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**DOCKET**

**09-AFC-3**

DATE MAY 04 2010

RECD. MAY 04 2010

May 4, 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)  
Rajesh Dighe Data Response Set 2, Responses to Rajesh Dighe  
Data Requests 5 through 14, Dated February 28, 2010

Dear Mr. Hoffman:

Attached please find one hard copy and one electronic copy on CD-ROM of the Mariposa Energy Project's Rajesh Dighe Data Responses Set 2. This Data Response Set was prepared in response to Mr. Rajesh Dighe's Data Requests 5 through 14 for the Application of Certification for the Mariposa Energy Project (MEP) (09-AFC-03) dated February 28, 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.

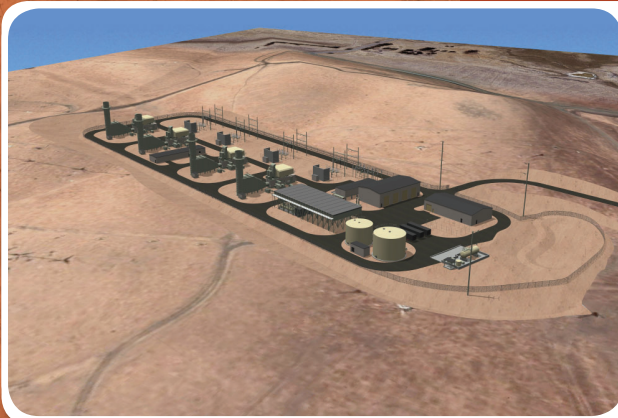
# APPLICATION FOR CERTIFICATION

RAJESH DIGHE DATA RESPONSES, SET 2  
(RESPONSE TO DATA REQUESTS 5 TO 14, DATED FEBRUARY 28, 2010)



SUBMITTED TO THE  
**California Energy Commission**

FOR THE  
**Mariposa Energy Project**  
(09-AFC-03)



SUBMITTED BY



**Mariposa Energy, LLC**

TECHNICAL ASSISTANCE BY



**CH2MHILL**

**MAY 2010**

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# Mariposa Energy Project

(09-AFC-03)

## Rajesh Dighe Data Responses, Set 2

(Response to Data Requests 5 to 14  
Dated February 28, 2010)

Submitted to  
**California Energy Commission**

Submitted by  
**Mariposa Energy, LLC**

With Assistance from

**CH2MHILL**  
2485 Natomas Park Drive  
Suite 600  
Sacramento, CA 95833

May 2010

# Contents

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<b>Section</b>	<b>Page</b>
Introduction.....	1
Land Use (5-10) .....	3
Air Quality (11).....	11
Public Health (12-13).....	23
Socioeconomics (14) .....	25

## **Attachments**

RDDR5-1	Conditional Use Permit 5653
RDDR8-1	Record of Conversation with MHCSD Regarding Wastewater
RDDR8-2	Record of Conversation with MHCSD Regarding Land Use
RDDR9-1	Letter from Allen Matkins to Alameda County
RDDR9-2	Letter from Mariposa Energy to California Department of Conservation

# Introduction

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The California Energy Commission (CEC) Siting Committee for the Mariposa Energy Project (MEP) granted Mr. Rajesh Dighe's Petition to Intervene on February 8, 2010. The order stated, "The deadlines for conducting discovery and other matters shall not be extended by the granting of this Petition."

The deadline for filing all Data Requests is 180 days after Data Adequacy, which occurred on August 26, 2009; therefore, all Data Requests were to be submitted by February 22, 2010. This Data Request was submitted on February 28, 2010; therefore, the request is untimely and Mariposa Energy can object to it on that basis. An Applicant is not required to respond to untimely Data Requests unless the requesting party makes a showing of good cause and the Siting Committee issues an order directing a response. However, Mariposa Energy provides the following responses to those requests that are relevant and for which information is reasonably available, while maintaining its right to object to future Data Requests as untimely.

Attached are Mariposa Energy's responses to Mr. Dighe's Data Request Set 2 (numbers 5 through 14) dated February 28, 2010, regarding the 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. Dighe presented them and are keyed to the Data Request numbers (5 through 14). 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. Dighe's Data Request 36 would be numbered Table RDDR 36-1. The first figure used in response to Mr. Dighe's Data Request 42 would be Figure RDDR 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, although they may have their own internal page numbering system.

# Land Use (5–10)

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## Background

Use of large parcel agricultural land for commercial power plant construction: Mariposa is clearly breaking the 158 acre Lee property into two zones- a 10 acre area for the MEP site for doing commercial infrastructure development of the power plant and the remaining 148 acre for non-agricultural purposes. MEP is trying to mitigate the ECAP and Williamson Act by stating:

*"Mariposa Energy will work to increase the agricultural output on the parcel by supplying year-round cattle watering capability and re-seeding the 5-acre temporary construction laydown and parking area and will be consistent with the ECAP goal of maximizing long-term productivity of East County's agricultural resources."*

## Response to Background Comments:

The 158-acre Lee Parcel has had a 6.5 MW cogeneration facility (Byron Cogeneration) occupying approximately 2.0 acres of the property since 1992. Previously, a wind farm occupied a significant portion of the Lee Parcel and adjoining land. Mariposa Energy will lease 10 acres of the Lee Parcel and the remaining 146 acres will continue to be used for non-irrigated cattle grazing.

## Data Request

- RDDR5 Please provide documented emails and memorandums with Alameda County and their acceptance of ECAP program specific sections listed below:
1. ECAP Program 40, which specifies "A-160" Zoning District Program, is classified as a "Wind Resource Area". The proposed site is a border case and "nearly" falls under this zoning law because of high wind availability on the site. Provide documents from Alameda County approving this site as falling outside the ECAP Program 40 and allowing the land use for natural gas power plant construction and not for Wind Power Generation.
  2. Communications regarding Alameda County's acceptance of using A-District zone for commercial purposes.
  3. Provide a copy of the "Alameda County Conditional Use Permit" for the proposed site parcel.
  4. How is providing help in increasing the agricultural output on the A-District zone parcel by supplying year-round cattle watering capability and re-seeding the 5-acre temporary construction laydown and parking area consistent with the ECAP goal of maximizing the productivity of East County's agricultural resources? Please provide all emails and correspondence with Alameda county approving applicant's efforts and

allowing the 10 acre section of the whole 158 parcel which falls currently under ECAP A-District zoning permit [sic].

5. In Section 5.6.1.6 Population and Growth Trends for ECAP, you mention the growth of Alameda County only on the west section of Alameda County - Livermore, Dublin, and Pleasanton. Provide communication, if any, from Alameda County on their concerns regarding the MEP affecting residential community growth inside Alameda County and their neighboring San Joaquin County- specifically Mountain House community. The reason for asking this specific question is to allow the certification committee to understand the inherent view of this project from MEP and Alameda County's perspective since Mountain House city falls under San Joaquin County, which has no jurisdiction over this parcel but is a sensory receptor of this project.

**Response:**

1. As documented in Footnote 1 on p. 5.6-12 of the MEP AFC, the lands east of the California Aqueduct, among others, are within the designated Wind Resource Area but outside of the 160-acre zoning district. The MEP parcel is not within the Wind Resource Area designated for 160-acre parcels. The source for this information is p. 28 of the East County Area Plan. This information was not based on any explicit conversation with Alameda County, but upon reading the Alameda County - East County Area Plan.
2. The whole northeastern portion of Alameda County, near the San Joaquin and Contra Costa County lines has an underlying East County Area Plan designation of Large Parcel Agricultural. This land use designation allows for the placement of public and quasi-public uses, infrastructure and utility corridors, which are common throughout the project area. (ECAP, p. 47.) One such example is the Modesto Irrigation District Substation, on the south side of Kelso Road in Alameda County that provides electrical power to the Mountain House Community Services District (MHCS), in San Joaquin County. Power lines from this substation cross Large Parcel Agricultural land use designations to reach the Tracy WAPA Substation located at the northwest corner of Kelso and Mountain House roads. The farm land on which the Modesto Irrigation District Substation is located was considered as Prime Farmland, and designated Cultivated Agricultural in the County Open Space Element prior to its conversion to provide electrical service to the MHCS.

The Tracy WAPA Substation, the Delta-Mendota Canal pumping facility, and the California Aqueduct pumping facility were initially located on properties designated Large Parcel Agricultural, which was later changed to Major Public land use. The Pacific Gas and Electric Company (PG&E) Bethany Gas Compressor Station and the PG&E Kelso Electrical Substation, located on the northeast corner of Kelso Road and Bruns Avenue, are also on land that is identified as Large Parcel Agricultural.

There is no explicit communication with Alameda County pertaining to commercial uses within the County's A Zoning District. Public utility buildings or uses are conditionally permitted within the A Zoning District.

3. Attachment RDDR5-1 is a copy of Conditional Use Permit (CUP) 5653, which was for the Byron Cogeneration plant. The MEP is over 50 MW in size and therefore is permitted

through the CEC and not through the local land use authority, Alameda County. Alameda County will not be issuing a CUP for the MEP, but will be providing input as written comments to the CEC.

4. The quality of agricultural land is determined by the State of California, Department of Conservation, Division of Land Resource Protection, with designations of (i) Prime Farmland, (ii) Farmland of Statewide Importance, (iii) Unique Farmland, and (iv) Grazing Land. The Lee Parcel and other nearby parcels are designated as Grazing Land; therefore grazing is considered the highest agricultural productivity for this land as determined by the State of California. The only available agricultural water source on the Lee Parcel is rain water that falls or drains onto the property, gathers in vernal pools, and then evaporates or percolates into the ground. Since trucking in water is very expensive, cattle grazing is restricted to periods when water is available. By providing year round water for the cattle to drink, cattle will be able to graze on the land even after the vernal pools have dried up, allowing for more flexible rangeland management and a higher utilization of the existing feed through an extended available period of grazing, thus increasing the holding capacity (agricultural productivity) of the Lee Parcel.

The reseeded of the 9-acre laydown area will be performed utilizing a seed mixture intended to maximize productivity by provide a higher tonnage of feed and a higher nutritional value than the grasses that were on the 9-acre area prior to the temporary disturbance.

These items serve to further the referenced ECAP goal of maximizing productivity of the East County's agricultural resources because increasing agricultural output lends itself to maximizing productivity of agricultural lands (which is an agricultural resource).

5. In complying with the intent of the East County Area Plan, the MEP is not a growth-inducing facility within Alameda County. MEP does not provide any additional drinking water supply, wastewater treatment, or other infrastructure that would encourage local residential or commercial growth at Mountain House or for any other third party.

MEP generates power at 230 kV, a transmission voltage level, so that the power can be utilized by PG&E to meet needs in the Greater San Francisco Bay Area load pocket and to reinforce intermittent generating assets, rather than at lower distribution voltage levels, which would make the power directly available to potential commercial or residential users.

MEP will not be heard from Mountain House, which is 2.3 miles to the east. As shown in Figure 5.13-6 of the AFC (KOP #5), MEP is barely visible from the Mountain House community, with the Modesto Irrigation District Substation and the WAPA Substation along with their transmission lines being the major visible items in the foreground. As such, MEP will not present a significant sensory impact on the MHCSD.

Mr. Dighe's request for "documented emails and memorandums with Alameda County" is similar to Mr. Sarvey's Data Request 4, to which the Applicant filed a formal objection on February 18, 2010. The Applicant objects to Mr. Dighe's request for such communications on the same grounds. There is no showing by Mr. Dighe that the requested information is relevant to or reasonably necessary for any decision the CEC must make. If Alameda County expresses an opinion or recommendation in this proceeding relating to matters



upon which the CEC must make a decision, it would be reasonable for a Party such as Mr. Dighe to ask the County for information that formed the basis of this opinion. On the other hand, it is not reasonable for a Party to make a blanket request regarding all discussions that may take place between another Party and a governmental agency without making a showing that such discussions form the basis of opinions that have been made a part of the record in this proceeding.

### **Data Request**

**RDDR6** Applicant has made conflicting comments in Section 5.6.2.2.2 and 5.6.2.2.4.

In section 5.5.2.2.2, Applicant is making use of a mitigation strategy by providing year round cattle-watering capabilities and saying that will enhance agricultural production. But immediately down the paragraph, the Applicant is taking a stand in Section 5.6.2.2.4 that he is not converting farmland to non-agricultural use, but in reality the Applicant is actually going to reduce the parcel acres into non-agriculture land. Applicant is requested to provide details on their communication and documented approvals from Alameda County and EACCS Heads on dividing an agricultural parcel by sheer mitigation of the remaining 5 acres of the parcel.

### **Response:**

MEP will not convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance, all jointly considered "Farmland", to nonagricultural uses. The project will use 10 acres of Grazing Land, which is not irrigated and not farmed. By reseeding the laydown area with grasses that provide more forage than the current grasses growing on the portion of the property and by providing year round water for the grazing cattle, the agricultural productivity of the remaining acreage is significantly improved as described in response to RDDR 4. The Applicant has not requested approval from Alameda County to lease a portion of the Lee property.

### **Data Request**

**RDDR7** Table 5.6.3 - Policy 52. Compliance with this policy is not justifiable since it is clearly in close proximity to neighboring residential communities and has high natural resource wind power generation ability. Applicant is requested to provide his correspondence, and memorandums with Alameda County and documented compliance with Policy 52 from Alameda County.

### **Response:**

MEP is not "... clearly in close proximity to neighboring residential communities ...", since it is in the middle of a 158-acre agricultural parcel and the adjacent parcels are also Large Parcel Agricultural land use. The closest suburban residential community, MHCS D, is 2.3 miles away and in a different county, San Joaquin County. The closest residential units are approximately 2,800 to 3,000 feet from the MEP project boundary and are single residences on larger rural residential and agricultural parcels.

The location was specifically chosen because it was not a desirable location for wind development, but was located close to the wind resource area and electrical substation to

provide support to the intermittent wind resources in the area. Wind energy generation had been attempted on this site, but the location was abandoned due to bankruptcy of the wind farm operator. In the meantime, no other wind projects were developed on this site while other wind projects have been developed and redeveloped in the more productive wind areas to the west.

Project Conformity with Policy 52 of the Alameda County - East County Area Plan is stated in Table 5.6-3, on page 5.6-20 of the AFC, and any documented compliance from Alameda County would be in the Alameda County comments filed at the CEC in the Mariposa Energy docket.

### **Data Request**

**RDDR8** Table 5.6.3 - Policy 76. The Applicant's conformity for this policy is not justifiable since it is clearly breaking the Mountain House Community [sic]. Note that the entire resident community of Mountain House is against the MEP. The residents are looking for a greener, no-pollution solution aligned to the state's pollution reduction targets. Please provide all communications with Mountain House Community Service District (MHCS D) and Mountain House Home builders and Trimark Communities LLC, regarding their approval and support for the Applicant's project. This is being requested since Mountain House community has already been under the foreclosure umbrella as a part of the State of California's general foreclosure issues. The MEP will further aggravate the situation and will cause the community characteristics from being changed by driving home buyers and home builders [away] because of air pollution threats from the MEP power plant.

### **Response:**

The only part of Policy 76 that refers to development within Alameda County (as opposed to development in neighboring counties and its impact on Alameda County) is the final sentence: "The County shall ensure that land uses within Alameda County adjacent to San Joaquin, Contra Costa, and Santa Clara Counties are compatible with adjacent agricultural uses in these other counties." The Mountain House community is located along the western edge of San Joaquin County. Its western edge is the county line. There is no agricultural land located between Mountain House and the Alameda County line. MEP, located 2.3 miles from the San Joaquin County line and the western boundary of the MHCS D, is not adjacent to agricultural uses within San Joaquin County. Therefore, there are no adjacent agricultural uses with which MEP must be compatible in San Joaquin County.

In order to obtain information required for the AFC and Supplemental Filings, representatives of Mariposa Energy contacted the MHCS D twice: (i) on April 27, 2009, to inquire about MHCS D waste water information, and (ii) on July 20, 2009, to discuss recent planning activities, including zoning changes and discretionary reviews. Records of these conversations are included as Attachments RDDR8-1 and RDDR8-2. In addition, a meeting with MHCS D staff took place on April 9, 2009, with a presentation to the MHCS D Board of Directors on July 8, 2009, followed by discussions or presentation at almost every monthly meeting of the MHCS D Board of Directors from August 2009 to March 2010, to inform and respond to questions raised by MHCS D. Also, representatives of the MHCS D Board of Directors attended the Site Visit & Informational Hearing held at the Byron Bethany Irrigation District offices on October 1, 2009.

As identified in Sections 5.1 and 5.9 of the AFC, MEP will not have significant air quality or public health impacts at the point of maximum impact concentration or within the Mountain House community. Additionally, as MEP is a natural-gas-fired facility and does not include a cooling tower, no visible emissions are expected. Therefore, visible impacts are not anticipated. Finally, the Bay Area Air Quality Management District and CEC will conduct their own independent air quality and public health assessments to determine MEP's air quality and public health impacts. Impacts considered significant may require the Applicant to provide additional mitigation or revise the project to reduce impacts to below significant levels.

### **Data Request**

**RDDR9** Table 5.6.3 Policy 85 - Williamson Act and Policy 93. The Applicant is violating the Act since it is not supporting agricultural use clearly. The Applicant's statement of providing year round cattle watering capability does not make him compliant since they will be using 10 acres of the parcel which will be violating the Act. Please provide detailed approvals and communication (emails, documents, and memorandums) from Alameda County and any state authorities.

### **Response:**

Williamson Act Section 51238(a) specifically defines compatible uses as follows ". . . the erection, construction, alteration, or maintenance of gas, electric, water, communication or agricultural labor housing facilities are hereby determined to be compatible uses within any agricultural preserve." Therefore, based on the statutory language and the intent of the Legislature of the State of California "electrical facilities" are deemed to be compatible uses and not a violation of the Williamson Act. It should be noted that the Byron Cogeneration facility was determined to be a compatible use by the Alameda County Board of Supervisors.

A detailed discussion on this topic was forwarded as a response to Mr. Robert Sarvey's data request, RSDR4 to which Mariposa Energy responded on February 22, 2010. The two letters that were attached to that response are also included here. Attachment RDDR9-1 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. Additionally, a letter dated June 2, 2009 from Mariposa Energy to Mr. Brian Leahy of the California Department of Conservation is included as Attachment RDDR9-2. Finally, a letter dated July 6, 2009, from Mr. Brian Leahy of the California Department of Conservation to Mariposa Energy and copied to the Alameda County Community Development Agency was docketed on July 15, 2009 and is available on the CEC Mariposa Energy website.

### **Data Request**

**RDDR10** Table 5.6.3 Policy 218 - The Applicant is clearly not complying with Warren-Alquist Act since the ECAP A-District parcel is getting abused by clear division of the 158 [acre] parcel. The Applicant is requested to provide documented conditional permits approving this policy and certification of compliance respecting the Warren-Alquist Act.

### **Response:**

The filing of the AFC with the CEC initiated a review and approval of the MEP by the CEC as required by the Warren-Alquist Act. Therefore, the Applicant is in compliance with the Warren-Alquist Act by proceeding through the current review and approval process at the CEC.

The parcel is not being divided nor is any subdivision of the parcel requested, since the MEP 10-acre site is part of the leasehold interest in the entire parcel. In order to preserve the utility of the agricultural grazing land, the Applicant specifically did not attempt to subdivide the property, but worked with the current owner and the grazing leaseholder to maintain the agricultural operations on the property.

Because land use determination is being addressed through the AFC at the CEC, there is no Alameda County conditional use permit process and therefore no documentation of a conditional use permit process.

**Attachment RDDR5-1**  
**Conditional Use Permit 5653**

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THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA

On motion of Supervisor..... Campbell....., Seconded by Supervisor..... Santana.....,  
and approved by the following vote  
Ayes: Supervisors..... Campbell, Santana and Chairman Perata - 3.....  
Noes: Supervisors..... None.....  
Excused or Absent: Supervisors..... King and Widener - 2.....

THE FOLLOWING RESOLUTION WAS ADOPTED: DECEMBER 12, 1989 NUMBER.....R-89-947.....

EXECUTE LAND CONSERVATION CONTRACT - MODIFY EXHIBIT "B"

WHEREAS, this Board of Supervisors did, by Resolution No. 137426, adopted on the 4th day of February, 1971, establish an Agricultural Preserve delineated on a map entitled "ALAMEDA COUNTY AGRICULTURAL PRESERVE 1971-34;" and

WHEREAS, this Board of Supervisors did, by Resolution No. 137427, adopted on the 4th day of February, 1971, authorize execution of a Land Conservation Agreement (Contract No. 5635) with Albert D. and Gertrude E. Muller, to cover their property identified by the following County Assessor's Designations:

Parcel No. 99B-7050-1-2 (currently 99B-7050-1-6 and 99B-7050-1-7)  
Parcel No. 99B-7050-1-3  
Parcel No. 99B-7050-2  
Parcel No. 99B-7050-4-3 (currently 99B-7050-4-5 and 99B-7050-4-6)  
Parcel No. 99B-7050-4-4

and

WHEREAS, Steven Shin-Der Lee has become the successor in interest of Albert D. and Gertrude E. Muller in the property identified as Parcel No. 99B-7050-1-7 (formerly portion of Parcel No. 99B-7050-1-2) under the aforementioned Land Conservation Agreement No. 5635; and

WHEREAS, this Board of Supervisors is in receipt of the request of Steven Shin-Der Lee for execution of a new agreement due to the change in ownership and for modification of the list of approved compatible uses to allow the designation of an additional compatible use: specifically, the operation of a co-generation/waste water distillation facility; and

WHEREAS, this Board of Supervisors did review the recommendation of the County Planning Department thereon;

NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors does hereby approve the change of ownership for a portion of the property under agreement in Alameda County Agricultural Preserve 1971-34, identified as Parcel No. 99B-7050-1-7, and directs that a new agreement to reflect the revised ownership be executed and recorded; and the Board does hereby approve the modification of the Exhibit "B" for said new agreement, which lists the approved compatible uses, to allow the designation of an additional compatible use, as follows:

"2. Co-generation/waste water distillation facility, as described by Conditional Use Permit C-5653."

and

BE IT FURTHER RESOLVED that the Chairman of this Board of Supervisors be and he is hereby authorized and directed to execute on behalf of the County of Alameda that certain Land Conservation Agreement approved by this Board of Supervisors by and between the County of Alameda and STEVEN SHIN-DER LEE, covering Parcel No. 99B-7050-1-7 located within said Alameda County Agricultural Preserve 1971-34 and as shown on that certain map marked Exhibit "C" attached hereto and made a part hereof.

0803B/AD52  
File #4739  
Agenda #15  
12/12/89  
R-89-947

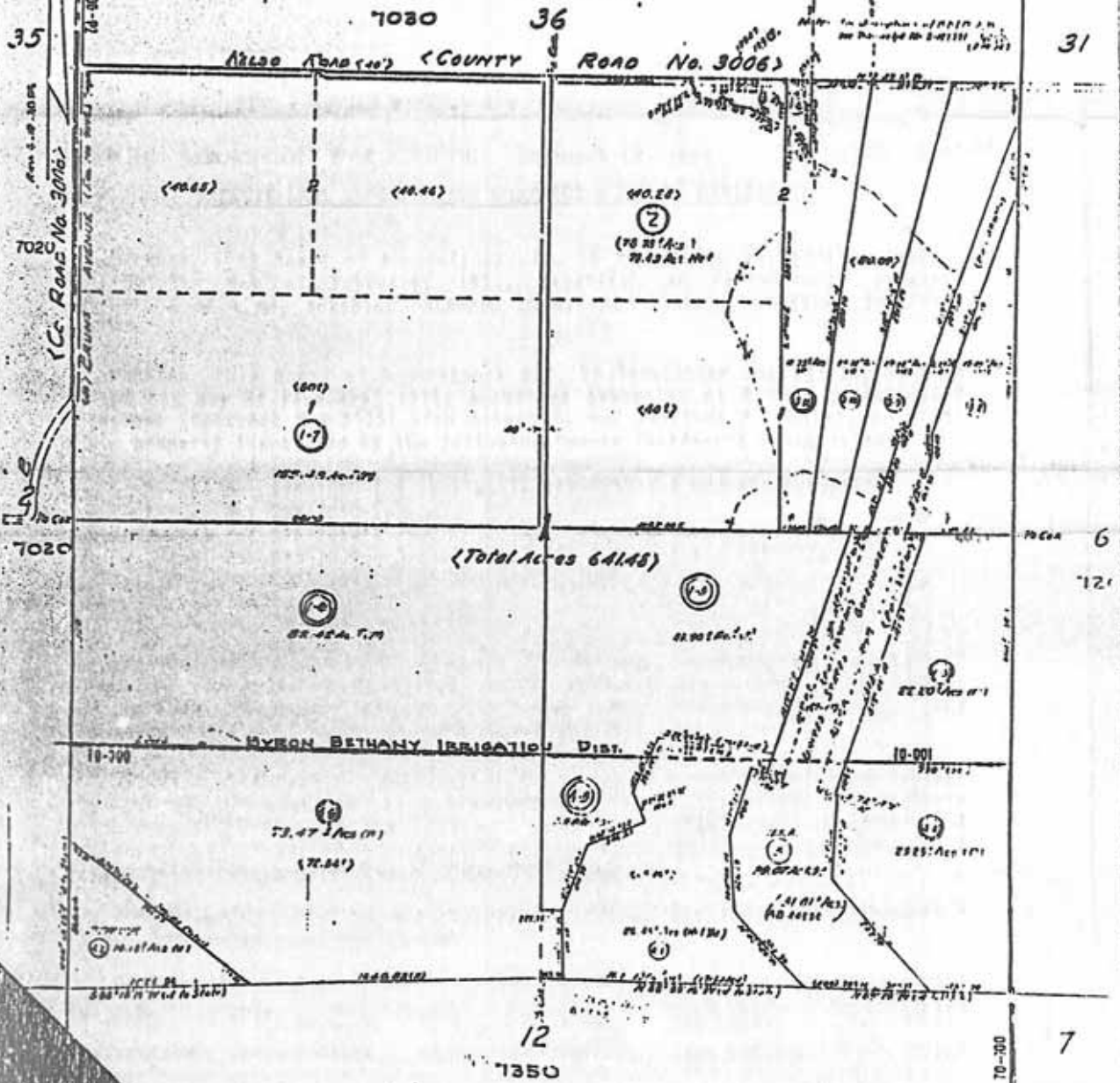
ASSESSOR'S MAP 99B

C. de A. No. 1100,  
19-47-10-100  
10-11

7050

Map of  
Section 1,  
T.2S., R.3E.

Scale: 1" = 500'



RESOLUTION NO. Z-6824 OF  
THE ZONING ADMINISTRATOR OF ALAMEDA COUNTY  
ADOPTED AT THE HEARING OF OCTOBER 4, 1989, CONCERNING C-5653

WHEREAS ALTAMONT COGENERATION has filed for CONDITIONAL USE PERMIT, C-5653, to allow a cogeneration facility that burns natural gas to generate electricity and disposes brine waste from oil and gas wells in an "A" (Agricultural) District, located at 14801 Kelso Road, south side at the intersection of Bruns Road, Livermore, Assessor's No. 99B-7050-1-7.

WHEREAS the Zoning Administrator did hold a public hearing on said application at the hour of 1:30 p.m. on the 20th day of September and on the 4th day of October, 1989, in the Alameda County Public Works Building, Auditorium, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

WHEREAS based upon an Initial Study it has been determined that an Environmental Impact Report will not be required and a Negative Declaration has been adopted; and

WHEREAS a Pre-Hearing Analysis was submitted recommending the application be conditionally approved; and

WHEREAS a representative for the application appeared at said public hearing and presented testimony in support of the application; and

WHEREAS neighbors attended the public hearing and offered testimony concerning the application; and

WHEREAS the Zoning Administrator did hear and consider all said reports, recommendations and testimony as hereinabove set forth; Now Therefore

BE IT RESOLVED that the Zoning Administrator finds that:

- (a) The use is required by the public need as the proposed use provides an efficient use of fossil fuels in generating electricity, provides an environmentally attractive method of natural gas waste product disposal, and produces a useful industrial byproduct from waste materials.
- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity as the proposal will be located on the same site as a wind generation facility. All required infrastructure and services are available to service the proposed cogeneration facility; there are alternatives for water usage.
- (c) The use, if permitted, under all the circumstances and conditions of this particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood as the proposed cogeneration facility shall operate under recommended conditions of approval which address all known potential impacts.



- (d) The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered as the Planning Commission has determined that the proposed cogeneration plant is a Conditional Use in the "A" (Agricultural) District. Recommended conditions of approval will insure conformance to established intent clauses and performance standards.

BE IT FURTHER RESOLVED that the Zoning Administrator does hereby conditionally approve said application as shown by materials labelled Exhibit "A" on file with the Alameda County Planning Department, subject to the following conditions:

- ✓ 1. The development shall be in substantial conformance with the plan as submitted. Zoning Approval shall be required prior to issuance of a Building Permit.
- ✓ 2. All necessary permits shall be obtained from the Bay Area Air Quality Management District prior to issuance of a building permit.
- ✓ 3. All necessary permits shall be obtained from the Building Inspection Department.
- ✓ 4. An encroachment permit shall be obtained from the Public Works Department for any connection to the County Road.
- ✓ 5. On site road improvements, drainage, and spill containment facilities shall be subject to Public Works Department review and approval prior to installation.
6. The disposal of all waste materials shall be in conformance with the requirements of the Alameda County Health Services Agency.
7. All necessary fire protection facilities shall be provided as required by the County Fire Chief.
- ✓ 8. All requirements of the California Regional Water Quality Control Board shall be met.
9. Brine water deliveries shall be only during daylight hours, Monday thru Friday.
- ✓ 10. Generators shall be equipped with state-of-the-art residential noise suppression systems. Maximum noise level at the property line shall be 50 dBA.

23 Jan 90 of  
Hal Dillner

(no authorization for  
to be fixed by 1-28-90  
fix rev'd 1-24-90

NOT RECD  
(EXEMPTIONS 1-1)

G. M. P. Inc.  
P.O. Box 11  
# 601-89146  
(OK per Larry Brock  
1-23-90)

OK

11-27-89 letter  
to CAP/PLC

- will send letter from Walker-Pierce Industries  
(Fax on 1-28-90) (copy suppliers)



11. Prior the issuance of Building Permit, the use shall be determined to be compatible with the limitations of the Agricultural Preserve contract.

Adopted by BS  
12-12-89

12. Operator shall advise and monitor that all service trucks deliver via Bruns Road.

Pursuant to Section 8-60.7 of the Alameda County Zoning Ordinance said Conditional Use Permit shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect.

Said Conditional Use Permit shall terminate October 4, 1992, and shall remain revocable for cause in accordance with Section 8-90.3 of the Alameda County Zoning Ordinance.

STEPHEN F. RICHARDS - ZONING ADMINISTRATOR  
ALAMEDA COUNTY PLANNING DEPARTMENT

1892z1/3

PRE-HEARING ANALYSIS, OCTOBER 4, 1989  
ALTAMONT COGENERATION  
CONDITIONAL USE PERMIT, C-5653

Application for **CONDITIONAL USE PERMIT, C-5653**, to allow a cogeneration facility that burns natural gas to generate electricity and disposes brine waste from oil and gas wells in an "A" (Agricultural) District, located at 14801 Kelso Road, south side at the intersection of Bruns Road, Livermore, Assessor's No. 99B-7050-1-7.

**PERTINENT FACTS:**

**History:** January 8, 1955, 61st Zoning Unit, established "A" (Agriculture) District zoning designation.

October 6, 1983, Conditional Use Permit C-4475, on appeal to the Board of Supervisors, conditionally approved construction and operation of 200 privately operated electric wind generators.

July 12, 1984, on appeal to the Board of Supervisors, pursuant to Section 8-91.1 of the Zoning Ordinance, said Board found that a "natural gas electricity generating facility with dependent agricultural production" to be a conditional use in the "A" (Agricultural) District for the purpose of filing a single application.

October 31, 1984, Conditional Use Permit C-4736, approved construction and operation of a natural gas electricity generating facility with dependent agricultural production (commercial greenhouses).

October 9, 1985, Conditional Use Permit C-4955, approved revision to C-4736 by allowing an increase in the size of greenhouse structures.

January 19, 1989, pursuant to Section 8-91.1 of the Zoning Ordinance, the Planning Commission approved a "natural gas electricity generating facility with dependent well drilling brine disposal and processing" as a conditional use in the "A" (Agricultural) District.

**Size of Parcel:** 155.45 acres

**Physical Features:** The roughly square-shaped parcel consists of chaparral on gently rolling hills. A high-voltage overhead power line runs in a north-south direction along the east side property line. A high-pressure gas transmission line runs in a northwest-southeast direction through the center of the property. The only other structures on site are windmills.

**Adjacent Area:** To the north, across Kelso Road, is a dairy. To the east are agricultural grazing lands and scattered dwellings. To the south, agricultural grazing lands are also developed with wind turbines. To the west, across Bruns Road, are agricultural lands approved for windfarm development and one dwelling located about 1,200' west of Bruns Road.

**Environmental Impact:** Based upon an Initial Study it has been determined that an Environmental Impact Report will not be required and a Negative Declaration will therefore be filed.

PLANNING CONSIDERATIONS:

Proposal

- The cogeneration plant will consist of natural gas-fueled internal combustion engine and generator sets housed in a pre-fabricated steel building approximately 125' x 45' in size. The brine water evaporator and processing section will be composed of five modular evaporation units, a small salt storage building, and a brine water storage tank area with spill containment facilities. There will be an on-site electrical substation used as a power source .

Overview

- The brine water distillation and processing operation will utilize waste heat from the cogeneration plant to evaporate water from the brine to yield salts for industrial use. It represents a safe and controllable alternative to the widespread practice of injection well disposal of oil and gas well brine waters.
- Natural gas wells produce brine water as a byproduct of natural gas extraction. The water is salty since it consists of ancient seawater trapped in the earth's sub-strata. Disposal of this water is a major problem for gas well operators since the California Regional Water Quality Board has designated the brine water as a waste material.
- The typical method of disposal is to truck the water from producing wells to an injection well site where it is then pumped underground. This method has the potential to contaminate aquifers. No cost effective alternative to injection wells had been developed until recently with the proposed operation.
- Gas well brine water will be trucked to the distillation plant site and unloaded into large steel storage tanks. Hydrocarbons will be stripped from the brine water prior to processing. The hydrocarbon free water will then be circulated through an evaporator where salt will be crystallized and processed into either a dry or semi-dry form. This end product will be sold commercially for industrial use.

PLANNING CONSIDERATIONS, continued:

Staff comment

- The installation site will be located on existing pasture land. On occasion, the property is used for grazing but its principle land use is a windfarm operation. The powerplant and water distillation area will cover approximately 2.0 acres.
- The site is ideally situated since it is located adjacent to an existing windfarm and all major infrastructure requirements are available for the operation. Electricity and natural gas connections can be made with on-site transmission lines.
- Water for power plant cooling and brine processing is available on the lessor's property from a small water well or a nearby irrigation district. The five cooling towers will use approximately 300 gallons per hour.
- The brine water and fuel storage area will be designed for spill containment to control spillage from truck to tank transfers, tank losses, and drainage from rainfall up to the level of a 100-year storm.
- Vehicular traffic generated by the plant will be minimal. The plant will be attended 1.5 shifts per day by two operators. There will be 4 to 6 water tank truck deliveries per day. Access will be from Bruns Road off an existing driveway.
- The brine water processing will essentially be noise free. Sound attenuation equipment will be installed to reduce any potential generator plant noise to less than 50 Dba at the property line, a level equivalent to normal conversation. The cogeneration plant will be equipped with air emissions control equipment that will meet Bay Area Quality Management District requirements. All necessary air quality permits will be obtained before the start of construction.
- Similar projects in Glenn, Sutter, and Yolo Counties have been approved under conditional use permits. These projects have all been located in Agricultural zone districts and are of similar size and scale..

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING:

1. Is the use required by the public need?

Yes. The proposed use provides an efficient use of fossil fuels in generating electricity, provides an environmentally attractive method of natural gas waste product disposal, and produces a useful industrial byproduct from waste materials.

TENTATIVE FINDINGS, continued:

2. Will the use be properly related to other land uses and transportation and service facilities in the vicinity?

Yes. The proposal will be located on the same site as a wind generation facility. All required infrastructure and services are available to service the proposed cogeneration facility.

3. Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?

No. If the proposed cogeneration facility operates under recommended conditions of approval, no detrimental or adverse effects to the surrounding area will result.

4. Will the use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered?

Yes. The Planning Commission has determined that the proposed cogeneration plant is a Conditional Use of the "A" (Agricultural) District. Recommended conditions of approval will insure conformance to established intent clauses and performance standards.

PRE-HEARING RECOMMENDATION:

Approval subject to the following conditions:

1. The development shall be in substantial conformance with the plan as submitted. Site Development Review approval shall be required prior to issuance of a Building Permit.
2. All necessary permits shall be obtained from the Bay Area Air Quality Management District prior to issuance of a building permit.
3. All necessary permits shall be obtained from the Building Inspection Department.
4. An encroachment permit shall be obtained from the Public Works Department for any connection to the County Road.
5. On site road improvements, drainage, and spill containment facilities shall be subject to Public Works Department review and approval prior to installation.

PRE-HEARING RECOMMENDATION, continued:

6. The disposal of all waste materials shall be in conformance with the requirements of the Alameda County Health Services Agency.
7. All necessary fire protection facilities shall be provided as required by the County Fire Chief.
8. All requirements of the California Regional Water Quality Control Board shall be met.
9. The permit shall be issued for a term of 3 years subject to review and renewal by the Zoning Administrator.

1878z13/17

CONDITIONAL USE PERMIT, C-5653  
OCTOBER 4, 1969  
PAGE 5

CONCERNING FINDINGS, continued:

11. The use shall be properly sited in that the site and surrounding area are zoned for the use.

12. The proposed use shall be in accordance with the zoning ordinance and all necessary infrastructure and services are available to the site.

13. The use, if permitted, shall be in accordance with the zoning ordinance and all necessary infrastructure and services are available to the site.

MINUTES

OF

THE ZONING ADMINISTRATOR OF ALAMEDA COUNTY

The October 4, 1989, hearing of the County Zoning Administrator of Alameda County was held at the hour of 1:30 p.m. in the Auditorium of the Alameda County Public Works Building, 399 Elmhurst Street, Hayward, California.

STAFF PRESENT:

Stephen F. Richards, Zoning Administrator  
Laura Guzman, Recording Secretary

CONDITIONAL USE PERMITS:

1. EDEN TOWNSHIP HOSPITAL DISTRICT AND, LAUREL GROVE HOSPITAL, CONDITIONAL USE PERMIT, C-5594, to expand an existing hospital by the construction of attached additions and VARIANCE, V-9766 to allow construction of attached additions to a hospital facility providing parking reduced from the required 211 spaces to 171 spaces in a "C-O" (Business, Administrative and Professional Offices) District, located at 19933 Lake Chabot Road, west side, 1/4 mile north of the intersection with Castro Valley Boulevard, Castro Valley, Assessor's No. 84A-279-10. C-10-18-89

Mr. Richards summarized the staff report, noting application had been continued from prior agendas and would have to be continued to October 18. Eden Hospital has presented the County with a master plan which is on file. On October 16, Castro Valley Municipal Advisory Council will hear this matter and will make a recommendation to the county. Testimony will be taken today.

Testimony was called for, but none was submitted.

Mr. Richards continued the matter to October 18, 1989.

2. ALTAMONT COGENERATION, CONDITIONAL USE PERMIT, C-5653, to allow a cogeneration facility that burns natural gas to generate electricity and dispose of brine waste from oil and gas wells in an "A" (Agricultural) District, located at 14801 Kelso Road, south side at the intersection of Bruns Road, Livermore, Assessor's No. 99B-7050-1-7. Z-6824  
C/A

Mr. Richards summarized the staff report, noting that the application had been continued from a prior agenda for additional information. It has been concluded that a negative declaration is appropriate. He read the recommendations from a neighbor.



✓ Harold Dittmer, officer of Altamont Cogeneration and President of Wellhead Electric Company, responding to the questions and issues that came up at the prior hearing, stated that detailed plans had been submitted. These plans show where the equipment and the noise suppression mufflers will be located. They have looked into the noise issue and they are confident that the noise can be mitigated within the limits so it won't be intrusive to the neighbors. In terms of deliveries to the site and concerns about traffic, he met with a group of neighbors and reviewed the plans. It has been agreed to make all deliveries from Bruns Road and to make this a condition if it is possible. He requested to have deliveries made during daylight hours. He is confident that they have reached an understanding.

Mr. Richards described the plans submitted by Mr. Dittmer.

Additional testimony was called for, but none was received.

Mr. Richards said that he was now prepared to take an action, but he was concerned about the hours of delivery. Mr. Gentry (neighbor) recommended that the deliveries be done between 8:00 and 4:00 p.m.

Mike Gentry said that in discussing with Mr. Dittmer, they had agreed to the daylight hours.

No other testimony was submitted.

Mr. Richards adopted the negative declaration and confirmed the findings in the staff report, approving the application subject to conditions recommended by staff with some changes and additional conditions.

3. FRANK ALONGI, CONDITIONAL USE PERMIT, C-5658, to allow continued operation of a horse boarding stable for twenty horses and occupancy of a mobile home by persons directly related to on-site agricultural operations in an "A" (Agricultural) District located at 10303 Cull Canyon Road, west side, approximately six miles north of Heyer Avenue, Castro Valley, bearing County Assessor's Designation 85-510-3. C-1-31-90

Mr. Richards summarized the staff report and noted that a variance request had been denied by the Board of Supervisors. The water system does not comply with the code and it is not recommended by the Health Department. This application was continued to try to resolve the water system issue with the Health Department. Staff has received numerous letters supporting the facility. Castro Valley Municipal Advisory Council has recommended approval for the boarding stable and approval of the mobile home, but only for the present family that is there now.

Steve Alongi, representing the applicant submitted some pictures for the file. He stated that his wife and children will live in the mobile home. The mobile home will not be rented out and if the property is ever sold, the mobile home will be sold. If they cannot occupy the mobile home, his family will move into his parent's house and they will still be using the same septic tank system.

# ALAMEDA COUNTY PLANNING DEPARTMENT

399 Elmhurst Street, Hayward, California 94544

(415) 670-5400

October 3, 1989

Alameda County Board of Supervisors  
Administration Building  
1221 Oak Street  
Oakland, 94612

Dear Board Members:

**SUBJECT:** Request for modification of Land Conservation Agreement  
No. 5635 - Agricultural Preserve 1971-34 - Steven Shin-Der Lee

**RECOMMENDATION:** That the Board of Supervisors amend the contract as requested to allow a co-generation/waste water distillation facility as a compatible use.

We have received your referral of the request of Steven Shin-Der Lee, successor in interest of Albert D. and Gertrude E. Muller for Parcel No. 99B-7050-1-7 covered by the above contract, to modify the list of approved compatible uses in the contract to add operation of a co-generation/waste water distillation facility. This request is now the subject of a pending Conditional Use Permit C-5653.

The Planning Commission recently interpreted the Zoning Ordinance to allow this as a conditional use in the A (Agricultural) District. This was done on the recommendation of the Planning Department, and was based on the fact that it is similar in concept and scope to other uses which are allowed as conditional uses in the A District, specifically oil and gas production. It is this Department's further position that the facility is compatible with the goals and objectives of the Williamson Act and with County policies implementing them, based again on that reasoning.

Therefore, it is recommended that Land Conservation Agreement No. 5635 for Agricultural Preserve 1971-34 be amended to add the following:

C.3.g.26) Co-generation/waste water distillation facility, as described by Conditional Use Permit C-5653.

See attached material for full description of the project and other details.

Very truly yours,

William H. Fraley,  
Planning Director

WHF/g-w/12D/24

CONDITIONAL USE PERMIT  
OCTOBER 1989

FAX NUMBER: 415-785-8793

DATE: 10-02-89

TO: County of Alameda Planning Department

ATTENTION: Steve Richards OR RON GEE  
399 Elmhurst  
Hayward, Ca. 94544

FROM: Michael D Centry  
415-224-2306

TOTAL PAGES: 3 including this page.

Request for Modification of Land Conservation Agreement  
No. 1034 - Agricultural Preserve 1971-81 - FUTURE 2012-81 1st

RECOMMENDATION: That the Board of Supervisors amend the agreement to  
be amended to allow a larger area/water facilities located at a  
suitable use.

It was further noted that the Board of Supervisors has approved the  
amendment to the agreement to allow a larger area/water facilities located at a  
suitable use.

The Board of Supervisors has approved the amendment to the agreement to  
allow a larger area/water facilities located at a suitable use.

The Board of Supervisors has approved the amendment to the agreement to  
allow a larger area/water facilities located at a suitable use.

The Board of Supervisors has approved the amendment to the agreement to  
allow a larger area/water facilities located at a suitable use.

PRE-HEARING ANALYSIS, SEPTEMBER 20, 1989  
ALTAMONT COGENERATION  
CONDITIONAL USE PERMIT, C-5653

Application for CONDITIONAL USE PERMIT, C-5653, to allow a cogeneration facility that burns natural gas to generate electricity and disposes brine waste from oil and gas wells in an "A" (Agricultural) District, located at 14801 Kelso Road, south side at the intersection of Bruns Road, Livermore, Assessor's No. 99B-7050-1-7.

PERTINENT FACTS:

History: January 8, 1955, 61st Zoning Unit, established "A" (Agriculture) District zoning designation.

October 6, 1983, Conditional Use Permit C-4475, on appeal to the Board of Supervisors, conditionally approved construction and operation of 200 privately operated electric wind generators.

July 12, 1984, on appeal to the Board of Supervisors, pursuant to Section 8-91.1 of the Zoning Ordinance, said Board found that a "natural gas electricity generating facility with dependent agricultural production" to be a conditional use in the "A" (Agricultural) District for the purpose of filing a single application.

October 31, 1984, Conditional Use Permit C-4736, approved construction and operation of a natural gas electricity generating facility with dependent agricultural production.

October 9, 1985, Conditional Use Permit C-4955, approved revision to C-4736 by allowing an increase in the size of greenhouse structures.

January 19, 1989, pursuant to Section 8-91.1 of the Zoning Ordinance, the Planning Commission approved a "natural gas electricity generating facility with dependent well drilling brine disposal/processing" as a conditional use in the "A" (Agricultural) District.

Size of Parcel: 155.45 acres

Physical Features: The parcel is approximately square in shape and the topography is gently rolling. There is a high voltage overhead power line running in a north-south direction along the easterly side property line. There is a high pressure gas transmission line running in a northwest-southeast direction through the center of the property. The only structures on the property are windmills.

Adjacent Area: Across Kelso Road to the north there is a dairy. To the east, agricultural grazing lands and scattered dwellings. To the south, agricultural grazing lands also developed with wind turbines. To the west, across Bruns Road, agricultural lands approved for windfarm development and one dwelling located 1,200' west of Bruns Road.

Environmental Impact: Based upon an Initial Study it has been determined that an Environmental Impact Report will not be required and a Negative Declaration will therefore be filed.

PLANNING CONSIDERATIONS:

Proposal

- The proposed cogeneration plant will consist of multiple, natural gas-fueled internal combustion engine/generator sets housed in a painted pre-fab steel building (approximately 125' x 45'), a small substation, short section of powerline to interconnect to an existing line, fuel storage tanks, the brine water evaporator processing facility which will be made up of modular units, a brine water storage tank area that will include spill protection, and a small salt storage building.
- The installation site will be located in pasture land occasionally used for grazing which also contains a windfarm operation. The powerplant and water distillation operation will cover approximately 2.0 acres in total.

Overview

- The brine water distillation and processing operation will utilize the waste heat from the cogeneration facility. It represents a safe and controllable alternative to the widespread practice of injection well disposal of oil and gas well brine waters.
- Natural gas wells produce water in the course of natural gas extraction. The water is salty since it consists of ancient seawater trapped in the earth's sub-strata. Disposal of the water is a major problem to gas well operators and regulatory agencies since the brine water is considered a designated waste by the California Regional Water Quality Board.
- The typical method of disposal is to truck the water from producing wells to an injection well site and to pump the water underground into an aquifer. This method unfortunately has the potential for ground water contamination. No cost effective alternative to injection wells had been developed until recently with the proposed operation.
- Gas well brine water will be trucked to the distillation plant site and unloaded into large steel storage tanks. The storage area will be underlain with a lined spill containment area to control spillage, tank losses, and rainfall from a 100-year storm. Hydrocarbons will be stripped from the brine water prior to processing. The hydrocarbon free water will then be circulated through an evaporator where salt will be crystallized and processed into either a dry or semi-dry form. This end product will be sold commercially for industrial use.

PLANNING CONSIDERATIONS, continued:

Staff comment:

- The site is ideally situated since it is located adjacent to an existing windfarm and all major infrastructure requirements are available for the operation. Electricity and natural gas connections can be made with on-site transmission lines.
- Water for power plant cooling and brine processing is accessible on the lessor's property from a small water well or a nearby irrigation district. Consumptive use of water in five small cooling towers will be approximately 300 gallons per hour.
- Vehicular traffic will be minimal by the plant will be attended 1.5 shifts per day by two operators. There will be 4 to 6 water tank truck deliveries per day. Access will be from Bruns Road off an existing driveway.
- The brine water processing portion of the project will be essentially noise free. The cogeneration plant will be equipped with air emissions control equipment that will meet Bay Area Quality Management District requirements. All necessary air permits will be obtained before commencement of construction.
- Similar projects in Glenn, Sutter, and Yolo Counties have been approved under conditional use permits. All projects have also been located in Agricultural zone districts.

FACTUAL FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING:

1. Is the use required by the public need?

Yes. The proposed use provides an efficient use of fossil fuels in generating electricity, provides an environmentally attractive method of natural gas waste product disposal, and produces a useful industrial byproduct from waste materials.

2. Will the use be properly related to other land uses and transportation and service facilities in the vicinity?

Yes. The proposal will be located on the same site as a wind generation facility. All required infrastructure and services are available to service the proposed cogeneration facility.

TENTATIVE FINDINGS, continued:

3. Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?

No. If the proposed cogeneration facility operates under recommended conditions of approval, no detrimental or adverse effects to the surrounding area will result.

4. Will the use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered?

Yes. The Planning Commission has determined that the proposed cogeneration plant is a Conditional Use of the "A" (Agricultural) District. Recommended conditions of approval will insure conformance to established intent clauses and performance standards.

PRE-HEARING RECOMMENDATION:

Approval subject to the following conditions:

1. The development shall be in substantial conformance with the plan as submitted. Site Development Review approval shall be required prior to issuance of a Building Permit.
2. All necessary permits shall be obtained from the Bay Area Air Quality Management District.
3. All necessary permits shall be obtained from the Building Inspection Department.
4. An encroachment permit shall be obtained from the Public Works Department for any connection to the County Road.
5. The disposal of all waste materials shall be in conformance with the requirements of the Health Department.
6. All necessary fire protection facilities shall be provided as required by the County Fire Chief.
7. All requirements of the California Regional Water Quality Control Board shall be met.
8. The permit shall be issued for a term period of 3 years subject to renewal.

MINUTES

OF

THE ZONING ADMINISTRATOR OF ALAMEDA COUNTY

The September 20, 1989, hearing of the County Zoning Administrator of Alameda County was held at the hour of 1:30 p.m. in the Auditorium of the Alameda County Public Works Building, 399 Elmhurst Street, Hayward, California.

STAFF PRESENT:

Stephen F. Richards, Zoning Administrator  
Laura Guzman, Recording Secretary

Before commencing the regular agenda, Mr. Richards noted that Item 1 (C-5527) would be continued to November 15, 1989, and Item 10 (V-9849) would be continued to November 1, 1989.

CONDITIONAL USE PERMITS:

1. JAMES AND JERI MILLS, CONDITIONAL USE PERMIT, C-5527, to implement a minor modification of a Planned Development allowing the storage of construction equipment, materials, and recreational vehicles in a "P-D" (Planned Development) District, located at 24 Greenville Road, east side, 1700' south of the intersection with I-580, Livermore, Assessor's No. 99B-5685-7 and 99B-5700-2-4.

No one was present to offer testimony in support of or in opposition to the application.

Mr. Richards continued the matter to November 15, 1989.

- ② ALTAMONT COGENERATION, CONDITIONAL USE PERMIT, C-5653, to allow a cogeneration facility that burns natural gas to generate electricity and dispose of brine waste from oil and gas wells in an "A" (Agricultural) District, located at 14801 Kelso Road, south side at the intersection of Bruns Road, Livermore, Assessor's No. 99B-7050-1-7.

Mr. Richards summarized the staff report, noting that a letter was received from Mountain House School District requesting an EIR. A letter from a neighbor concerned about the high winds in the area and air contamination was received. At this point he is not prepared to take final action on this application. The negative declaration is not complete at this time and he doesn't feel that an EIR will be necessary.

Harold Dittmer, representing the application, gave an overview. The project is a cogeneration plant that will process natural gas brine waters. Cogeneration is an energy plant savings concept. The important thing is that the project meets several positive needs. His company has extensive background in cogeneration, natural resources and in oil and gas.



ZONING ADMINISTRATOR MINUTES  
SEPTEMBER 20, 1989  
PAGE 2

Mr. Dittmer added that natural gas wells produce salt water and in many places it is disposed by dumping it into the ground which is not an acceptable way of disposing it. Currently it is disposed by underground injection. This process has been controversial over the last years because concerns are raised that there might be water contamination. They have come up with an alternative to dispose of this water which is to use waste heat of the power plant to evaporate off the water, salvage the salt and sell the salt. They have similar plants like this in Sutter County, Glenn County, Butte County and after extensive environmental review another plant was permitted in Yolo County. Initially, the Regional Water Quality Control Board (RWQCB) was concerned about this. The RWQCB has worked out with them a system that enables the plants to operate safely and they are now supporters. They have a blank waiver that works out a series of steps that they have agreed to and those practices have been applied to all the projects that they have been permitted. He believes that any environmental issues that people might be concerned have been addressed in the numerous situations that they have gone through.

Mr. Richards questioned about the 5 natural gas engines housed in the building, which is approximately 1500' from the nearest county road.

Mr. Dittmer responded that the engines will have residential grade mufflers. The engine power house building will be insulated for noise. They have never had a noise problem and if they ever do, it will be very simple to fix. The control equipment that will be required by BAAQMD is state of the art and is substantially more advanced than the standard that is used by most projects of this type. All regulations that could possibly be considered will be added. The pollution levels turn out to be quite low. The other source of possible pollution would be the concern of the brine waste evaporation process. The water that is to be delivered to this site contains a small amount of hydrocarbon which will be emitted. This vapor will be controlled by putting carbon canisters on the vapor recovery units. They have gone through extensive lengths to develop the process to avoid air pollution issues.

Mr. Richards questioned if there were some wells on the property and if they had been tested for quantity. Where are they going to get the 300 gallons per hour make up water?

Mr. Dittmer responded that there are two choices from where to get that water. First choice is to drill a water well and get the water from that well. It is their intention to drill a test well for adequate quality and quantity water. He pointed out what this water is for. There are small cooling towers in the system which cool a certain section of the engine. There is an alternative in using cooling towers. If it turns out that this quality and quantity of water is not available, they can actually use a refrigeration effect from the natural gas in a pipe line. The other possible source for water is to buy it from the nearby water district.

Mr. Richards said that he would like to have a much more detailed plan of the site plus details of the access road, the size of the tanks, where the machinery will be laid out and how the trucks would circulate.

Mr. Dittmer said that this drawing is complete. The tanks are square and are 10' or 11' high. The spill containment area is basically rock with a double liner that is resistant to sun light. This has been approved by the Water Quality Control Board. The delivery trucks are similar to a milk truck. They have had an engineer redesign the access from Bruns Road. They have made sure that there is pull-off space so that the tractors will be able to pull-off and park completely off the road and be able to open the gate.

Mr. Dittmer demonstrated a sample of water and the salt that they wind up with. He added that people are concerned that there might be water contamination with underground pumping. This project will be supervised by the proper regulatory agencies and is headed by a responsible company. This is called a designated waste by the Regional Water Quality Control Board which means that is not hazardous but it also means that it just can't be dumped in any place.

Mr. Richards said that if he could have the detailed plans by Monday, he could continue the application for two weeks.

Mr. Dittmer responded that the plans were in his office and that they would be available.

Additional testimony was called for.

Mike Gentry, resident on Kelso Road, said that he is not so much questioning the process of the project, but he is concerned about the environmental issues. He requested that an environmental study be done since he is concerned about air quality, traffic, noise, odor, fire hazard and possibility of spill. He noted that this area is also subject to heavy fogs. There are a number of homes and a school close to the subject site. He disagreed that fire danger is low, noting that they have had 2 fires in this area this year. During the wind season, the fire would blow to the residences. He added that there is a good chance that a new town will be in the area. He questioned what effect this project would have on the property value and why was this site picked when this county is not a large producer of oil and gas. He is on a well as all the other houses and is concerned that if another well is drilled, the area will be impacted. If a spill did occur it could go directly into the irrigation district water since it is a downhill slope. He doesn't feel that the roads in the area are designed for heavy traffic.

Mr. Albert Moore, owner of property nearby, said that he was not in opposition at this time. He added that Mr. Dittmer gave a good presentation, unfortunately, he has been a victim of excellent presentations in the past. He questioned what relationship does the application have with Fayette Energy Corporation.

Mr. Dittmer responded that Fayette Corporation is currently the owner of Altamont Cogeneration. Wellhead Electric Company is anticipating investing in this plant with the option of buying.

Mr. Moore said that he has had personal experience with Fayette not keeping what they promise. He agreed with the points brought up by Mr. Gentry. He added that this area that is east of California Aqueduct is in the process of annexation to San Joaquin County. He knows that these plans are based on other projects and he would like to see some proof.

Loretta Vos, resident on the northwest corner property, had the same concerns brought up by the two gentlemen, especially the road and traffic. She supports the idea that an environmental report should be done.

Mr. Richards said that there are several questions that need to be answered. He suggested that the matter be continued for two weeks.

Mr. Dittmer agreed with the continuance period.

No other testimony was submitted.

Mr. Richards continued the matter to October 4, 1989.

3. KENNETH MCRAE, CONDITIONAL USE PERMIT, C-5665, to allow outdoor storage yard for construction materials in an "M-1" (Light Industrial) District, located at 2460 Dunn Road, south side, 1/4 miles west of Clawiter Road, Hayward, Assessor's No. 439-13-20.

Mr. Richards summarized the staff report.

Dan Clapp, representing the application, agreed with the staff recommendations.

Mr. Richards questioned if any fabrication was done on the yard.

Mr. Clapp said that the only materials they have on the site are steel panels that are used for slab construction. Occasionally, the panels will be cut to size.

Mr. Richards said that this could not be done outside of the building under this permit.

Mr. Clapp noted that it is very similar to a lumber yard.

**Attachment RDDR8-1  
Record of Conversation with MHCSD  
Regarding Wastewater**

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# CH2MHILL TELEPHONE CONVERSATION RECORD

**Call To:** Nader Shareghi

**Phone No.:** 209.831.5607

**Date:** April 27, 2009

**Call From:** Peggie King

**Time:** 11:30 AM

**Message  
Taken By:**

**Subject:** Mountain House CSD Water and Wastewater Information

**Project No.:** 382914

I spoke with Nader Shareghi today about the water and wastewater facilities at Mountain House CSD. He will ask his plant operator about data that they can send to us electronically.

## Recycled wastewater

The Mountain House CSD priority for recycled wastewater would supply the planned (but not yet constructed) community golf course. The golf course would use about 1 mgd of water (during the irrigation season). Providing recycled wastewater to the golf course will also include construction of approximately 2 miles of pipeline about 1/4 mile away from the western boundary of the service area. This may put a recycled water pipeline closer to the Diamond Generating Facility (but still several miles away). Presently, recycled water is not used in the community. The WWTP will ultimately be 5.4 mgd and there would be additional water available sometime in the future depending on community growth. The present discharge is 300,000 to 400,000 gpd.

There is no formal agreement with Calpine to provide recycled water to the E. Altamont Generating Facility. Mr. Shareghi indicated that the CEC had required Calpine to use recycled water at their proposed facility if it is available.

## Raw water for drinking water

Mr. Shareghi will check with his plant operator about getting raw water quality data for 2008. He said that the raw water NTU is typically 7 to 8 NTU or more than 40 NTU during the year. He will look into any Title 22 information they may have for the source water.

**Attachment RDDR8-2  
Record of Conversation with MHCSD  
Regarding Land Use**

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# CH2MHILL TELEPHONE CONVERSATION RECORD

**Call To:** Morgan Groover  
Development  
Manager  
Mountain House CSD

**Phone No.:** 925-335-1242  
**Date:** July 20, 2009

**Call From:** Joshua Hohn  
**Time:** 11:30 AM

**Message**

**Taken By:** CH2M HILL

**Subject:** Mariposa Energy Project – Land Use Data Adequacy

**Project No.:** 382914

**Context:**

CEC had the following two comments related to the Land Use section; responses required to make AFC data adequate:

- Please list any recent or proposed zone changes and/or general plan amendments; noticed by an elected or appointed board, commission, or similar entity at the state or local level.
- Please identify all discretionary reviews by public agencies initiated or completed within 18 months prior to filing the application. Section 5.6.1.5 does not include timeframes.

**Summary:**

Mr. Groover identified the Mountain House Town Center Tentative Subdivision Map as a current on-going planning process for which discretionary review will eventually be necessary. The initial study was published in November, 2008.

Initial Study:

[http://www.sjgov.org/commdev/cgi-bin/cdyn.exe/handouts-mtnhouse\\_MountainHouseTownCent-IS?grp=handouts-mtnhouse&obj=MountainHouseTownCent-IS](http://www.sjgov.org/commdev/cgi-bin/cdyn.exe/handouts-mtnhouse_MountainHouseTownCent-IS?grp=handouts-mtnhouse&obj=MountainHouseTownCent-IS)

**Attachment RDDR9-1**  
**Letter from Allen Matkins to Alameda County**

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# 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 51238<sup>1</sup> 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).

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Williamson Act helped to cure this problem. As explained by the California Supreme Court,<sup>5</sup> 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."<sup>6</sup>

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

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

**To: Bruce Jensen**  
cc: Bo Buchynsky

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

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.<sup>7</sup>

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."<sup>8</sup> 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."<sup>9</sup>

## **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

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<sup>7</sup> § 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.

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

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

**To: Bruce Jensen**  
cc: Bo Buchynsky

**From: David H. Blackwell**  
Date: June 3, 2009  
Page 4

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.<sup>10</sup> 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.'"<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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."<sup>14</sup> A significantly less-preferred alternative for terminating a contract is cancellation.<sup>15</sup> 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.<sup>16</sup> 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."<sup>17</sup> 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.<sup>18</sup>

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.

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<sup>10</sup> §§ 51240, 51242, 51244.

<sup>11</sup> *Honey Springs*, 157 Cal.App.3d at 1131.

<sup>12</sup> § 51240.

<sup>13</sup> § 51243(a).

<sup>14</sup> *Sierra Club*, 28 Cal.3d at 852.

<sup>15</sup> § 51282.

<sup>16</sup> § 51283.

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

<sup>18</sup> §§ 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.4<sup>th</sup> 191, 204-207, although the Department of Conservation often refers to these findings as important policy considerations.

To: Bruce Jensen  
cc: Bo Buchynsky

From: David H. Blackwell  
Date: June 3, 2009  
Page 5

### 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.<sup>19</sup>

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...."<sup>20</sup> Once an agricultural preserve is established, the city or county may offer contracts to landowners within the preserve.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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

<sup>19</sup> § 50201(e), Ch. 1443, p. 3378 (1965 Regular Session).

<sup>20</sup> § 50201(d), Ch. 1443, p. 3377 (1965 Regular Session).

<sup>21</sup> §§ 51230, 51242(b).

<sup>22</sup> Ch. 1120, p. 3426 (1977-78 Regular Session).

<sup>23</sup> § 51231.

To: Bruce Jensen  
cc: Bo Buchynsky

From: David H. Blackwell  
Date: June 3, 2009  
Page 6

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.<sup>24</sup>

In 1977, AB 1625 deleted the two references to the term "utility" in Section 51238,<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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<sup>24</sup> AB 1178, Ch. 1372, p. 2809 (1969 Regular Session).

<sup>25</sup> Ch. 1120, p. 3429 (1977-78 Regular Session).

<sup>26</sup> AB 1770, AB 3406 (1991-1992 Regular Session).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*



**To: Bruce Jensen**  
cc: Bo Buchynsky

**From: David H. Blackwell**  
Date: June 3, 2009  
Page 7

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 2663<sup>29</sup> 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 version<sup>30</sup> of AB 2663 also introduced the separate compatibility standards for non-prime lands<sup>31</sup> 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.<sup>32</sup>

### **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

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<sup>29</sup> Ch. 1251 (1994 Regular Session).

<sup>30</sup> August 25, 1994.

<sup>31</sup> § 51238.1(c).

<sup>32</sup> Ch. 967 (1999 Regular Session).

**To: Bruce Jensen**  
cc: Bo Buchynsky

**From: David H. Blackwell**  
Date: June 3, 2009  
Page 8

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.

**To: Bruce Jensen**  
cc: Bo Buchynsky

**From: David H. Blackwell**  
Date: June 3, 2009  
Page 9

(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).

**To: Bruce Jensen**  
cc: Bo Buchynsky

**From: David H. Blackwell**  
Date: June 3, 2009  
Page 10

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.<sup>33</sup> 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

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<sup>33</sup> 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.

**To: Bruce Jensen**  
cc: Bo Buchynsky

**From: David H. Blackwell**  
Date: June 3, 2009  
Page 11

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 reseeding 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.

**To: Bruce Jensen**

cc: Bo Buchynsky

**From: David H. Blackwell**

Date: June 3, 2009

Page 12

#### **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 RDDR9-2**  
**Letter from Mariposa Energy to**  
**California Department of Conservation**

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# 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).<sup>1</sup> 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).

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<sup>1</sup> 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.

# Air Quality (11)

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## Background

Technical Design: Europe and even developing countries like India are on the path of designing power plants with carbon storage allowing zero emissions.

## Data Request

RDDR11 Applicant is requested to provide a cost analysis for carbon storage as a part of the design for cutting down health consequences because of emissions. This request is being made considering the State of California's and Federal Agencies' efforts regarding cutting down pollution and stepping towards greener implementations.

## Response:

There are two fundamental concepts related to the control of carbon dioxide (CO<sub>2</sub>) emissions: (1) CO<sub>2</sub> capture and (2) CO<sub>2</sub> injection and storage. The CO<sub>2</sub> capture technology has been well proven for pre-combustion use (i.e., the technology currently used in coal gasification plants); however, the post-combustion CO<sub>2</sub> capture has only been applied to small coal-fired units on a commercial basis. There are currently large-scale demonstrations of a wide variety of new post-combustion CO<sub>2</sub> capture technologies in service or in construction worldwide on coal-fired units but none of the technologies have been proven at large, commercial scale. Norway has installed CO<sub>2</sub> capture on natural-gas-fired combined cycle (NGCC) units. Although the technology is being demonstrated, it is known to be very expensive on a cost per ton CO<sub>2</sub> captured basis because the concentration of CO<sub>2</sub> in NGCC exhaust is very low compared to coal-fired units. Therefore, until these technologies are demonstrated at large, commercial scale, they will not be "commercially available," which means that they will not be offered with typical product warranties and guarantees for performance and availability. Additional information on the status of these carbon capture technologies can also be found in the *Low-Carbon Coal: Meeting U.S. Energy, Employment and CO<sub>2</sub> Emission Goals with 21<sup>st</sup> Century Technologies* report prepared by the National Coal Council submitted to the U.S. Secretary of Energy Steven Chu. The full report can be obtained from the National Coal Council Web site [www.nationalcoalcoalouncil.org](http://www.nationalcoalcoalouncil.org).

Injection and storage is the second fundamental concept related to CO<sub>2</sub> emission control. Once CO<sub>2</sub> is captured, the CO<sub>2</sub> must be compressed and sent to a permanent storage location. Injection of CO<sub>2</sub> for use in enhanced oil recovery has taken place for more than 30 years. However, injection of CO<sub>2</sub> for the purpose of long-term storage, or sequestration, is relatively new. The Department of Energy is co-funding many CO<sub>2</sub> storage demonstrations nationwide through the Regional Carbon Sequestration Partnerships. However, the largest of these demonstration projects is only injecting approximately 10 to 25 percent of the CO<sub>2</sub> that would be produced by a typical coal-fired unit. These demonstrations will continue for several years to determine the technical and geological results, as well as monitor for unplanned CO<sub>2</sub> releases. Until the results of the demonstrations projects have been evaluated, CO<sub>2</sub> storage will not be commercially available with the guarantees necessary to

couple this technology with an operating power plant. Timelines and descriptions of the status of this technology are also discussed in the National Coal Council report.

With regards to the operating profile of the MEP, the simple-cycle turbines will be operating with an exhaust temperature of approximately 850 degrees Fahrenheit. Therefore, the use of a CO<sub>2</sub> scrubbing system would require a process to cool the exhaust gas stream to ambient temperature prior to capturing CO<sub>2</sub> with one of several different scrubbing fluids (e.g., amine or ammonia). Removal of dilute CO<sub>2</sub> from 850-degree exhaust gas has not been demonstrated on a commercial scale. Additionally, MEP will be operated in a highly flexible and variable manner, as required by MEP's Power Purchase Agreement with PG&E. CO<sub>2</sub> scrubbers are large chemical plant processes that require several hours, and sometimes days, to reach equilibrium once they are started. Therefore, the CO<sub>2</sub> scrubbers would not be feasible for units that are operated in a variable manner rather than consistent, steady-state operation.

Reference:

National Coal Council. 2009. Low-Carbon Coal: Meeting U.S. Energy, Employment and CO<sub>2</sub> Emission Goals with 21<sup>st</sup> Century Technologies. December.

# Public Health (12–13)

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## Background

Pollution

## Data Request

RDDR12 Applicant is requested to provide detailed communications (emails, documents, memos) with Mountain House Elementary schools a) Wicklund Elementary School, and b) Bethany Elementary School since the kids are sensitive receptors to the emissions from the project. Have they been advised of the potential health hazards since the wind is going to blow the pollution right into these locations which are just 2.3 miles from the proposed site?

## Response:

As required by the CEC licensing process, Mariposa Energy has completed an extensive analysis of the potential airborne exposure to sensitive receptors within 6 miles of the project location (see Section 5.1 [Air Quality], Section 5.5 [Hazardous Materials and Handling], and Section 5.9 [Public Health] of the AFC). The results of the air quality impact assessment, the offsite consequence analysis, and the public health risk assessment are all below the levels of significance. An independent analysis of the potential airborne exposure from the project will also be conducted by the CEC and the Bay Area Air Quality Management District to verify the results of the AFC analysis. If significant impacts are identified during the independent analyses, Mariposa Energy will be required to mitigate impacts to less than significant levels prior to obtaining a license.

Figure 5.5-1 in Section 5.5 of the AFC presents the location of each sensitive receptor included in the analysis, including Wicklund, Bethany, and Mountain House elementary schools (the individual address for each receptor is included in Appendix 5.5A of the AFC). The list and locations of the 28 sensitive receptors included in the AFC analysis were based on the following data sources:

- Environmental Data Resource Sensitive Receptor Report dated March 24, 2009
- California Department of Social Services, Community Care Licensing Division website (<http://www.cclid.ca.gov/>)
- Google Earth™ School Overlay

Copies of the complete AFC are available at the Mountain House Branch Library within the MHCS D and on the CEC Web site for the MEP.

In addition to the postings above, the results of the air dispersion modeling analysis were presented to the MHCS D Board of Director on July 8, 2009. Mariposa Energy has also been informed that the CEC provided notice of the Application to all school districts in the area. Please contact the CEC Staff or Public Adviser for a list of those organizations that received notice of this application.

**Data Request**

RDDR13 Applicant is requested to provide details regarding any meetings, presentation sessions it has made to Mountain House residents, and their feedback about the support or concerns about MEP. Mountain House residents are going to be victims of the pollution and are sensitive receptors over which Alameda County is counting on earning tax and power generation benefits. Applicant's feedback will throw more light to the certification committee [sic].

**Response:**

In an effort to reach out to the community of Mountain House and develop an open dialogue, the Applicant had a meeting with MHCSD Staff on April 9, 2009, and made a presentation to the MHCSD Board of Directors on July 8, 2009. In addition, representatives of the Applicant have attended MHCSD Board Meetings throughout the latter part of 2009 and early 2010, providing many opportunities for Mountain House residents to ask questions of Mariposa Energy. The presentations and feedback that was provided at the meetings is available at <http://www.ci.mountainhouse.ca.us/streaming.asp>

The Applicant, CEC Staff, and the CEC Commissioners were present at the CEC Site Visit and Informational Hearing on October 1, 2009, to provide an opportunity for members of the public, including Mountain House community, to raise their concerns or provide feedback on the project. Representatives of the MHCSD Board of Directors also participated in the Site Visit and Informational Hearing. A transcript of the presentations and public feedback provided at this proceeding may be found at <http://www.energy.ca.gov/sitingcases/mariposa/documents/index.html>

The Applicant has specifically designed and sited MEP to ensure that potential concerns have been considered and addressed. For visual impacts, MEP is barely visible from Mountain House and has no visible plumes, since it is air cooled, rather than water cooled. MEP utilizes aqueous, rather than anhydrous ammonia to minimize the impacts of an accidental release. MEP cannot be heard at Mountain House. Regarding air pollution, Mariposa Energy has mitigated emissions in both the Bay Area Air Quality Management District and the San Joaquin Valley Air Pollution Control District with no significant unmitigated emissions. Regarding health concerns, Mariposa Energy has conducted an extensive Health Risk Assessment which indicates that there are no significant impacts to sensitive receptors within 6 miles of the project site for any criteria pollutants or health risks (Cancer Risk, Chronic Hazard Index, and Acute Hazard Index). The closest sensitive receptor is actually in Alameda County, not at MHCSD or San Joaquin County.

The power generated by the Applicant is not sold to Alameda County, but to PG&E, benefiting all customers of PG&E and providing grid services to the California Independent System Operator, which operates the entire California high voltage transmission grid. Significant construction labor, operating labor, construction consumables and maintenance materials will likely originate in San Joaquin County or Contra Costa County, since their services are closer to the MEP site, thus providing economic benefits to those counties.

# Socioeconomics (14)

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## Background

Pollution to Mountain House-San Joaquin County and Economic Advantage to Alameda County: The strategic location of the proposed site on the border of Alameda County and on the east of the Altamont Mountains shields the entire Alameda population from emissions effects. The project is going to help Alameda County in the power and tax sectors. Mountain House is going to receive no benefits. In fact, the Mountain House residential community development will be hampered because of the lowering of home prices caused by increased foreclosures. This will further alienate home developers and builders.

## Response:

Property taxes paid to Alameda County are just a portion of the positive economic impacts that the MEP will have on the tri-County area of San Joaquin, Alameda and Contra Costa counties. Construction consumables and supplies will most likely be purchased close to the site, in San Joaquin, Contra Costa and Alameda counties. Union construction labor will also likely come from the areas closest to MEP's location in these three counties. The individuals employed at the plant and maintenance materials utilized during the operation of the facility will also come mostly from the local area. Therefore, all three counties will receive positive economic benefits from the project.

The Applicant has addressed the potential air pollution impacts by providing Emission Reduction Credits that are within 50 miles of the San Joaquin Valley Air Pollution Control District to the Bay Area Air Quality Management District and by providing funding to the San Joaquin Air Pollution Control District for programs to be implemented in the Mountain House and Tracy areas to improve ambient air quality. Based on air modeling reviewed by both of these air pollution control agencies, there is no significant unmitigated increase in criteria pollutants from the MEP.

## Data Request

RDDR14 Has Applicant taken efforts to explain and advise Alameda County regarding the health consequences from emissions caused by MEP and the potential breaking of the Mountain House community because of impacts on home prices and inducing more foreclosures by being a sensitive receptor to the power plant? Please provide documented emails, memos around these topics discussed with Alameda County.

## Response:

The potential health impacts associated with the MEP were addressed in the AFC filed with the CEC, assessed by the Bay Area Air Quality Management District as part of its ongoing review of the application materials, and addressed in the Mitigation Agreement with the San Joaquin Valley Air Pollution Control District. These filings demonstrate that there will not be any significant impacts on sensitive receptors in the MHCSD or elsewhere. Please see responses RDDR-12 and RDDR-13, earlier in this document. In addition, a cumulative



impact assessment was conducted for comparison to the ambient air quality standards, which was submitted to the CEC on November 13, 2009, in response to DR-13. The cumulative impact assessment included the proposed projects within 6 miles of the MEP site (i.e., the list of projects included the East Altamont Energy Center, the Tesla Power Plant, and the Waste Management of Alameda County landfill projects) and the results of the cumulative impacts analysis were less than significant. The Applicant has not provided additional correspondence to Alameda County officials regarding this matter beyond the docketed CEC materials.



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](http://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)

**APPLICANT**

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**DECLARATION OF SERVICE**

I, Haneefah Walker, declare that on May 4, 2010, I served and filed copies of the attached Rajesh Dighe Data Response Set 2, Responses to Rajesh Dighe Data Requests 5 through 14, Dated February 28, 2010. 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:**

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:**

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

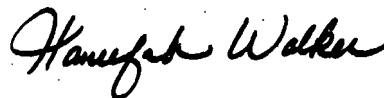
**OR**

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](mailto:docket@energy.state.ca.us)

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



**Haneefah Walker**