

Introduction

On November 7, 2000, Alameda County voters decisively passed Measure D, the Save Agriculture and Open Space Lands Initiative. This comprehensive voter initiative amended the Alameda County General Plan to “preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open spaces of Alameda County from excessive, badly located and harmful development.”

Measure D was drafted in consultation with numerous community groups and individuals throughout Alameda County and placed on the ballot by the signatures of more than 63,000 Alameda County residents. It was endorsed by over forty elected and appointed officials, including the mayors of two of the County’s three most populous cities, by over two dozen environmental and community groups, and by two property owner associations. At the behest of Measure D’s opponents, the Board of Supervisors put a competing proposal, Measure C, on the ballot that would have left the existing General Plan largely intact. Measure D’s supporters had to distinguish their initiative in the voters’ minds from this confusing countermeasure. A combined total of over three million dollars was spent by both sides to educate the electorate about the pros and cons of Measure D, the largest expenditure for a local land use ballot measure in state history.

Measure D was approved in the November 2000 election by 243,094 voters, approximately 57% of the votes cast, and received a majority of the votes in eastern Alameda County, the area which it primarily affects. Measure C failed, receiving only 43% of the vote in its favor, showing that voters were clearly able to distinguish the two

measures. This capsule history of the drafting and passage of Measure D shows that Alameda County voters knew what they were voting for in passing Measure D and made a conscious, deliberate and unambiguous choice to protect the remaining open space, agricultural lands, and high quality of life in Alameda County for current residents and future generations.

Measure D's Policies

Measure D relocated and completed an Urban Growth Boundary (UGB) in eastern Alameda County. Urban type development can only be approved inside the UGB. Outside the UGB large minimum parcel sizes are required and with few exceptions only those uses directly supporting agriculture and natural resource protection are permitted. The site of the proposed Mariposa Energy Project is located far outside the UGB established by the initiative.

Large Parcel Agriculture land use designation

The East County Area Plan (ECAP) of the Alameda County General Plan contains land use designations that regulate land use densities, intensities, and permitted uses in the East County area. The Large Parcel Agriculture designation applies to the site of the Mariposa Energy Project and was amended by Measure D. Subject to the provisions of Measure D, the Large Parcel Agriculture designation permits:

agricultural uses, agricultural processing facilities (for example, wineries, olive presses), limited agricultural support service uses (for example, animal feed facilities, silos, stables, and feed stores), secondary residential units, visitor serving commercial facilities (by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, windfarms and related facilities, utility corridors, and similar uses compatible with agriculture.

Of direct relevance to this proceeding, the voters specifically deleted a provision that previously permitted “other industrial uses appropriate for remote areas and determined to be compatible with agriculture.”

The proposed Mariposa Energy Project is a fossil-fueled, privately owned peaker plant. It cannot reasonably be considered to fall within any of the uses permitted under the Large Parcel Agriculture land use designation as amended by Measure D. Very obviously it is not an agricultural use, an agricultural processing facility, a limited agricultural support service use, or a visitor-serving commercial facility that supports agriculture. Nor is the proposed power plant a residential unit, a recreational use, a solid waste landfill or related facility, a quarry, windfarm or windfarm related facility. The peaker plant is not a public or quasi-public use. As described in ECAP Policy 54, public facilities include “limited infrastructure, hospitals, research facilities, landfill sites, jails, etc.” None of these examples comes close to describing a privately-owned, 188 MW peaking plant. Clearly the Mariposa Energy Project is not related to agriculture. It is a private, commercial facility, contracted to PG&E for a ten-year period; it is not a public or quasi-public use.

As mentioned above, the Alameda County electorate specifically deleted that provision of ECAP which previously allowed “other industrial uses appropriate for remote areas and determined to be compatible with agriculture.” This is precisely the type of use now being proposed and which was prohibited by the voters of Alameda County. In revising the Large Parcel Agriculture designation to delete the above language, the drafters of Measure D were very deliberate. Many hours were spent during three meetings open to the public discussing this revision. At first the participants attempted to comprehensively list all uses that should be allowed outside the UGB. The

list of potentially allowable uses ran to several pages. It did not include commercial electric power plants. Ultimately the drafters decided that such a listing was impractical: no matter how thorough, an important use might very well be overlooked and not listed. If that use were not listed, then Measure D could reasonably be interpreted as not permitting it. The drafters did not want to make such an error, so the amendment that was made was deliberately selected. We chose to retain the provision that permits “public and quasi-public uses” and to delete the provision permitting “other industrial uses appropriate for remote areas and [that could be] determined to be compatible with agriculture.” Our goal was to provide reasonable latitude in permitting public facilities (schools, hospitals, recreational centers, etc.) that truly serve the needs of East County residents, but simultaneously to prevent those uses clearly not related to agriculture, recreation, open space protection, natural resource use, or waste management. When adopting this revision to the Large Parcel Agriculture designation, the voters specifically intended to eliminate a category of use that conflicts with the overall purpose of Measure D to protect agriculture and open space land in eastern Alameda County.

The Alameda County Community Development Agency (CDA) in its argument that the Mariposa Power Project is allowable under Measure D does not rely heavily on this stricken provision, preferring instead to justify the power plant as permissible infrastructure. Nevertheless, the CDA does state that this power plant is compatible with agriculture. This argument clearly is faulty since the power plant would permanently convert agricultural land to a non-agricultural use. Unfortunately the CDA has chosen to ignore an important voter directive in advancing a claim of compatibility. Section 20 of Measure D states “The Board of Supervisors and other officials and employees of Alameda County shall carry out and enforce the provisions of this ordinance and

generally the provisions of the East County Plan diligently and effectually. They are mandated to use the most effective means available to prevent, abate, and remedy violations” (emphasis supplied). In passing Measure D, the voters deliberately chose to protect agriculture and open space outside the UGB. In reaching a conclusion that contradicts the voters’ intention, the CDA has failed to use the most effective means available to protect the public interest.

Permissible Infrastructure

Measure D contains an exemption that permits public infrastructure to be built outside the UGB provided it is needed to serve development consistent with the voter initiative. However, the measure prohibits County approval of infrastructure in excess of that needed to serve current and future East County residents. This exemption is contained in Measure D, Policy 13:

The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative. This Policy shall not bar 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County, 2) maintenance, repair or improvements of public facilities which do not increase capacity, and 3) infrastructure such as pipelines, canals, and power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative. “Infrastructure” shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities.

Even if a merchant power plant could be considered a public facility or infrastructure rather than a private industrial use—a debatable proposition at best—the proposed Mariposa Energy Project in combination with other existing and reasonably foreseeable power projects provides more power than is need for permissible growth in

Alameda County. The applicant has not met his burden of proof that the Mariposa Energy Project is needed to meet permissible growth in Eastern Alameda County. Moreover, this determination must be viewed in the context of other Energy Commission actions. The East Altamont Energy Center, another 1100 MW power plant, was recently approved for eastern Alameda County and it would more power than is needed for Eastern Alameda County.

Alameda County officials argue that eastern Alameda County is likely to receive only a fraction of the energy supplied by the proposed facility, and therefore it can be sized substantially larger than the actual needs of East County residents. This is not a reasonable interpretation of the infrastructure exemption in Measure D. First, there is no guarantee than any of the power produced by the Mariposa Power Project will serve East County residents. If no power is used to serve East County, then the power plant is simply another industrial facility that produces a commodity for sale elsewhere in PG&E's service territory for the next ten years. This is precisely the type of industrial use that was prohibited on agriculturally designated land in eastern Alameda County. This prohibition was enacted by deleting the former ECAP provision allowing such industrial uses, as discussed above on pages 4 and 5 of this testimony. The implication that land outside the urban growth boundary can be used to supply a statewide commodity not otherwise permitted by the initiative is not a valid interpretation of Measure D's infrastructure exemption.

Second, the notion that only a small fraction of the energy produced will go to East County and therefore a much larger facility than is needed can be approved, clearly is not what the voters intended. Consider the logical implication of this interpretation: there is no limit on the number of power plants that could be sited in East County because

the assumed contribution from each plant can be made vanishingly small. Under this interpretation, Alameda County could justify five, ten or twenty power plants and the landscape could be littered with such facilities. This is not a theory as the Mariposa Energy Project is the third such power project proposed in Eastern Alameda County. It is reasonable to assume that the voters had this outcome in mind when passing the initiative which is entitled Measure D, the Save Agriculture and Open Space Lands Initiative. The voters specifically intended to prevent Eastern Alameda County from becoming a landscape dominated by large power plants. The overall purpose of Measure D is “to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open spaces of Alameda County from excessive, badly located and harmful development.” Alameda County officials in their quest for revenue have made a mockery of the intent of the initiative.

Finally, Alameda County officials argue that there is no growth-inducing effect of the power plant because other policies limit growth in East County. This argument is a misreading of Policy 13. The growth-inducing restriction has to do with transmission facilities that traverse land outside the urban growth boundary. (“This Policy shall not bar ... infrastructure such as pipelines, canals, and power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative.”) The earlier part of Policy 13 governs the size of facilities needed to serve East County residents. (“The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative.”) The purpose of this earlier language is both to prevent inducement of excessive growth and also to prevent the direct environmental impact of

facilities built larger than needed to serve the area's population. In short, there is simply no interpretation of Policy 13 that permits infrastructure of this size to be built without violating the clearly expressed will of the citizens of Alameda County.

Other ECAP Policies

A number of other East County Area Plan policies that were not amended by Measure D are designed to promote and protect agriculture and other open space in eastern Alameda County. The CEC staff very appropriately asked questions about these other policies in its correspondence with the Alameda County Community Development Agency. Unfortunately the CDA's responses were not protective of agriculture and open space. If these interpretations of County policy are allowed to stand, no part of Alameda County's open landscape is safe from inappropriate and harmful industrial development and a never-ending siting of natural gas power projects in Eastern Alameda County.

For example, CEC staff asked if the proposed power plant would be inconsistent with ECAP Policy 52 (formerly Policy 56) which states that the County "shall preserve open space areas for the protection of public health and safety, provision of recreational opportunities, production of natural resources (e.g., agriculture, windpower, and mineral extraction), protection of sensitive viewsheds, preservation of biological resources, and the physical separation between neighboring communities." In its reply the CDA simply asserts that these objectives will be protected without offering any analysis. Quite clearly, the irreversible conversion of agricultural land to industrial use accomplishes none of the above goals. The proposed power plant does not protect public health and safety; in fact, its air emissions are likely to impair public health. It does not provide recreational opportunities; in fact, it will remove the possibility of recreation from ever taking place on the site. The proposed power plant does not enhance production of natural resources;

in fact, it takes agricultural resources permanently out of production. It does not protect sensitive viewsheds; in fact, it blocks views of Brushy Peak and Mount Diablo. It does not protect biological resources; in fact, it permanently eliminates plant and animal habitat which is indisputable.

The notion that some mitigation funds can compensate for these permanent losses is hubris and should not be accepted by the Energy Commission. Open space and agricultural lands are finite. They are vanishing at an alarming rate in Alameda County and throughout California. That fact is what prompts citizens to place open space initiatives on the ballot all over the state. No amount of money can replace land lost to development. Measure D was the result of Alameda County officials not hearing what its citizens were saying and forcing them to enact policy by initiative. We trust the Energy Commission will look past Alameda County's thirst for new revenue and implement the will of the voters of Alameda County who decisively passed Measure D and deny the Mariposa Energy Project.

Conclusion

If approved, the Mariposa Energy Project would violate Measure D approved decisively by the Alameda County electorate in 2000. The MEP is a large, industrial facility located far outside the Urban Growth Boundary established by the voters. If additional power were needed for eastern Alameda County, the recently approved East Altamont Energy Center (itself far larger than needed) will supply all the additional requirements. The MEP is incompatible with a host of other General Plan policies designed to preserve agriculture and protect open space in rural Alameda County. For all

of these reasons, the Energy Commission should deny the certification of the Mariposa Energy Project.

DECLARATION OF SERVICE

I, Robert Sarvey declare that on January 7, 2011 I served copies of Dick Schneiders Opening Testimony on Land Use. 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

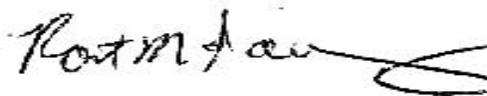
depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

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

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