

<b>DOCKET</b>	
<b>09-AFC-3</b>	
DATE	APR 06 2011
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STATE OF CALIFORNIA  
State Energy Resources  
Conservation and Development Commission

In the Matter of: )  
) )  
Mariposa Energy Project )  
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DOCKET NUMBER: 09-AFC-3  
California Pilots Association (CALPILOTS)  
Rebuttal Testimony

**Rebuttal Brief of the Mariposa Energy Project (MEP)**

California Pilots Association (CALPILOTS)  
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## Traffic and Transportation – Aviation

CALPILOTS offers our Rebuttal Testimony as follows:

### **MEP is within the approach of departure and aircraft Overflight of the Byron Airport**

CALPILOTS agrees that the closest stack is approximately 165 feet to the west of the outer Safety Zone on the RNAV (GPS) instrument approach to runway 30. That being said it was CEC Staff's Expert witness who testified that at 1230 feet height the plume has a width of 109 meters (358 feet or a radius of 179 feet) and at 2000 feet altitude has a width of 185 meters (606 feet or a radius of 303 feet). (RT, 3/7/11, pg. 294, 5-12.). The thermal plume would clearly invade the protected air space of the RNAV GPS approach.

The FAA Aeronautical Information Manual (AIM) recommends pilots remain upwind of the thermal plume (Ex 700, pg. 2.FAA AIM7-5-13, b.). It should be noted that on the Approach to Byron Airport to runway 30 for both IFR (Instrument Flight Rules) and for VFR (Visual Flight Rules) pilots are flying downwind of the thermal plumes. There is no margin of safety of distance from the thermal plumes and the outer edge of the protected zone. Mr. Walters went on to respond that the plume velocities are averages and that can reach up to 7.2 (two times the 4.3 meters per second threshold) meters per second could occur above the stack up to and above 2000 feet (RT, 3/7/11, pg. 290,10-14.).

Furthermore there are an undetermined number of over flights of MEP (SA. Traffic and Transportation – Figure 4A and 4B) where a one (1) mile diameter is used. The number of flights as compared to Byron Airport operations is not accurate because aircraft count omits those aircraft without transponders and in correlating against Byron Airport operations does

not include aircraft overflying the Byron Airport which are not considered an operation.

(RT, 2/25/11,14-24.)

“MR. YURTIS: You have to take off or land at the airport to be considered an operation, an accountable operation at that airport.

MR. WILSON: Thank you.

So if an aircraft was flying from point A to point B, neither being the Byron Airport, and they overflew that circle that's designated, and they did not have a transponder, would it be recorded as part of the 60,000?

MR. YURTIS: This only records transponder-equipped aircraft.”

MEP continues to convince the Committee that “We have done the math” when in fact pilots do not refer to the MEP math but the FAR Part 77 as well as other Federal Aviation Regulations including but not limited to the Aeronautical Information Manual.

Neither MEP nor CEC Staff has mitigated a width or a height in either in feet or miles which warn the pilot of the Plume hazard MEP. The Stack lighting would be impossible to see and avoid if a pilot were flying in IFR (Instrument Flight Rule conditions).

**The Byron airport does not have congested flight patterns and MEP will not restrict airspace around the airport.**

The Byron Airport has one of the most complicated patterns with its different sizes and altitudes to accommodate the different types of aircraft using this airport. Aircraft include but not limited to jet, ultralights, gliders and a wide variety of general aviation types of aircraft. Congestion is caused by the various types of aircraft and the priority they have in the pattern and not the total number aircraft using the airport. Gliders have the highest priority because they lack a motor (second to balloons) and then ultralights. If even two of these priority aircraft are in the pattern

general aviation must wait for them to clear before entering the pattern. That airspace is bused over MEP to insure traffic pattern separation.

### **MEP Impact on future use of the Byron Airport including plans for expansion**

CALPILOTS requests the Commission take notice of Contra Costa County Board of Supervisors, Airport Committee (Meeting), Thursday February 3, 2011, 11:30 a.m., Attachment 1.

Draft Minutes

Item 5. (*Emphasis added*)

- Airport businesses are struggling and Airport staff has been working with those businesses to try to reach some kind of agreement, if possible, to help them through this hard economic time.
- Byron Jet Center, at the Byron Airport, has ordered the steel for their three (3) large hangars and should start construction in May or June.
- Calls are still coming in on a regular basis for both facilities from different businesses that are looking to relocate or are interested in starting a new business.

Item 6 (*Emphasis added*)

Foreign Trade Zone for the Byron Airport

This further emphasizes that neither CEC Staff nor the MEP has participated or worked with this Committee to discuss or try to understand where or what affect placing a Hazard (MEP with its thermal plumes) within Byron Airport (C83) Zone D and to the IFR and VFR approach the Runway 30 would have on existing businesses, new businesses, or the planned Free Trade Zone. CALPILOTS has attempted to bring these matters before the Commission (Ex. 701, 702, 703).

DECLARATION OF SERVICE

I, Andy Wilson, declare that on April 6, 2011, I served and filed copies of the attached CALPILOTS First Testimony. The original documents, 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;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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*);

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, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



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Andy Wilson  
CALPILOTS

## Attachment 1

Contra Costa County Board of Supervisors  
Airport Committee

Thursday, February 3, 2011, 11:00 a.m.  
550 Sally Ride Drive  
Director of Airports Office

**Draft Minutes**

The meeting was called to order at 11:00 a.m. by Supervisor Mitchoff.

Supervisor Karen Mitchoff, Chair and Supervisor Mary Piepho, Vice Chair were introduced. County Staff present: Cliff Glickman, District IV Chief of Staff; Keith Freitas, Airport; Beth Lee, Airport; and Natalie Olesen, Airport.

**2. Approval of Minutes**

September 20, 2010, minutes were approved.

**3. Public Comment:**

Dianne Cole commented that there had been previous discussion on discontinuing the Part 139 Certificate (Certificate) at Buchanan Field. Dianne stated that she was opposed to discontinuing the Certificate for the following reasons:

1. While the Federal Aviation Administration (FAA) assures that getting the Certificate back would be no problem, she has never seen a government entity where simple tasks are not difficult.
2. The immediate impact has not been addressed. A number of private jets that fly out of Buchanan Field would not be able to get the insurance they need as insurance carriers will not allow them to fly into non Part 139 Certificate airports. This would cause a loss in aircraft operations and fuel sales.
3. There would be a cost savings in not completing the enhanced markings. But, Buchanan Field can be a very confusing airport, to someone not familiar with it, due to its layout. More signage and more direction mean more safety which is better for the Airport.

Supervisor Mitchoff requested a report on the Pro's and Con's and financial analysis of keeping the Part 139 certificate to be agendaized for the March meeting.

Geoff Logan, Aviation Advisory Committee (AAC) Vice Chair and Aviation Insurance Business Owner, stated that in the 20 plus years he has been involved with the aircraft insurance business, insurance companies have never precluded an aircraft from being insured if they do not use an airport that has Part 139 Certificate.

Supervisor Mitchoff and Supervisor Piepho agreed that an action into a formal policy position needed to be made and then taken to the full Board.

**4. Report by Aviation Advisory Committee (AAC)**

Tom Weber reported:

- The AAC has stepped up their role in helping to address Airport matters.
- For the first time in years the AAC has no member vacancies.

- The terms have been extended to three (3) years to stagger vacancies.
- A 60 day holdover has been instituted instead of an unlimited number of months.
- The vacant At-Large position received 11 applications. Of the 11 applicants, nine (9) were qualified and scheduled for interviews. One of the applicants scheduled for interview was appointed by District 1. The top three applicants, from the interviews, were then discussed. Rich Spatz has been recommended to the Internal Operations Committee to fill the vacant At-Large position. The AAC is working to keep the other two top rated applicants involved in other ways.
- The AAC will continue to:
  1. Discuss the Part 139 Certificate
  2. Review the Airport Budget
  3. Work with Airport staff to help developers be successful in developing the Airports.
- The AAC will be discussing adjusting their meeting schedule from the second Tuesday to the second Thursday of the month, as requested by the District IV Supervisor.

## **5. Airport Development**

Keith Freitas reported:

- Airport staff is working with County Counsel in the final process of terminating the Silver Pacific lease agreement. In the next three few months that property will be reverted back to the County.
- Airport businesses are struggling and Airport staff has been working with those businesses to try to reach some kind of agreement, if possible, to help them through this hard economic time.
- Byron Jet Center, at the Byron Airport, has ordered the steel for their three (3) large hangars and should start construction in May or June.
- Calls are still coming in on a regular basis for both facilities from different businesses that are looking to relocate or are interested in starting a new business.

Supervisor Mitchoff suggested alternating sites for the Airport Committee meetings between the two airports and then asked for a recommendation from Keith Freitas.

## **6. Foreign Trade Zone Update**

Beth Lee reported that a Foreign Trade Zone (FTZ) has been in a topic of discussions since 2008 which was initially brought to Airport staff's attention by Supervisor Piepho. Discussions have taken place with the Port of Stockton about joining their existing FTZ for getting the FTZ designation for the Byron Airport in a more cost effective way. Initially the item was brought before the Transportation, Water and Infrastructure Committee (TWIC) of the Board of Supervisors (Board) on three (3) or four (4) separate occasions to discuss the concept. There were different concerns raised with the concept. Ultimately it was move from that committee to the AAC. After discussion with the AAC the item was to go to the full Board for discussion. At that time the Airport Committee reconvened and it was referred back to the Airport Committee and then to the AAC for more discussion. The concept is interesting and Airport staff would like to get policy direction on how to proceed.

Tom Weber commented that the FTZ designation for the Byron Airport has been discussed by the AAC several times. A representative from the Port of Stockton came and spoke to AAC. The AAC agreed it was an interesting idea, there would be a lot of challenges and would need some greater exploration. The biggest concern of the AAC is the costs for pursuing the FTZ and sources of funding available. This would be a big stretch for the Airports budget.

Geoff Logan stated that after hearing the representative from the Port of Stockton talk about the FTZ it sounded like it would be a difficult process. A presentation from another party who had recently been



through the process of joining another FTZ would be helpful to see how difficult it would be for Byron Airport to join the FTZ of the Port of Stockton.

Diane Cole stated that from some research she has done the upfront costs can be tremendous as Byron does not have adequate water, power and sewer or road and they would all have to be upgraded. The upfront costs in this economic climate may not be worth pursuing the hours that it takes to explore further as the money for the basic infrastructure is not available.

Supervisor Piepho stated that the FTZ designation could be an economic draw to the Byron Airport as well as East County. Getting the designation and having it would provide the opportunity for the businesses to come in determine if it is a suitable location and then the business would then have to mitigate their impact and create the infrastructure to accommodate it. This would not be an upfront cost to the County and those costs would be borne by the developers. It would obviously be a challenge as there is a time process, a financial process, review process and determining who to partner with. A decision will need to be made on whether to pursue the designation with limited resources, knowing that possibly it could create an economic benefit or it is just something to keep considering. The Supervisor would like to see this move forward but did not know if the resources are available to do it.

Supervisor Mitchoff asked for an update at a future Airport Committee meeting.

#### **7. Noise Complaint Update**

Keith Freitas reported that over the last nine (9) years noise complaints have dropped dramatically. Complaints are averaging around 100 per year. Some of the decrease is due to total operations being down. The Master Plan and Part 150 Noise Study process was also helpful in educating the public about the Airport operations.

#### **8. Future Agenda Items**

- Part 139 Certificate
- Airport Fiscal Year 2010/11 Budget at 50%.
- Update on Foreign Trade Zone

Dianne Cole made a final announcement. The 99's Women's Pilots Organization is planning to sponsor a powder puff derby in 2013. This cross country air race event will start at Buchanan Field; bringing an additional 40 to 50 aircraft to the Airport. It is expected that several hundred people will attend.

Next meeting is to be scheduled for Thursday March 17, 2011, at 9:30 a.m.

Meeting was adjourned at 11:57 a.m.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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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 3/18/2011)

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