

# Memo

<b>DOCKET</b>	
<b>09-AFC-3</b>	
DATE	<u>JUL 06 2010</u>
RECD.	<u>JUL 06 2010</u>

**To:** Docket Optical System

**From:** Lisa Worrall

**CC:**

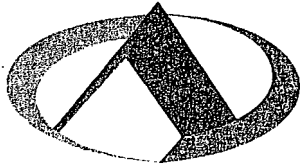
**Date:** 7/7/2010

**Re:** Docket request for the Mariposa Energy Project: Alameda County Community Development Agency letter (dated April 30, 2002) regarding the Tesla Power Plant (01-AFC-21), Proposed Tesla Power Plant Consistency with Alameda County General Plan and Williamson Act Contracts – Alameda County Community Development Agency (CDA) response to California Energy Commission (CEC) letter of February 4, 2002.

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I have requested that the Alameda County letter, identified above, be docketed for the Mariposa Energy Project (MEP) as the Land Use Preliminary Staff Assessment references specific statements Alameda County made in this letter.

The proposed MEP is not affiliated with the Tesla Power Plant project.



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Adolph Martinelli  
Agency Director

April 30, 2002

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Mr. Bob Haussler,  
Environmental Office Manager  
California Energy Commission  
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Sacramento, CA 95814-5512

<b>DOCKET</b>
<b>01-AFC-21</b>
<b>DATE</b> APR 30 2002
<b>RECD.</b> MAY 08 2002

Subject: Proposed Tesla Power Plant Consistency with Alameda County General Plan and Williamson Act Contracts - Alameda County Community Development Agency (CDA) response to California Energy Commission (CEC) letter of February 4, 2002.

Dear Mr. Haussler:

The following is a response to questions raised in your letter of February 4, 2002 (attached). In the following responses, we identify the number of the question as listed in the February 4 document, and provide a response.

In opening, County staff believes that the proposed Tesla Power Plant can be made consistent with all applicable policies of the Alameda County East County Area Plan (ECAP) as modified by the Measure D Initiative with judicious use of mitigation measures, and that the ECAP does not preclude construction of a power plant outside of the Urban Growth Boundary (UGB) and on lands designated for Large Parcel Agricultural use. The Tesla Power Plant proposal falls within the definition of "infrastructure" allowable under Policy 14A of the ECAP, and the electricity produced by this facility would certainly be considered a public utility. Following are answers to specific questions raised in the CEC letter.

Question No. 1: Does the County consider a power generation facility a land use allowed under the "Large Parcel Agriculture description as amended by Measure D? Is the proposed Tesla project consistent with Policies 81A and 85? Yes, with the provision that agricultural land be preserved as a matter of policy by this project. Policies 81A and 85 must be taken in context with the remainder of the ECAP as amended by Measure D.

These policies do not absolutely limit the uses in the "A" District to uses that fit these descriptions, when those other uses fall under the provisions of Policy 14A, which allows certain types of public uses, public facilities and infrastructure in support of public utilities. In Policy 14A, the County defines infrastructure as "public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities."

**Mr. Bob Haussler, California Energy Commission**  
**Alameda County CDA response to CEC letter of February 4, 2002**  
**April 29, 2002**

County Staff believes that the project is appropriately called a "public facility as well as "structures and development necessary to the provision of...public utilities" because it would substantially serve a key need of the public at large. County staff have also explained in the past that the proposed plant fits within the reasonable definition of "infrastructure," and that the reason for this position is transparent given the definition in the policy. When the ECAP is taken comprehensively and in context, it is evident that the proposed project would be consistent with the provisions of the ECAP, including Policies 81A and 85.

Any use that constitutes a public facility or segment of the infrastructure necessary to provide adequate utility service to the East County is consistent with Measure D overall and with these two Policies. The Tesla Power Plant proposed use would be an example of this type of use.

Question No. 2: If the Tesla Power Plant is determined to be infrastructure, the power generation capability of the power plant potentially will exceed service demands...considered adequate for the East County designated area. Does the County consider the proposed project at conflict with the intended parameters for a public utility as presented in Policy 14A? Please explain. No, County staff perceives no conflict. In its lead-in comment, the CEC staff notes that the facility will be constructed to provide energy to areas beyond Alameda County. The statewide need for energy is not limited to Alameda County, but is widespread, and given the energy needs presently projected statewide and locally, Alameda County (even with the growth constraints put in place by Measure D) will need significant additional electrical energy in the near- to mid-term, and is likely to receive only a fraction of the energy produced by this plant, and the energy it needs, from the grid. Until present and future statewide needs for electrical energy are fulfilled, no plants constructed within California would be considered growth-inducing for Alameda County, and would not be in conflict with Policy 14A.

Question No.3: Is the Tesla Power Plant project a use consistent with preservation of "agricultural/open space areas" as presented [under Policy 56, Sensitive Lands and Regionally Significant Open Space] and the definition in Table 1 of ECAP? Yes. For the uses defined under this policy, including health and safety, recreational opportunities, production of natural resources, protection of sensitive viewsheds as defined in the ECAP, biological preservation and physical separation of communities, the answer is "yes." The placement of the proposed power plant in this setting would not significantly compromise any of the values stated in this policy, especially with the mitigation that is being proposed for biological resources, and provided that the loss of agricultural land is to be mitigated by agreement as it has been for the EAEC proposed project, also in Alameda County. County staff does not see a significant or unavoidable inconsistency with the proposed use. This is further clarified by Policy 58 [Sensitive Lands and Regionally Significant Open Space]: The County shall approve only open space, park, recreational, agricultural, limited infrastructure, public facilities (e.g., limited infrastructure, hospitals, research facilities, landfill sites, jails, etc.) and other similar and compatible uses outside the Urban Growth Boundary.

**Mr. Bob Haussler, California Energy Commission**  
**Alameda County CDA response to CEC letter of February 4, 2002**  
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Question No. 4: Is the Tesla project within the boundaries of the Mountain House designated area?  
No. The Mountain House area is defined by the California Aqueduct route in the northeastern corner of the County and the County boundaries with San Joaquin and Contra Costa Counties. As such, the Mountain House area is located entirely north of the Interstate 580 and 205 routes. No Mountain House policies apply to the Tesla project location.

Question No. 5: Thermal power generation facilities or similar uses are not identified as uses allowed within the the County's "A" District, therefore, can it be concluded that this use is not allowed? This conclusion is in error. Infrastructure uses such as power plants are allowable in the "A" Zoning District with a Conditional Use Permit, the process for which would be a direct parallel to the CEC process, and for which the CEC process is an acceptable substitute. Such infrastructure uses are also allowed under ECAP Policy 14A.

Question No. 6: Is a power plant a consistent use under an Alameda County executed Williamson Act contract? Is the Tesla project consistent with Policy 89 as amended by Measure D? The power plant use is not consistent with a Williamson Act contract; this inconsistency is determined not by the County, but by the Department of Conservation and the State Legislature, which have made such determinations. The Tesla project is consistent with Measure D Policy 89 insofar as the County is presently taking steps to rescind the Williamson Act contract that presently applies to this site (not prohibited in general by Measure D), and to execute a land conservation agreement as required by rescission law on an adequate parcel of land nearby. To date, there has been no formal application by the project proponent to begin this rescission, although we believe it to be forthcoming.

In closing, County staff notes that when comparing a project against the policies of an internally consistent local General Plan document, one must account for the whole context of the General Plan document. Policies must be carefully screened for applicability to the issue at hand, or one may inadvertently mischaracterize the issue through lack of proper context, and reach conclusions that are not relevant or even incorrect. If an appropriate agricultural land mitigation agreement is successfully entered into by the County and the applicant, County staff would consider the project as proposed to be in full compliance with the Alameda County ECAP.

This concludes ACCDA's responses to the letter of March 7, 2002. We trust that these responses will be adequate to your needs. If you require other information or clarification of these responses, please feel free to contact Mr. Bruce Jensen at phone (510) 670-6527 or [bjensen3@co.alameda.ca.us](mailto:bjensen3@co.alameda.ca.us).

Very truly yours,



Adolph Martinelli,  
Community Development Director

**Mr. Bob Haussler, California Energy Commission**  
**Alameda County CDA response to CEC letter of February 4, 2002**  
**April 29, 2002**

cc: Each Member, Alameda County Board of Supervisors  
Susan Muranishi, County Administrator  
Richard E. Winnie, County Counsel  
James Sorensen, Planning Director  
Mr. Scott Busa, FPL Energy  
Mr. MacGregor Hay

AM/bhj

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