAAQMD; and

WHEREAS, Mariposa believes that any and all air quality impacts from the Project will be fully mitigated by the project’s design and incorporated construction and operation mitigation measures, including, but not limited to fugitive dust control, diesel-fueled engine control plan, implementation of best available control technology (BACT) and its BAAQMD emission reduction credit offset package; and

WHEREAS, while under no obligation to do so, Mariposa desires to cooperate with the District to address the District’s air quality concerns and assist the District by entering into this Agreement to provide additional air quality benefits; and

WHEREAS, the District and Mariposa have determined that payment of an air quality mitigation fee to be used for air quality benefit programs within the San Joaquin Valley, and particularly in the Northern Region, within or near the Mountain House Community Services District, City of Tracy and San Joaquin County is the appropriate method for Mariposa to address District concerns and to ensure localized benefits within the District.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants set forth herein, Mariposa and the District hereby agree as follows:

1. Air Quality Mitigation Fee. Subject to the conditions precedent set forth in Section 2 below, Mariposa agrees to contribute to the District the sum of six hundred forty-four thousand five hundred and three dollars (\$644,503) to ensure localized benefits in the Northern Region, particularly within or near the Mountain House Community Service District, City of Tracy, and San Joaquin County (the "Air Quality Mitigation Fee"). An outline of the methodology used to determine the Air Quality Mitigation Fee is attached hereto as Part A-1 of Attachment A, incorporated herein by reference. The calculation of the Air Quality Mitigation Fee is attached hereto as Part A-2 of Attachment A, incorporated herein by reference. Mariposa agrees to pay the Air Quality Mitigation Fee to the District within thirty (30) days after physical delivery of the first combustion turbine generator to the Project site. If Mariposa ceases to be the owner of the Project and a new owner of the Project has made the payment contemplated in this Agreement to the District, then Mariposa shall be relieved of any further obligations under this Agreement.

2. Conditions Precedent. The Parties acknowledge and agree that Mariposa's obligation to pay the Air Quality Mitigation Fee shall be subject to the fulfillment or waiver (such waiver to be in Mariposa's sole discretion) of both of the following conditions precedent:

- (a) Issuance of the final CEC certification for the Project; and
- (b) Physical delivery of the first combustion turbine generator to the Project site.

Notwithstanding the above, if the AFC with the CEC has been cancelled, withdrawn or denied, or if the Mariposa Energy Project is certified but not constructed during the term of the CEC's certification, then this Agreement shall automatically terminate, and neither Party shall have any further obligations hereunder.

3. Use of Air Quality Mitigation Fee. The District agrees to set up a specific account into which the Air Quality Mitigation Fee will be deposited. The District agrees to use the Air Quality Mitigation Fee exclusively to establish specific programs that create contemporaneous air quality benefits. The final mitigation measures to be implemented will be selected by the District, can include the District's Burn Cleaner woodstove retrofit and fireplace replacement program, the Carl Moyer Program, heavy duty engine retrofit/replacement program, agricultural engine replacement program, and/or other similar programs approved by the District. In expending funds from the Air Quality Mitigation Fee, the District shall give preference to cost-effective programs in or near the Mountain House Community Service District, City of Tracy, San Joaquin County, and the Northern Region of the San Joaquin Valley Air Basin, in that order.

The District agrees not to place the Air Quality Mitigation Fee into any operating account, or to use the Air Quality Mitigation Fee for any purpose other than those designated in this Agreement.

4. Only Mitigation Payment Required. The District acknowledges and agrees that payment of the Air Quality Mitigation Fee pursuant to this Agreement is the appropriate method for Mariposa to address the District's concerns relating to migration of pollutants from the Project and to ensure localized benefits in the Northern Region, and that payment of such Air Quality Mitigation Fee is the only action requested by the District in connection with the development, construction, operation and maintenance of the Project. Nothing in this Agreement shall be deemed a waiver of any cause of action or remedies the District may pursue against other entities related to transport of air pollution from the Bay Area into the San Joaquin Valley. Further, the District acknowledges and agrees that Mariposa believes that, notwithstanding this Agreement, any and all air quality impacts from the Project have been fully mitigated and that nothing in this Agreement can or should be interpreted as an admission by Mariposa to the contrary.

5. Cooperation. The Parties agree to cooperate with each other with respect to any requests or actions related to this Agreement from the CEC, the Environmental Protection Agency, BAAQMD, the California Air Resources Board, and/or any interveners in the Project, and to do or cause all things necessary, proper or advisable to help consummate and make effective the transaction contemplated by this Agreement, including, but not limited to providing written and oral testimony in furtherance of this Agreement as part of the CEC licensing process. The Parties agree to seek a condition of certification in the CEC license for the Project which incorporates the terms of this Agreement.

6. Governing Law. This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California.

7. Authority. Each Party acknowledges and agrees that it has the full right, power and authority to execute this Agreement, and to perform its obligations hereunder.

8. No More Favorable Terms. With respect to any other applicant for an energy license before the CEC as of the date of this Agreement which is similarly situated near the Northern Region, the District agrees not to enter into any air quality mitigation agreement based on methodology which utilizes a lower calculation value (expressed in dollars per ton) than the value set forth in Part A-2 of Attachment A to this Agreement, without also offering such an arrangement to Mariposa.

9. Relationship of the Parties. Nothing herein is intended to create or is to be construed as creating a joint venture, partnership, agency or other taxable entity between the Parties. The rights and obligations of the Parties shall be independent of one another and shall be limited to those expressly set forth herein and, except as expressly provided to the contrary, shall not be construed to apply to any affiliate of the Parties.

10. No Third Party Beneficiary. The Parties mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party.

11. Notices. All notices necessary to be given under the terms of this Agreement, except as herein otherwise provided, shall be in writing and shall be communicated by prepaid mail, telegram or facsimile transmission addressed to the respective Parties at the address below or to such other address as respectively designated hereafter in writing from time to time:

To Mariposa: Mariposa Energy LLC
c/o Diamond Generating Corporation
333 S. Grand Ave., Suite 1570
Los Angeles, CA 90071
Attn: Mr. Bohdan "Bo" Buchynsky, Executive Director
Phone: (213) 473-0080
Fax: (213) 620-1170

To District: 1990 East Gettysburg Avenue
Fresno, CA 93726-0244
Attn: Mr. David Warner
Phone: (559) 230-5900
Fax: (559) 230-6061

12. Assignment. This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. No Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the above, the Parties agree that Mariposa may freely assign its rights and duties under this Agreement, without District's prior written consent, to: (a) an affiliate of Mariposa; (b) a successor-in-interest by merger, consolidation or reorganization; (c) a purchaser or other transferee of the Project; or (d) a lender for purposes of financing the project.

13. Entire Agreement. This Agreement, together with the Exhibits attached hereto, contains the entire understanding between the Parties with respect to the subject matter herein. This Agreement may not be amended except by an instrument in writing signed by each Party.


14. Joint Effort. The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it, and accept its terms and conditions. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

* * *


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and date first above written.

Mariposa Energy LLC

By: 
Name: Bohdan Buchynsky
Title: Executive Director

Dated: December 9, 2009

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

By: 
Chris Vierra, Chair
Governing Board
San Joaquin Valley Unified APCD


Dated: 12-17-09

Approved:

By: 
Seyed Saadredin
Executive Officer/Air Pollution Control Officer
San Joaquin Valley Unified Air Pollution Control District

Dated: 12/17/09

Approved as to Legal Form:

By: 
Philip M. Jay
District Counsel

Approved as to Accounting Form:

By: 
Cindi Hamm, Director
Administrative Services

ATTACHMENT A

PART A-1

Outline of Methodology for Determining SJV Net Mitigation Value

For NO_x and VOC emissions, the full potential to emit will be mitigated, partly by using Bay Area emission offsets that are within 50 miles of the San Joaquin Valley Air Basin at the offset ratios specified in District Rules. The remainder of emissions will be the mitigation balance (see Table 1 of Part A-2).

For PM₁₀ and SO_x emissions, the maximum expected emissions during the PM₁₀ non-attainment season (Quarters 4 and 1) will be mitigated (see Table 2 of Part A-2). These emissions are based on an expected usage of 600 hours during this time, with 100 startups and shutdowns. The 600 hours was selected to be conservative, as the California Energy Commission has found that a typical peaker plant will only operate 600 hours total per year, mostly outside of the PM₁₀ non-attainment season. Bay Area emission offsets will not be used; therefore no offset ratios from District Rules will be utilized and the entire amount of emissions will be the mitigation balance.

The mitigation fee is then calculated by multiplying the mitigation balance by a mitigation value (see Table 3 of Part A-2). For NO_x and VOC, the mitigation value is \$16,000 per ton, based on the Carl Moyer program cost effectiveness threshold, plus 5% for administrative costs, for a total value of \$16,800 per ton. For PM₁₀ and SO_x, the mitigation value is determined from the District's Burn Cleaner wood stove retrofit/fireplace replacement program, which offered a rebate of \$750 per wood stove or fireplace retrofit/replacement. Table 4 of Part A-2 shows the calculations used to determine the number of wood stoves/fireplace requiring retrofit/replacement and the cost of such mitigation. This works out to \$52,865 per ton. Adding 5% for administrative costs results in a total value of \$55,508 per ton.

PART A-2

Table 1 – NOx and VOC Mitigation Balance

Pollutant	Potential to Emit - PTE (tpy)	PTE w/ offset ratio (tpy)	Bay Area offsets (tpy)	Mitigation Balance (tpy)
NOx	48.6	72.9	55.9	17.0
VOC	11.1	16.65	11.1	5.55

Table 2 – PM10 and SOx Mitigation Balance

Pollutant	PTE during non-Attainment quarters (tpy)	Mitigation Balance (tpy)
PM10 + Sox	4.786	4.786

Table 3 – Mitigation Fee

Pollutant	Mitigation Balance (tpy)	Mitigation Value (\$/ton)	Mitigation Fee (\$)
NOx	17.0	16,800	285,600
VOC	5.55	16,800	93,240
PM10 + SOx	4.786	55,508	265,663
Total			644,503

Part A-2

Table 4
MEP: PM10 Mitigation Fee Determination
Burn Cleaner Program Emission Calculation

<p>Cords of Wood Burned Each Winter Season Volume of a Cord of Wood (ft3) Weight of Cord of Wood (pounds) Annual Wood Usage (lbs/year/unit) Oak Heating Value Average Cords/hr</p>	<p>0.92 90 4058 3718 30.67 0.00040</p>	<p>Using the equation in Section 7.1 Residential Wood Combustion document (ARB Emission Inventory Methodology) CEC Consumer Energy Center Firewood Document Average weight of Oak woods - dry (Live, Black, and White) CEC Consumer Energy Center Firewood Document (weight x average annual consumption) MMBtu/cord (see below) (see below)</p>																																																				
<p>PM10 Emission Rate for Existing Wood Stoves Average Annual Emissions per unit Annual Average Hours of operation Average Hourly Emission per Unit Average Hourly Emission per Unit EPA Hourly Emission Standard Average Reduction in PM10</p>	<p>31.1 57.8 2302 0.025 11.4 5.8 28.4</p>	<p>lb/ton (Section 7.1 Residential Wood Combustion document (ARB Emission Inventory Methodology)) lbs/unit/year calculated based on the annual cords per year divided by the average cords/hr lbs/hour grams/hour grams/hour (average of the U.S. EPA emission standards for catalytic and non-catalytic wood heaters) lbs/year/unit lbs/year</p>																																																				
<p>Mitigation Requirement</p>	<p>9572</p>	<p>(4.2 tons/year of PM10 + 0.6 tons/year of SO2 - represents 600 hours of operation and 100 startup/shutdowns at 3.0 lb/hr during the PM10 season (Oct-Mar))</p>																																																				
<p>Number of Retrofits Required Per Unit Cost Mitigation Cost (PM10) Mitigation Cost with Administrative Fee</p>	<p>337.3 \$ 750 \$ 253,012 \$ 265,662</p>	<p>SJVAPCD Burn Cleaner Program/Wood Stove Replacement</p>																																																				
<p>Heating Content MMBTU/cord Oak, Black Oak, Live Oak, White Average</p>	<p>27.4 36.6 28.0 30.7</p>	<p>Heating Content (MMBTU/cord) Weight (pounds - dry) 3625 4840 3710 4058</p>																																																				
<p>Reference: CEC Consumer Energy Center Firewood Document</p>																																																						
<p>Stockton Fire Station #4 Tracy Carbons Average</p>	<p>Heating Degree Days January 616 609 613</p>	<table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">February</td> <td style="width: 10%; text-align: center;">March</td> <td style="width: 10%; text-align: center;">April</td> <td style="width: 10%; text-align: center;">May</td> <td style="width: 10%; text-align: center;">June</td> <td style="width: 10%; text-align: center;">July</td> <td style="width: 10%; text-align: center;">August</td> <td style="width: 10%; text-align: center;">September</td> <td style="width: 10%; text-align: center;">October</td> <td style="width: 10%; text-align: center;">November</td> <td style="width: 10%; text-align: center;">December</td> <td style="width: 10%; text-align: center;">Total</td> </tr> <tr> <td></td> <td style="text-align: center;">419</td> <td style="text-align: center;">332</td> <td style="text-align: center;">195</td> <td style="text-align: center;">77</td> <td style="text-align: center;">14</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td style="text-align: center;">12</td> <td style="text-align: center;">105</td> <td style="text-align: center;">365</td> <td style="text-align: center;">601</td> <td style="text-align: center;">2738</td> </tr> <tr> <td></td> <td style="text-align: center;">409</td> <td style="text-align: center;">320</td> <td style="text-align: center;">189</td> <td style="text-align: center;">73</td> <td style="text-align: center;">13</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td style="text-align: center;">9</td> <td style="text-align: center;">91</td> <td style="text-align: center;">346</td> <td style="text-align: center;">596</td> <td style="text-align: center;">2657</td> </tr> <tr> <td></td> <td style="text-align: center;">414</td> <td style="text-align: center;">326</td> <td style="text-align: center;">192</td> <td style="text-align: center;">75</td> <td style="text-align: center;">14</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td style="text-align: center;">11</td> <td style="text-align: center;">98</td> <td style="text-align: center;">356</td> <td style="text-align: center;">599</td> <td style="text-align: center;">2698</td> </tr> </table>		February	March	April	May	June	July	August	September	October	November	December	Total		419	332	195	77	14	1	1	12	105	365	601	2738		409	320	189	73	13	1	1	9	91	346	596	2657		414	326	192	75	14	1	1	11	98	356	599	2698
	February	March	April	May	June	July	August	September	October	November	December	Total																																										
	419	332	195	77	14	1	1	12	105	365	601	2738																																										
	409	320	189	73	13	1	1	9	91	346	596	2657																																										
	414	326	192	75	14	1	1	11	98	356	599	2698																																										
<p>Energy Requirement (Annual) Energy Requirement (January) Hourly Consumption Rate</p>	<p>0.92 cords 0.21 cords 0.00040 Cords per Hour</p>	<p>Using the equation in Section 7.1 Residential Wood Combustion document (ARB Emission Inventory Methodology) Using the equation in Section 7.1 Residential Wood Combustion document (ARB Emission Inventory Methodology)</p>																																																				



San Joaquin Valley

AIR POLLUTION CONTROL DISTRICT

GOVERNING BOARD

Chris Vierra, Chair
Councilmember, City of Ceres

Tony Barba, Vice Chair
Supervisor, Kings County

David G. Ayers
Councilmember, City of Hanford

Judith G. Case
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Supervisor, Madera County

Henry Jay Forman, Ph.D.
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Mayor, City of Stockton

Randy Miller
Councilmember, City of Taft

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Supervisor, Merced County

William O'Brien
Supervisor, Stanislaus County

Leroy Ornellas
Supervisor, San Joaquin County

John G. Telles, M.D.
Appointed by Governor

Raymond A. Watson
Supervisor, Kern County

J. Steven Worthley
Supervisor, Tulare County

Vacant
Large City

Seyed Sadredin
Executive Director
Air Pollution Control Officer

Northern Region Office
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 • FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 • FAX (559) 230-6061

Southern Region Office
34946 Flyover Court
Bakersfield, CA 93308-9725
(661) 392-5500 • FAX (661) 392-5585

www.valleyair.org

DATE: December 17, 2009

TO: SJVUAPCD Governing Board

FROM: Seyed Sadredin, Executive Director/APCO
Project Coordinator: Dave Warner

RE: APPROVE AND AUTHORIZE CHAIR TO SIGN AIR
QUALITY MITIGATION AGREEMENT WITH
MARIPOSA ENERGY, LLC

RECOMMENDATION:

1. Authorize the Chair to sign the attached air quality mitigation agreement with Mariposa Energy, LLC to accept funds in the amount of six hundred forty-four thousand five hundred and three dollars (\$644,503) to mitigate localized air quality impacts within the District from the operation of a proposed simple cycle power plant just west of the San Joaquin County line.

BACKGROUND:

Mariposa Energy, LLC is seeking approval from the California Energy Commission (CEC) to construct and operate the Mariposa Power Plant (MPP), a simple cycle peaker power plant. Peaker power plants are typically operated only during periods of peak power consumption, essentially remaining on call until the California Independent Systems Operators (ISO) calls on them to operate to fill an anticipated power need. The CEC has found that peaker plants in California operate 600 hours per year on average, with most of that in the summer months. The proposed project will be fueled with natural gas and will have a nominal electrical output of 200 megawatts. On-site construction of the project is expected to take place from April 2011 to June 2012, a total of about 14 months. Commercial operation is planned by the third quarter of 2012.

The proposed power plant will be located on a 10-acre portion of a 158-acre parcel in Alameda County, southeast of the intersection of Bruns Road and Kelso Road.

Located 7 miles northeast of the city of Tracy and 2.5 miles west of the community of Mountain House, the facility's boundaries will be approximately 2.4 miles from the District. Located in Alameda County, the project will be under the jurisdiction of Bay Area Air Quality Management District (BAAQMD). However, due the project's proximity to the District, the prevailing wind direction and the resulting transport of air pollution from the Bay Area to the Valley, the District is concerned with the project's localized impact within the Valley.

Mariposa Energy, LLC has been very receptive to the District's concerns and has exhibited great willingness to address the District's concerns as well those of Valley residents potentially impacted by the project. Towards that end, Mariposa Energy, LLC and District staff have negotiated the attached Air Quality Mitigation Agreement that will provide adequate funding for mitigating the air quality impact from the project.

DISCUSSION:

General transport of air pollution from the Bay Area into the Valley has been a longstanding source of concern for the District. With respect to this project, the District has an added concern due to the close proximity of the project to the District boundaries. It is expected that the project will employ state of the art pollution control technology, provide emissions reduction credits to offsets emissions within BAAQMD, and comply with all applicable BAAQMD prohibitory rules. Nonetheless, the District believes that due to the proximity of the proposed facility to the District, emissions from the project will mostly impact the District without corresponding benefits from offsets provided from sources within the BAAQMD. Therefore, an agreement was negotiated with Mariposa Energy, LLC to provide the necessary funding for mitigating the project's potential air quality impact within the District.

The quantity of emissions that needed to be mitigated was established based on the following methodology:

- For NO_x and VOCs, the facility's potential emissions during the entire year, based on 4,000 hours of operation (for all periods during which the District might experience high Ozone concentrations or high PM₁₀ concentrations), are to be mitigated.
- For PM₁₀ and SO_x, the facility's maximum expected emissions during the period from October through March (period during which the District might experience high PM₁₀ concentrations) are to be mitigated. This is conservatively based on 600 hours of operation, based on the CEC finding that peaker plants in California only operate 600 hours per year on average, and most of that time will be during the summer months when PM₁₀ concentrations typically do not occur.

- Allow credit for emission reduction credits provided in the Bay Area that are within 50 miles of the air basin boundary at the offset ratios specified in District rules.

Based on the above methodology, 22.55 tons per year of NOx and VOC emissions and 4.786 tons per year of PM10 and SOx emissions required mitigation within the Valley. The mitigation fee for NOx and VOC emissions is \$16,800 per ton, and is based on the Carl Moyer program cost effectiveness threshold with 5% for administrative costs. The mitigation fee for PM10 and SOx is \$55,508 per ton, based on the District's wood stove retrofit program, and also includes 5% for administrative costs. At these rates, a sum of \$644,503 is required.

Similar to the past emission reduction incentive programs sponsored by the District, the funds received under this Air Quality Mitigation Agreement will be used to provide contemporaneous emission reductions in the Valley and to the extent possible near Tracy, within the District's Northern Region. Emission reduction programs that will be funded will be the most cost-effective projects available and are likely to include replacement or retrofitting of heavy duty diesel internal combustion engines and electrification of agricultural pump engines.

FISCAL IMPACT:

Under the terms of the Air Quality Mitigation Agreement, Mariposa Energy, LLC will pay \$644,503 to the District within thirty (30) days after physical delivery of the first combustion turbine generator to the Project site. In general, this means that the funds will be available approximately nine months in advance of the project completion date. To ensure contemporaneous reduction in emissions, the District intends to award these funds in accordance with a schedule that would allow emission reductions to take place prior to the initial start-up of the proposed power plant. Accordingly, it is estimated that necessary budget resolutions authorizing the related appropriations will be presented to the Governing Board sometime in 2011.

Attachment:
Air Quality Mitigation Agreement (8 pages)

Attachment RSDR2-1
Byron Cogen BAAQMD Permit

PLANT # 10437
Byron Power Company,c/o Ridgewood Power Mgnt
4901 Bruns Road, Byron, CA 94514

Facility Wide Conditions: None

source	current conditions	application	condition type
-----	-----	-----	-----
1	3785	0	
2	3785	0	
3	3785	0	
4	3785	0	
5	3785	0	
6	5984	4157	
7	5984	4157	
8	5984	4157	
9	5984	4157	
10	5984	4157	

COND# 3785 -----

Plant 10437, Byron Power Company
Condition 3785

Sources S-1, S-2, S-3, S-4 and S-5

1. Hours of operation of each Waukesha 7042 GSI Engine (Sources S-1, S-2, S-3, S-4, and S-5) shall not exceed 24 hours per day.Basis:cum.increase
2. Each of the five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) shall not exceed 8760 hours per year.Basis:cum increase
3. The five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) shall be fired on pipeline quality natural gas only.Basis:BACT
4. Total combined natural gas consumption of the five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) shall not exceed 1,740,000 cubic feet per day or 635,000,000 cubic feet per year.

5. Within sixty (60) days of initial startup of any emitting source at the cogeneration facility, the owner/operator shall perform a District approved Source Test of emissions of Nitrogen Oxides (NO_x), Precursor Organic Compounds (POC) and Carbon Monoxide (CO) from each of the five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) controlled by Catalytic Converters (A-1, A-2, A-3, A-4 and A-5) in order to demonstrate compliance with the emission limitations of Conditions No. 7, 8 and 9 respectively. Basis: BACT
6. No later than one year after the initial source tests required by Condition No. 5, and at least once a year thereafter, the owner/operator shall certify to the satisfaction of the APCO that the five Catalytic Converters (A-1, A-2, A-3, A-4 and A-5) are controlling emissions of Nitrogen Oxides (NO_x), Precursor Organic Compounds (POC) and Carbon Monoxide (CO) as required to satisfy the emission limitations of Conditions No. 7, 8 and 9 respectively. Basis: BACT
7. Emissions of Nitrogen Oxides (NO_x calculated as NO₂) from each of the five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) shall not exceed 0.3 grams per brake horsepower-hour as determined using District Source Test Method 13A. Basis: BACT
8. Emissions of Precursor Organic Compounds (POC) from each of the five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) shall not exceed 0.6 grams per brake horsepower-hour as determined using District Source Test Method 7. Basis: BACT
9. Emissions of Carbon Monoxide (CO) from each of the five Waukesha 7042 GSI Engines (Sources S-1, S-2, S-3, S-4, and S-5) shall not exceed .5 gram per brake horsepower-hour as determined using District Source Test Method 6. Basis: BACT
10. A District approved NO_x emission monitor and recorder shall be on the premises and operational at all times that any of the five engines S-1 through S-5 are operating. Emissions from each of the five engines shall be monitored and recorded at least once a week for a continuous period of no less than thirty (30) minutes per week per engine. After a period of at least three months of continuous compliance with Condition No. 7, the owner/operator may request the APCO to change the daily testing requirement to a weekly basis [Approved 5-1-96]. In the event the monitor indicates that the NO_x emission from an engine will cause an excess of the limitation of

Condition No. 7, the owner/operator shall immediately shut down the engine and make the necessary repairs to the engine or catalytic converter to assure compliance. The engine should be retested immediately after it is restarted to demonstrate compliance with Condition No. 7. The District shall be notified within forty eight (48) hours of each occurrence of such a NOx excess. The monitor shall be calibrated at least once every two weeks against a known NOx standard gas. All engine test results and all calibration test records shall be made available to District personnel upon request and these records shall be maintained for at least one year from the date of the test.Basis:BACT

11.A District approved natural gas flow rate meter shall be installed and operational at all times. This meter shall record total natural gas flow to the five engines, S-1 through S-5.Basis:Record

12.The stack opacity from the Catalytic Converters (A-1 through A-5) shall not exceed Ringelmann 0.25 or 5% opacity for a period not to exceed three (3) minutes in any one (1) hour.Basis:District Reg.

list condition NUMBER >> 5984

COND# 5984 -----

ALTAMONT COGENERATION CORP.,APPL. #4157,PLANT #5185
CONDITIONS FOR SOURCES 6 THROUGH 10

1. Hours of operation of each Water Evaporator (Sources S-6, S-7, S-8, S-9, and S-10) shall not exceed 24 hours per day.

2. Total hours of operation of each five Water Evaporators (Sources S-6, S-7, S-8, S-9, and S-10) shall not exceed 8760 hours per year.

3. A. The stack opacity from each of the five Water Evaporators, S-6 through S-10, shall not exceed Ringelmann 0.

B. In the event that there is a steam plume from the evaporator stack, the residual plume, after dissipation of the steam, shall not exceed Ringelmann 0.

In addition, the owner/operator shall perform a District approved source test to determine particulate (PM10) mass emissions from the evaporators if either of the opacity limits above are exceeded. This test shall be

performed within 30 days of the date of the excess, and the results submitted to the District no later than 30 days after the test date.

4. In accordance with Regulation 2-2-411, at such time as the applicability of any requirement of this Rule would be triggered solely by virtue of a relaxation of one or more of the above conditions which limit the emissions from the permitted sources (including hours of operation), the requirements of this Rule shall apply to the source or stationary source in the same way as they would apply to a new or modified source or stationary source otherwise subject to this Rule.

5. The owner/operator shall comply with all conditions of the Negative Declaration, Resolution No. Z-6824, issued by Alameda County on October 4, 1989 for this project.

Attachment RSDR2-2
BAAQMD E-mail Response

From: Public Records [PublicRecords@baaqmd.gov]
Sent: Wednesday, February 03, 2010 12:36 PM
To: McGregor, Keith/SAC
Subject: RE: Annual Hours of Operation at the Byron Cogeneration Facility - Byron, CA
Attachments: 10-02-03_McGregor.DOC; 10-02-03_Response to McGregor.pdf

Good afternoon Keith,

I have enclosed the permit conditions. This company is not required to give up what you are asking for. Any questions, you can email or call.

Thanks

Thank you,
Public Records Staff
In house: Public Records
publicrecords@baaqmd.gov

Rochelle Henderson,
Public Records Coordinator
415-749-4784

From: Keith.McGregor@CH2M.com [mailto:Keith.McGregor@CH2M.com]
Sent: Monday, February 01, 2010 4:13 PM
To: Public Records
Subject: MEP: Annual Hours of Operation at the Byron Cogeneration Facility - Byron, CA

Please see the attached data request form.

If you have any questions, please give me a call.

Thank you,

Keith McGregor
Associate Project Manager
CH2MHILL
2485 Natomas Park Drive Suite 600
Sacramento, CA 95833
Direct: (916) 286-0221
Mobile: (916) 992-3365
Fax: (916) 614-3450



BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 939 ELLIS STREET
 SAN FRANCISCO, CA. 94109
 ATTENTION: ADMINISTRATIVE SERVICES DIVISION
 e-mail request to: *publicrecords@baaqmd.gov*

Office Use Only
P.R.R. NUMBER

10-02-03

Direct Dial: (415) 749-4761
 FAX: (415) 749-5111

PUBLIC RECORDS REQUEST FORM

ATTENTION REQUESTOR: To expedite your request for District records, please fill out this form completely. Specifically identify the type of records you are requesting from the list below. **NOTE:** There is a limit of one facility or one site address per request form.

REQUESTOR INFORMATION

NAME: <i>Keith McGregor</i>			DATE: <i>02/01/2010</i>
COMPANY: <i>CH2MHILL</i>			
MAILING ADDRESS: <i>2485 Natomas Park Drive, Suite 600</i>			
CITY: <i>Sacramento</i>	STATE: <i>CA</i>	ZIP CODE: <i>95833</i>	PHONE NUMBER: <i>(916) 286-0221</i>

REQUESTED FACILITY INFORMATION

FACILITY NAME: <i>Byron Power Company, c/o Ridgewood Power Mgmt</i>		
FACILITY ADDRESS: <i>4901 Bruns Road</i>		
CITY: <i>Byron</i>	STATE: <i>CA</i>	ZIP CODE: <i>94514</i>
TIME PERIOD OF DOCUMENTS REQUESTED: <i>Annual</i>	From: <i>2006</i>	To: <i>2009</i>

REQUESTED RECORDS (Check no more than three applicable items)

Complaint Information <input type="checkbox"/> Complaint Printout <input type="checkbox"/> Specific Complaint #	Notice Of Violation Information <input type="checkbox"/> NOV Printout <input type="checkbox"/> Specific NOV #	OTHER: * * * <i>Annual hours of operation for each of the five Waukesha 7042 GSI engines for 2006, 2007, 2008, and 2009.</i>
Episode Information <input type="checkbox"/> Episode Printout <input type="checkbox"/> Specific Episode #	<input type="checkbox"/> AB2588 Inventory <input type="checkbox"/> Source Test Reports <input type="checkbox"/> Lab Report #	
Permit Application Information <input checked="" type="checkbox"/> Permit Application Printout <input type="checkbox"/> Specific Application # <input type="checkbox"/> Permit Conditions	<input type="checkbox"/> Review Permit Files * <input type="checkbox"/> Review Enforcement Files ** <input type="checkbox"/> Review Rule Development Files ** <input type="checkbox"/> Asbestos Notifications	

* Subject to facility review (i.e., trade secrets).
 ** You will be contacted to schedule an appointment date to review records.
 *** If what you are seeking is not on this Form, you may attach a letter with additional information on the request.

Cost: **Copies: \$.10 per page; Diskette \$5.00; CD \$10.00; Audiotape \$5.00; Microfiche sheet \$8.00.**
 Note: After a preliminary estimate, **advance payment may be required.**

I hereby agree to reimburse the BAAQMD for the direct cost of duplicating the information requested in accordance with Gov't Code Section 6253(b).

OFFICE USE ONLY:

Enclosed are the records you requested.

We are unable to provide the records you requested.

A search was made but no records were found.

We are unable to find the record you requested because the request did not include sufficient information to find it.

Out of District's Jurisdiction.

G:\admin\doamgr\prform.doc (RH:ROZ07/28/04)\fillable

Attachment RSDR3-1
Bethany Compressor Station BAAQMD Permit

From: Public Records [PublicRecords@baaqmd.gov]
Sent: Wednesday, February 03, 2010 2:03 PM
To: McGregor, Keith/SAC
Subject: RE: Operating Permit and Annual Hours of Operation at the PG&E Bethany Compressor Station - Byron, CA
Attachments: 10-02-07_Response to McGregor.pdf; 10-02-07_McGregor.DOC

Thank you,
Public Records Staff
In house: Public Records
publicrecords@baaqmd.gov

Rochelle Henderson,
Public Records Coordinator
415-749-4784

From: Keith.McGregor@CH2M.com [mailto:Keith.McGregor@CH2M.com]
Sent: Tuesday, February 02, 2010 2:57 PM
To: Public Records
Subject: MEP: Operating Permit and Annual Hours of Operation at the PG&E Bethany Compressor Station - Byron, CA

Please see the attached data request form.

If you have any questions, please give me a call.

Thank you,

Keith McGregor
Associate Project Manager
CH2MHILL
2485 Natomas Park Drive Suite 600
Sacramento, CA 95833
Direct: (916) 286-0221
Mobile: (916) 992-3365
Fax: (916) 614-3450



BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 939 ELLIS STREET
 SAN FRANCISCO, CA. 94109
 ATTENTION: ADMINISTRATIVE SERVICES DIVISION
 e-mail request to: *publicrecords@baaqmd.gov*

Office Use Only
P.R.R. NUMBER

10-02-07

Direct Dial: (415) 749-4761
 FAX: (415) 749-5111

PUBLIC RECORDS REQUEST FORM

ATTENTION REQUESTOR: To expedite your request for District records, please fill out this form completely. Specifically identify the type of records you are requesting from the list below. **NOTE:** There is a limit of one facility or one site address per request form.

REQUESTOR INFORMATION

NAME: <i>Keith McGregor</i>			DATE: <i>02/02/2010</i>
COMPANY: <i>CH2MHILL</i>			
MAILING ADDRESS: <i>2485 Natomas Park Drive, Suite 600</i>			
CITY: <i>Sacramento</i>	STATE: <i>CA</i>	ZIP CODE: <i>95833</i>	PHONE NUMBER: <i>(916) 286-0221</i>

REQUESTED FACILITY INFORMATION

FACILITY NAME: <i>PG&E Bethany Compressor Station</i>		
FACILITY ADDRESS: <i>14750 Kelso Road</i>		
CITY: <i>Byron</i>	STATE: <i>CA</i>	ZIP CODE: <i>94514</i>
TIME PERIOD OF DOCUMENTS REQUESTED: <i>Annual</i>	From: <i>2006</i>	To: <i>2009</i>

REQUESTED RECORDS (Check no more than three applicable items)

Complaint Information <input type="checkbox"/> Complaint Printout <input type="checkbox"/> Specific Complaint #	Notice Of Violation Information <input type="checkbox"/> NOV Printout <input type="checkbox"/> Specific NOV # <input checked="" type="checkbox"/> AB2588 Inventory <input type="checkbox"/> Source Test Reports <input type="checkbox"/> Lab Report # <input type="checkbox"/> Review Permit Files * <input type="checkbox"/> Review Enforcement Files ** <input type="checkbox"/> Review Rule Development Files ** <input type="checkbox"/> Asbestos Notifications	OTHER: * * *
Episode Information <input type="checkbox"/> Episode Printout <input type="checkbox"/> Specific Episode #		
Permit Application Information <input checked="" type="checkbox"/> Permit Application Printout <input type="checkbox"/> Specific Application # <input checked="" type="checkbox"/> Permit Conditions		

* Subject to facility review (i.e., trade secrets).
 ** You will be contacted to schedule an appointment date to review records.
 *** If what you are seeking is not on this Form, you may attach a letter with additional information on the request.

Cost: **Copies: \$.10 per page; Diskette \$5.00; CD \$10.00; Audiotape \$5.00; Microfiche sheet \$8.00.**
 Note: After a preliminary estimate, **advance payment may be required.**

I hereby agree to reimburse the BAAQMD for the direct cost of duplicating the information requested in accordance with Gov't Code Section 6253(b).

OFFICE USE ONLY:

Enclosed are the records you requested.

We are unable to provide the records you requested.

- A search was made but no records were found.
- We are unable to find the record you requested because the request did not include sufficient information to find it.
- Out of District's Jurisdiction.

PLANT # 14218
Pacific Gas and Electric Co
14750 Kelso Road, Byron, CA 94514

Facility Wide Conditions: None

source	current conditions	application	condition type
-----	-----	-----	-----
1	23442	4948	

COND# 23442 -----

1. The owner or operator shall operate the stationary emergency standby engine, only to mitigate emergency conditions or for reliability-related activities (maintenance and testing). Operating while mitigating emergency conditions and while emission testing to show compliance with this part is unlimited. Operating for reliability-related activities are limited to 100 hours per year.

(Basis: Emergency Standby Engines, Hours of Operation Regulation 9-8-330)

2. The Owner/Operator shall equip the emergency standby engine(s) with: a non-resettable totalizing meter that measures hours of operation or fuel usage

(Basis: Emergency Standby Engines, Monitoring and Recordkeeping 9-8-530)

3. Records: The Owner/Operator shall maintain the following monthly records in a District- approved log for at least 36 months from the date of entry. Log entries shall be retained on-site, either at a central location or at the engine's location, and made immediately available to the District staff upon request.
 - a. Hours of operation (maintenance and testing).
 - b. Hours of operation for emission testing.
 - c. Hours of operation (emergency).
 - d. For each emergency, the nature of the emergency condition.
 - e. Fuel usage for engine.
 - f. CARB Certification Executive Order for the engine.

(Basis: Emergency Standby Engines, Monitoring and Recordkeeping 9-8-530)

Land Use (4–8)

Background

Mariposa Energy received a reply letter from the Department of Conservation on July 6, 2209 [sic] titled Alameda County: Mariposa Energy Project Proposed Electric Facility as "Compatible Use". The letter states, "Given the stated facts in your letter dated June 2, 2009, the Mariposa Energy Project appears to be a compatible use with the on-going agricultural activities occurring on the 158-acre parcel. While the final decision is in the hands of the County of Alameda, the Department of Conservation could certainly concur with that conclusion should Alameda County arrive at it."

Data Requests

RSDR4. Please provide all correspondence with Alameda County, Memos. [sic] Emails, Records of conversations, etc. related to the Projects [sic] compatibility with the Williamson Act.

Response:

Attachment RSDR4-1 is a letter dated June 3, 2009, from Mr. David Blackwell of Allen Matkins to Mr. Bruce Jensen of the Alameda County Community Development Agency. This letter and its accompanying memorandum provide a detailed legislative history of the compatible use provisions in the Williamson Act. Additionally, a letter dated June 2, 2009, from Mariposa Energy to Mr. Brian R. Leahy of the California Department of Conservation is included as Attachment RSDR4-2.

The June 3, 2009, letter is the only correspondence between the Applicant and Alameda County pertaining to the Williamson Act. To the extent that RSDR4 requests other documents "etc.," the Applicant will file a formal objection to the request on the grounds that it is vague, burdensome, and irrelevant.

RSDR5. Please provide the hearing dates, meetings, etc. for Alameda County's determination that the project is a compatible use with the Williamson Act.

Response:

Mariposa Energy is not aware of any scheduled hearing dates or meetings for Alameda County's determination that the project is a compatible use with the Williamson Act.

RSDR6. Has the Mariposa Project applied for a Conditional Use Permit for the Project?

Response:

Mariposa Energy has not applied for a Conditional Use Permit for the project; under the Warren-Alquist Act the California Energy Commission has sole jurisdiction for licensing of the project.

RSDR7. Please provide the application if one has been filed for the conditional use permit.

Response:

Mariposa Energy has not applied for a Conditional Use Permit for the project.

RSDR8. Please provide the distance from the Mariposa Project to the Mountain House Community when the project has reaches full build out.

Response:

The shortest distance between the MEP project site boundary and the border of San Joaquin County, which is also the border of the Mountain House Community, is 2.3 miles.

Attachment RSDR4-1
Letter from Allen Matkins to Alameda County

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
200 Pringle Avenue, Suite 300 | Walnut Creek, CA 94596-7367
Telephone: 925.943.5551 | Facsimile: 925.943.5553
www.allenmatkins.com

David H. Blackwell
Direct Dial: 415 273 7463 File Number: D2739-002/SF761311.03

June 3, 2009

Bruce H. Jensen
Senior Planner
Alameda County Community Development Agency
224 W. Winton Avenue, Room 111
Hayward, CA 94544-1215

Re: Mariposa Energy: Compatible Use Legislative History

Dear Bruce:

Per your request during our last meeting, I am enclosing a memorandum that analyzes the legislative history of the compatible use provisions in the Williamson Act, in particular those provisions relating to electrical facilities such as the Mariposa Energy, LLC project.

We are in the process of procuring a letter from Brian Leahy, Assistant Director of the Department of Conservation, providing his opinion regarding how our project is a compatible use under the Williamson Act. Two weeks ago, the Governor's Office directed the Department and other State agencies to analyze this topic in light of the Governor's desire to facilitate the siting and construction of renewable energy and other electrical facilities throughout the State. Although we believe that this policy will strengthen our position before the CEC, the immediate effect is that Mr. Leahy cannot submit the requested letter until it has been vetted by the appropriate persons involved in this policy development, which may take some time. We will forward to you Mr. Leahy's letter as soon as it is received.

Separately, an evaluation of the Electric Load and Power Generation Resources of Alameda County is being prepared and will be forwarded to you under a separate cover letter from Bo Buchynsky.

If you have any questions about the memorandum or any other issues, please give me a call.

Very truly yours,



David H. Blackwell

Enclosure

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Bruce H. Jensen
June 3, 2009
Page 2

cc: Bo Buchynsky

Memorandum

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
www.allenmatkins.com

To: Bruce Jensen

County of Alameda

cc: Bo Buchynsky

Diamond Generating Corporation

From: David H. Blackwell

Date: June 3, 2009

Telephone: 415.273.7463

E-mail: dblackwell@allenmatkins.com

File Number: D2739-002/SF759698.03

*Subject: Mariposa Energy Project
Compatible Uses Under the Williamson Act*

This memorandum addresses your April 9 inquiry regarding the legislative history of Section 51238¹ of the Williamson Act (Gov. Code § 51200 *et seq.*), wherein the State Legislature declared that electric facilities are a "compatible use" under the Act. In particular, this memorandum briefly reviews the background of the Act and the development of the compatible use provisions via legislative amendments. The memorandum then applies Section 51238 to Mariposa Energy LLC's proposed electric facility in Alameda County ("Mariposa Energy Project").

I. Introduction

As set forth below, the fundamental goal of the Williamson Act is the preservation of agricultural and open space from disorderly encroachment patterns of urban development. The Williamson Act is implemented through a voluntary contract between the local agency and the landowner. Land not under contract is not directly subject to the Act's protection, so land under contract should remain in contract except in extraordinary circumstances. Furthermore, the Act discourages contract cancellations. For these reasons and the reasons below, it would be unwise to consider having a portion of the contract applicable to the Mariposa Energy Project cancelled.

The Legislature has expressly deemed electric facilities as "compatible uses" under the Act since it was adopted in 1965. Even though local implementation of other compatible uses has been modified and curtailed during the evolution of the Act, the express declaration found in Section 51238 has actually broadened over the last 44 years. Some have mistakenly believed that only strictly agricultural or open space uses are allowed under the Williamson Act. To the contrary, the Act expressly allows compatible uses, whether defined by the local agency (subject to meeting the Act's "principles of compatibility" in Section 51238.1) or by the Legislature (such as Section 51238).

¹ All statutory references are to the Government Code unless otherwise noted.

To: Bruce Jensen
cc: Bo Buchynsky

From: David H. Blackwell
Date: June 3, 2009
Page 2

The Mariposa Energy Project is clearly an electric facility and is therefore a compatible use under Section 51238. The ten acres that the Mariposa Energy Project will occupy should remain under contract, thereby respecting the Legislature's mandate to preserve contracts and maintaining the entire 158-acre parcel under Williamson Act control.

II. Background and Purpose of the Williamson Act

A. Preservation of Agricultural and Open Space Land

Before 1966, the California Constitution required that individual property tax assessments be made according to the market value of the assessed property.² As a result, the County Assessor was required to consider the highest and best use to which the property was naturally adapted, and could not limit consideration only to the property's present use.³ Therefore, agricultural lands adjoining urban areas could be subject to higher property assessments and taxes, thereby forcing agricultural landowners to discontinue farming and sell or convert their land to urban development.⁴ The Williamson Act helped to cure this problem. As explained by the California Supreme Court,⁵ the Act:

was the Legislature's response to two alarming phenomena observed in California: (1) the rapid and virtually irreversible loss of agricultural land to residential and other developed uses and (2) the disorderly patterns of suburban development that mar the landscape, require extension of municipal services to remote residential enclaves, and interfere with agricultural activities. The Legislature perceived as one cause of these problems the self-fulfilling prophecy of the property tax system: taxing land on the basis of its market value compels the owner to put the land to the use for which it is valued by the market. As the urban fringe approaches, the farmer's land becomes valuable for residential development. His taxes are therefore increased, although his income is likely to shrink as more costly practices must be undertaken both to avoid interfering with his new neighbors and to protect his crops, livestock, and equipment from their intrusion. Often the farmer is forced to sell his land to subdivision developers, sometimes long before development is appropriate. As houses go up, so does the value of the remaining agricultural land, and the cycle begins anew.

Another concern was that farmers "fearing the encroachment of development incompatible with agricultural uses and the resultant increase in property taxes will not make the substantial investment in capital equipment, such as irrigation systems, required for a successful farming operation."⁶

² *Dorcich v. Johnson* (1980) 110 Cal.App.3d 487, 492.

³ *Id.*

⁴ *Id.*

⁵ *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 850.

⁶ *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 791.

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In response to these concerns, the Legislature made three findings when passing the Act in 1965. In sum, the Legislature found that preservation of agricultural land is necessary: (1) for the state's agricultural economy and to assure healthy food for future residents of the state and nation; (2) to discourage premature and unnecessary conversion of agricultural land to urban uses, which causes discontinuous urban development patterns that increase the costs of community services; and (3) to preserve the value of agricultural lands as open space.⁷

As summarized by a California court of appeal: "The Williamson Act is a legislative effort to preserve open space and agricultural land through discouraging premature urbanization and, at the same time, to prevent persons owning agricultural and/or open lands near urban areas from being forced to pay real property taxes based on the greater value of that land for commercial or urban residential use, a factor which would force most landowners to prematurely develop."⁸ Another court similarly characterized the Williamson Act as an endeavor "to preserve agricultural land and discourage the premature and unnecessary conversion of such land to urban uses."⁹

B. The Importance of Keeping the Land Under Contract

At the heart of the Williamson Act is the contract between the landowner and the local agency. Once an agricultural preserve is established, the local government may offer to owners of

⁷ § 51220, Ch. 1443, p. 3378 (1965 Regular Session). In its current form, Section 51220 provides the following findings:

(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.

(b) That the agricultural work force is vital to sustaining agricultural productivity; that this work force has the lowest average income of any occupational group in this state; that there exists a need to house this work force of crisis proportions which requires including among agricultural uses the housing of agricultural laborers; and that such use of agricultural land is in the public interest and in conformity with the state's Farmworker Housing Assistance Plan.

(c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontinuous urban development patterns which unnecessarily increase the costs of community services to community residents.

(d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.

(e) That land within a scenic highway corridor or wildlife habitat area as defined in this chapter has a value to the state because of its scenic beauty and its location adjacent to or within view of a state scenic highway or because it is of great importance as habitat for wildlife and contributes to the preservation or enhancement thereof.

(f) For these reasons, this chapter is necessary for the promotion of the general welfare and the protection of the public interest in agricultural land.

⁸ *Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal.App.3d 1122, 1130.

⁹ *Delucchi v. County of Santa Cruz* (1986) 1179 Cal.App.3d 814, 819.

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agricultural land within the preserve the opportunity to enter into annually renewable Williamson Act contracts that restrict the land to agricultural uses for at least ten years.¹⁰ The ten-year minimum term "was intended to guarantee a long-term commitment to agricultural and other open space use to deny the tax benefits of the Act to short-term speculators and developers of the urban land, and to ensure compliance with the constitutional requirement of an 'enforceable restriction.'"¹¹ The contract "may provide for restrictions, terms, and conditions, including payments and fees, more restrictive than or in addition to those required by" the Act.¹² Every contract must exclude uses that are not agricultural and that are not compatible with agricultural uses, and this exclusion must remain in effect for the duration of the contract.¹³ If the land is not subject to a Williamson Act contract, it is not subject to the protections of the Williamson Act.

The "nonrenewal procedure is the intended and general vehicle for contract termination."¹⁴ A significantly less-preferred alternative for terminating a contract is cancellation.¹⁵ Although cancellation accounts for only about 1% of the total acreage of terminated contracts, it is the source of many disputes that have reached the appellate courts. The minute number of contract cancellations is the result of the Williamson Act's structural discouragement of cancellation. For example, the landowner must pay a cancellation fee equal to 12½ percent of the fair market value of the property as if it were free of the contractual restriction.¹⁶ The fee is imposed "as a deterrent to the landowner to seek cancellation during the early years of the contract and to ensure that owners who execute agreements are not speculators looking for a short-term tax shelter."¹⁷ In addition, both the landowner and local agency must agree to cancellation, the agency is required to make numerous legislatively-mandated findings supporting cancellation and which are designed primarily for urban and residential uses on the urban fringe, and the cancellation process is subject to a noticed public hearing.¹⁸

Thus, cancellation of a contract, or any portion thereof, is not encouraged by the Williamson Act. To the contrary, a fundamental purpose of the Act is to keep land under contract, thereby helping preserve agricultural and open space.

¹⁰ §§ 51240, 51242, 51244.

¹¹ *Honey Springs*, 157 Cal.App.3d at 1131.

¹² § 51240.

¹³ § 51243(a).

¹⁴ *Sierra Club*, 28 Cal.3d at 852.

¹⁵ § 51282.

¹⁶ § 51283.

¹⁷ *Dorcich v. Johnson* (1980) 110 Cal.App.3d 487, 496.

¹⁸ §§ 51281, 51282, 51284. Certain emergency-related findings required by the California Supreme Court in *Sierra Club* were found unwarranted in *Friends of East Willits Valley v. County of Mendocino* (2002) 101 Cal.App.4th 191, 204-207, although the Department of Conservation often refers to these findings as important policy considerations.

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III. Compatible Uses

The Legislature has expressly recognized the construction and maintenance of electric facilities as a compatible use since the inception of the Act. This express finding was part of the original 1965 legislation and continues to this day with little substantive change.

A. Legislative History of Compatible Uses

As initially chaptered in 1965, the Williamson defined "compatible use" as follows:

Except as otherwise defined by this act, "compatible use" shall be determined by the city or county administering the agricultural preserve according to uniform rules. "Compatible use" shall include 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. No land occupied by gas, electric, water, or communication utility facilities shall be excluded from a preserve by reason of such use.¹⁹

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...."²⁰ Once an agricultural preserve is established, the city or county may offer contracts to landowners within the preserve.²¹ 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.²² 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 then enumerates the compatible uses that will be permitted within the preserve.²³ 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 three "principles of

¹⁹ § 50201(e), Ch. 1443, p. 3378 (1965 Regular Session).

²⁰ § 50201(d), Ch. 1443, p. 3377 (1965 Regular Session).

²¹ §§ 51230, 51242(b).

²² Ch. 1120, p. 3426 (1977-78 Regular Session).

²³ § 51231.

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compatibility" enumerated in Section 51238.1 that was added by AB 2663, and as explained in detail below.

B. Legislative History of Electric Facilities as Compatible Uses

Following the approval of AB 1178 in 1969, the "compatible use" definition of Section 51201(e) was modified and renumbered 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 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.²⁴

In 1977, AB 1625 deleted the two references to the term "utility" in Section 51238,²⁵ likely reflecting the Legislature's desire to clarify that compatible uses include facilities beyond those of investor-owned utilities regulated by the Public Utilities Commission. The Legislature recognized that many other entities, such as municipal organizations, irrigation districts, federal authorities, interstate gas transmission companies, Qualified Facilities, Independent Power Producers, interstate communications entities and Electric Wholesale Generators provided infrastructure similar to those regulated by the CPUC, and thus their facilities should also be deemed to be compatible uses.

In 1991 and 1992, the Department of Conservation introduced legislation that would replace 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 51238.1.²⁶ Notwithstanding these limitations, proposed new Section 51238.2 essentially replicated the statutorily-enumerated compatible uses from 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.²⁷ Also noteworthy is that during the amendment process, there was an attempt to limit this section 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 51238 be limited to transmission facilities. Both bills died on November 30, 1992.²⁸

²⁴ AB 1178, Ch. 1372, p. 2809 (1969 Regular Session).

²⁵ Ch. 1120, p. 3429 (1977-78 Regular Session).

²⁶ AB 1770, AB 3406 (1991-1992 Regular Session).

²⁷ *Id.*

²⁸ *Id.*

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AB 724 was vetoed in 1993. Each of its seven versions had at least one provision “notwithstanding other provisions of law” which maintained verbatim the existing treatment of gas, electrical, water and communication facilities as compatible uses unless denied by local government after notice and hearing. Several amended versions also had interpretive language further clarifying that these statutory issues were exempt from the three “principles of compatibility.”

AB 2663²⁹ 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. In addition, the bill added text to Section 51238 authorizing local government to impose conditions on lands to be placed within preserves to “permit and encourage” compatible uses in conformity with new Section 51238.1. However, this language is targeted primarily at outdoor recreation uses (whose definition AB 2663 did not modify) and is unrelated to electrical and other facilities. The last amended version³⁰ of AB 2663 also introduced the separate compatibility standards for non-prime lands³¹ 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.”

In 1999, AB 1505 renumbered the subparagraphs of Section 51238 into (a)(1), (a)(2), and (b), reflecting its current structure.³²

C. Current Williamson Act Provisions Regarding Compatible Uses

Below are the critical Sections of the current Williamson Act, with key provisions underscored.

Section 51201(e) recognizes that a “compatible use” may either be adopted by a local agency or enumerated in the Act:

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

²⁹ Ch. 1251 (1994 Regular Session).

³⁰ August 25, 1994.

³¹ § 51238.1(c).

³² Ch. 967 (1999 Regular Session).

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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.

Section 51238 continues to declare electric facilities as compatible uses unless the board determines otherwise following a noticed public hearing:

(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.

Section 51238.1 sets forth the principles of compatibility for nonstatutory compatible uses adopted by the local agency:

(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.

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(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.

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.

D. Application of Section 51238 to the Mariposa Energy Project

As we have discussed during our meetings during the last year, Section 51201(e) 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).

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On its face, the Mariposa Energy Project, which is an electric facility, is a "compatible use" under Section 51238(a)(1). The County Board of Supervisors has made no finding to the contrary following a noticed public hearing, nor has the County indicated at any time during our meetings over the last year that the Board contemplates doing so.

E. Application of Section 51238.1 to the Mariposa Energy Project

A facility deemed to be a compatible use under Section 51238 is not required to meet the requirements of Section 51238.1. If a board makes a written determination pursuant to Section 51238(a)(1) that electric facilities are not as a matter of law compatible uses, then the inquiry turns to whether such a facility meets the compatibility requirements of Section 51238.1. As set forth above, the County Board of Supervisors has taken no action following a noticed public hearing that restricts the Legislature's mandate that electric facilities are deemed compatible uses under the Act.

Nevertheless, in order to provide a comprehensive discussion for the County's review, this memorandum also applies the criteria set forth in Section 51238.1 to the Mariposa Energy Project.³³ 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 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).

As demonstrated below, the Mariposa Energy Project is consistent with the three principles of compatibility set forth in Section 51238.1(a).

First, the Project 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. To the contrary, the Project will enhance agricultural production. The subject parcel is a non-irrigated, non-prime, 158-acre parcel used for grazing cattle. Removing ten acres for the Mariposa Energy Project would have no adverse effect on long-term agricultural capability in the area, even if the Project did not offer the mitigation described herein. By providing an enhanced watering system for the cattle and re-seeding the five-acre laydown area with more productive grasses, the remainder of the parcel will support more cattle than what the parcel can support in its

³³ Section 51238.1 did not exist in 1989, when the County Board determined that a cogeneration facility, which involves thermal electric generation, was a compatible use under the Williamson Act contract applicable to the 158-acre parcel. The Board's action underscores the County's recognition that determining a use to be a compatible use is preferable to requiring partial contract cancellation, and that retaining the entire parcel under Williamson Act control is important.

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current state. Therefore, no significant compromise of the long-term productive agricultural capability of the subjected contracted parcel will occur.

Second, the Project will not significantly displace or impair current or reasonably foreseeable agricultural operations. Again, the Mariposa Energy Project will be fully-contained within a ten-acre site in the middle of the 158-acre parcel, and will not significantly displace or impair current or reasonably foreseeable agricultural operations on the parcel since the only reasonably foreseeable agricultural operations are non-irrigated grazing. The parcel's topography, soil, and vernal pools make the production of other agricultural commodities highly unlikely. Therefore, the use as an electric facility will not significantly displace agricultural operations.

Third, the Project will not result in the significant removal of adjacent contracted land from agricultural or open-space use. The Project will have no effect on adjacent properties' agricultural production. Grazing on adjacent contracted land would continue as it has previously because the Project is located on ten acres in the middle of the 158-acre parcel, and will have no impacts on the other properties' operations.

Because the Mariposa Energy Project is located on non-prime land, even if the County determined that the principles of compatibility set forth in Section 51238.1(a) were not met, *and* that the Project could not be subject to conditions imposed pursuant to Section 51238.1(b) so that the principles could be met, then the County could still determine that the Project is compatible under the more relaxed standards of Section 51238.1(c). First, by implementing the conditions referenced above, the Project will enhance agricultural productivity on the remainder of the 158-acre parcel, thus any adverse onsite impacts would be mitigated. Second, the parcel is non-irrigated grazing land that is not considered as Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, or Unique Farmland by the Farmland Mapping and Monitoring Program. The use of ten acres out of 158 acres of grazing land would theoretically displace one or two cow/calf pairs out of ninety-three pairs typically grazed on the site. With the addition of cattle water troughs and the reseeded of the construction laydown area with more productive grasses, the one or two cow/calf pairs no longer able to graze on the Project's ten acres will be able to exist on the 146 acres balance of the parcel. Third, the Project will support the continuation of agricultural uses on the property by enhancing water availability with cattle troughs and improved feed from the reseeded construction laydown area. In addition, the additional revenue from the long-term lease on the ten-acre site provides the land owner of the 158-acre parcel with a financial incentive to maintain the agricultural and open-space nature of the balance of the parcel. Fourth, the Project does not involve a residential subdivision, and may actually discourage new residential development in the immediate area. Finally, the Project is consistent with the uncodified intent language for compatible uses on non-prime land, as discussed in Section B above.

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IV. Conclusion

The Mariposa Energy Project is a compatible use under the Williamson Act, and the County should recognize it as such in its LORS discussion. Even though some electric facility projects in the past have cancelled all or part of their respective Williamson Act contracts before building their projects, this approach actually undermines the Williamson Act by removing that property from the controls and protections provided by the Act. The most efficient and just way to proceed is to keep the entire 158-acre parcel under contract, while recognizing that the ten-acre Mariposa Energy Project is a compatible use.

Attachment RSDR4-2
Letter from Mariposa Energy to California
Department of Conservation



Mariposa Energy, LLC

333 S. Grand Ave., Suite 1570, Los Angeles, CA 90071

Tel: (213) 473-0080 Fax: (213) 620-1170

Via Overnight Service

June 2, 2009

Mr. Brian R. Leahy
Assistant Director
Division of Land Resource Protection
California Department of Conservation
801 K Street, MS 18-01
Sacramento, California 95814

*Re: Alameda County: Mariposa Energy Project
Proposed Electric Facility as "Compatible Use"*

Dear Mr. Leahy:

Per Government Code section 51206, and on behalf of Mariposa Energy, LLC, we are submitting this letter requesting your informal opinion about the application of the "compatible use" provisions of the Williamson Act to our proposed electric facility in unincorporated Alameda County.

It is our belief that the electric facility, known as the Mariposa Energy Project, is by definition a statutory compatible use per Government Code section 51238 for the reasons we have discussed and have memorialized in prior correspondence and memoranda to you. We recognize, however, that the Department is currently formulating a policy regarding the statutory compatibility of energy uses on lands under Williamson Act contracts, per the request of the Governor's Office, and that it could be premature for you to issue an opinion regarding the application of Section 51238 until that policy is adopted.

Thus, although we request that you provide an informal opinion regarding the applicability of Section 51238 to the Mariposa Energy Project, we understand if you would prefer to limit your opinion to the application of Section 51238.1, which relates to non-statutory compatible uses and the three "principles of compatibility." As background, we provide below a description of the Mariposa Energy Project and the application of Section 51238.1 to the Project.

I. Property Background

The Mariposa Energy Project will occupy ten acres on a 158-acre parcel owned by Mr. Steven Shin-Der Lee located in Alameda County, APN 99B-7050-001-10. A five-acre construction



Mariposa Energy, LLC

laydown and worker parking area for the Project is located adjacent to and southeast of the proposed Project site. An additional laydown area (one acre) for the water supply pipeline will be located at the Byron Bethany Irrigation District (BBID) headquarters, approximately 1.3 miles north of the project site. A 0.6-acre laydown area for transmission line construction will be located along the transmission line route adjacent to PG&E Kelso Substation. The Project site is located directly south of the existing 6.5-megawatt Byron Power Company cogeneration plant, which occupies two acres in the middle portion of the parcel.

The property has historically been used for non-irrigated grazing on nonprime agricultural land. On February 4, 1971, the County adopted a resolution establishing Agricultural Preserve No. 1971-34 and entered into Land Conservation Agreement No. 5635 with Mr. Lee's predecessor in interest. After Mr. Lee purchased a 158-acre portion of that property, he asked the County to enter into a new Land Conservation Agreement to reflect the change of ownership and to modify the list of approved compatible uses to allow the designation of an additional compatible use: the operation of a co-generation/wastewater distillation facility as defined by a County-approved conditional use permit CUP - 5653. On December 12, 1989, the County Board of Supervisors adopted Resolution No. 89-947, which approved the change of ownership and added the Byron Power Company co-generation/wastewater distillation facility as a second compatible use (in addition to the grazing, breeding or training of horses or cattle).¹ On that same day, Mr. Lee and the County entered into Land Conservation Agreement No. C-89-1195.

Diamond Generating Corporation, as the parent entity of Mariposa energy, LLC, now leases the 158-acre parcel from Mr. Lee. We have been working with Mrs. Jess, who grazes cattle on the Lee property to coordinate the proposed mitigation for utilizing ten acres of non-irrigated grazing land as the location for the Mariposa Energy Project. One of the limiting factors to grazing on the property is the lack of water year-round, since the current water source is a vernal pool. By adding cattle water troughs on the east and west sides of the Project, the useful grazing period on the property can be extended. In addition, when the five acre temporary construction laydown and parking area is re-seeded, the recommended seed mixture will increase the grazing capacity of the five acres to more than compensate for the loss of ten acres of non-irrigated grazing land.

II. Application of Section 51238.1 to the Mariposa Energy Project

As we have previously discussed, we believe that the Mariposa Energy Project is consistent with the three principles of compatibility set forth in Section 51238.1(a).

¹ Section 51238.1 did not exist in 1989, when the County Board determined that the cogeneration facility was a compatible use under the Williamson Act contract. We believe that the Board's action underscores the County's recognition that determining a use to be a compatible use is preferable to requiring partial contract cancellation, and that retaining the entire parcel under Williamson Act control is important.



Mariposa Energy, LLC

First, the Project 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. To the contrary, the Project will enhance agricultural production. The subject parcel is a non-irrigated, non-prime, 158-acre parcel used for grazing cattle. Removing ten acres for the Mariposa Energy Project would have no adverse effect on long-term agricultural capability in the area, even if the Project did not offer the mitigation described herein. By providing an enhanced watering system for the cattle and re-seeding the five-acre laydown area with more productive grasses, the remainder of the parcel will continue to support the cattle that are currently grazing on the parcel. Therefore, no significant compromise of the long-term productive agricultural capability of the subjected contracted parcel will occur.

Second, the Project will not significantly displace or impair current or reasonably foreseeable agricultural operations. Again, the Mariposa Energy Project will be fully-contained within a ten-acre site in the middle of the 158-acre parcel, and will not significantly displace or impair current or reasonably foreseeable agricultural operations on the parcel since the only reasonably foreseeable agricultural operations are non-irrigated grazing. The parcel's topography, soil, and vernal pools make the production of other agricultural commodities highly unlikely. Therefore, the use of ten acres for an electric facility will not significantly displace agricultural operations.

Third, the Project will not result in the significant removal of adjacent contracted land from agricultural or open-space use. The Project will have no effect on adjacent properties' agricultural production. Grazing on adjacent contracted land will continue as it has previously because the Project is located on ten acres in the middle of the 158-acre parcel, and will have no impacts on the other properties' operations.

Because the Mariposa Energy Project is located on non-prime land, even if it were determined that the principles of compatibility set forth in Section 51238.1(a) were not met, *and* that the Project could not be subject to conditions imposed pursuant to Section 51238.1(b) so that the principles could be met, then a determination that the Project is compatible under each of the four more relaxed standards of Section 51238.1(c) could be made. First, by implementing the conditions referenced above, the Project will enhance agricultural productivity on the remainder of the 158-acre parcel, thus any adverse onsite impacts will be mitigated. Second, the parcel is non-irrigated grazing land that is not considered as Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, or Unique Farmland by the Farmland Mapping and Monitoring Program. The use of ten acres out of 158 acres of grazing land would theoretically displace one or two cow/calf pairs out of the typical ninety-three pairs seasonally grazing on the site. With the addition of cattle water troughs and the reseeded construction laydown area with more productive grasses, however, the one or two cow/calf pairs no longer able to graze on the Project's ten acres will be able to exist on the balance of the 146 acres of the parcel. Third, the Project will support the continuation of agricultural uses on the property by enhancing water availability with cattle troughs and improved feed from the reseeded construction laydown area. In addition, the additional revenue from the long-term lease on the ten-acre site provides the land



Mariposa Energy, LLC

owner of the 158-acre parcel with a financial incentive to maintain the agricultural and open-space nature of the balance of the parcel. Fourth, the Project does not involve a residential subdivision, and may actually discourage new residential development in the immediate area.

If you have any questions or comments, please give me a call. Thank you.

Very truly yours,

Bohdan Buchynsky
Executive Director

Cc: William Geyer
David Blackwell

Files – MEP – Chron.
MEP – DOC
DGC – Chron.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE **MARIPOSA ENERGY PROJECT**
(MEP)

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 2/8/2010)

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DECLARATION OF SERVICE

I, Stephanie Moore, declare that on February 18, 2010, I served and filed copies of the attached Mariposa Energy Project Robert Sarvey Data Responses, Set 1. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/mariposa/index.html>.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

 x sent electronically to all email addresses on the Proof of Service list;

 by personal delivery or by depositing in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

 x sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

 depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

Original signed by: _____
Stephanie Moore