

DOCKET

09-AFC-3

DATE

RECD. APR 06 2011

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

Application for Certification for the Mariposa Energy Project

Docket No. 09-AFC-03

REPLY BRIEF OF ROB SIMPSON

I. MEP IS NOT PERMITTED UNDER THE WILLIAMSON ACT CONTRACT

The Williamson Act contract covering the land at issues specifies what uses are allowed on the land. The County's conclusion that MEP can be built on the land based on a compatibility analysis wrongly fails to consider the explicit terms of the contract. Where land is covered by a Williamson Act contract, the terms of the contract determine the permitted uses, not a compatibility analysis. MEP cannot be built on the land under the enforceable Williamson Act contract.

The Williamson Act Contract

On December 12, 1989, the County Board of Supervisors adopted Resolution No. 89-947, which amended the February 4, 1971 Williamson Act contract, Land Conservation Agreement No. 5635. The amendment approved change of ownership and added the Byron power company wastewater facility as a compatible use. On that same day, the landowner and the County entered into the amended Williamson Act contract, Land Conservation Agreement No. C-89-1195 (the "Contract").

Exhibit Number 12, Appendix DR1-1, contains a copy of the Contract and the Alameda County Board of Supervisors Resolution R-89-947 approving the contract. Page 3 of the contract provides the restrictions on the use of the property, "*During the term of this agreement, or any renewal thereof, the said property shall not be used for any purpose, other than agricultural uses for producing agricultural commodities for commercial purposes and compatible uses, which uses are set forth in Exhibit B attached hereto and incorporated by reference.*" Exhibit "B" provides for two uses, "*1) Grazing, breeding or training of horses or cattle 2) Co-generation/waste water distillation facility as described by Conditional Use Permit C-5653.*"¹

¹

Compatible Uses

Alameda County is the responsible party for determining if uses are compatible for any Alameda County Williamson Act contracts. The Department of Conservation plays only an adviser role in such determinations as acknowledged by the Department: "While the final decision is in the hands of the County of Alameda."

Alameda County has not fulfilled its duty to evaluate if the MEP is compatible with the relevant Williamson Act contract. The County's entire analysis of this issue is only three sentences: "The parcel on which the Project will be located is under a Williamson Act contract. The property subject to the Williamson Act contract is considered non-prime, non-irrigated grazing land. By letter dated July 6, 2009, the State Department of Conservation agreed that the Project would be a "compatible use" under the Williamson Act, and would be designed so that the parcel remains in agricultural use. Given that Mariposa has committed to reseeding the laydown areas and to the placement of permanent agricultural water sources on the parcel, the parcel will be able to support as many cattle on the remaining 146 acres after the Project is built as are currently supported and is thus consistent with the Williamson Act." February 21, 2001 County of Alameda Official Statement.

The Williamson Act allows from Counties to contract with landowners to determine exactly what uses will be permitted. "Any city or county may by contract limit the use of agricultural land for the purpose of preserving such land pursuant and subject to the conditions set forth in the contract and in this chapter. A contract may provide for restrictions, terms, and conditions, including payments and fees, more restrictive than or in addition to those required by this chapter." Cal Gov Code § 51240

Williamson Law contracts must "Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract" and are "binding upon, and inure to the benefit of, all successors in interest of the owner." Cal Gov Code § 51243

Alameda County's determination that MEP is a compatible use

In violation of Cal Gov Code § 51240, 51243, and 51238.1, the County has based its analysis entirely on the general principles of compatibility instead of looking to the terms of the contracts. The County described its analysis in a May 20, 2010 Alameda County Community Development Agency letter to applicant:

"Under Government Code 51238, the erection, construction, alteration or maintenance of gas, electric, water or communication facilities on a parcel encumbered by a Williamson Act contract area all considered compatible uses unless the Board of Supervisors, after notice and hearing, makes a finding to the contrary. This includes electrical power generation facilities such as the proposed Project.

There are limitation to compatible uses; the use must meet the requirements of the Principles of Compatibility . . . The Project, as proposed, would be consistent with these principles . . ."

Compatibility is only evaluated for nocontracted land, the terms of the contract, obviously, cover lands for which a contract exists. Cal Gov Code § 51238.1. In this case, the Contract

enumerates the only permitted uses – “1) *Grazing, breeding or training of horses or cattle* 2) *Co-generation/waste water distillation facility as described by Conditional Use Permit C-5653.*” MEP does not meet either of these uses and so, cannot be permitted on the land without violating the binding Contract.

The County and MEP’s arguments that Cal Gov Code § 51238 allows that a power plant is a compatible use is of no moment because the land is covered by the Contract and Cal Gov Code § 51238 only applies to land that is not covered by a contract: “Sections 51230 and 51238 relate[s] to noncontracted lands within agricultural preserves.” Cal Gov Code § 51238.1

II. THE ALTERNATIVES ANALYSIS IS FAULTY

The Applicant contends that;

"The SSA also presented alternative technologies to MEP. Staff concluded that alternative technologies such as solar, wind, geothermal, biomass, tidal, and wave do not present feasible alternatives to the proposed project.³² The SSA found that the alternative linear routes are feasible but present no clear advantage. Power plants that are not natural gas-fired were eliminated from consideration because they did not meet the project objectives for a dispatchable energy project.³³"

This contention ignores the CEC PIER report;

RESEARCH EVALUATION OF WIND GENERATION, SOLAR GENERATION, AND STORAGE IMPACT ON THE CALIFORNIA GRID

"this report concludes that the system flexibility provided by storage is more efficient than equivalent conventional generation capacity"

5. Use of storage avoids greenhouse gas emissions increases associated with committing combustion turbines strictly for regulation, balancing, and ramping duty.

6. A 30 to 50 MW storage device is as effective or more effective as a 100 MW combustion turbine used for regulation purposes, given the use of the storage-specific control algorithms as mentioned in (4) above, the faster response of the storage as compared to a gas turbine, and the fact that a 50 MW storage device has an approximate – 50 to + 50 MW operating range that is equivalent to a zero to 100 MW range for a combustion turbine for regulation purposes.

<http://www.energy.ca.gov/2010publications/CEC-500-2010-010/CEC-500-2010-010.PDF>

Rob Simpson 27126 Grandview avenue Hayward CA. 94542 510-909-1800
rob@redwoodrob.com