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DOCKET	
09-AFC-3	
DATE	JUN 14 2011
RECD.	JUN 14 2011

State of California  
State Energy Resources Conservation and Development Commission

In the Matter of: ) Docket # 09-AFC-03  
                      )  
Mariposa Energy Project ) Petition for Reconsideration  
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### Introduction

Pursuant to Section 1720 of the California Code of Regulations Intervenor Sarvey petitions for reconsideration of the Commissions May 18<sup>th</sup> decision approving the Presiding Members Proposed Decision and the errata for the Mariposa Energy Project. The petition requests that the Commission require rehabilitation of Bruns Road prior to initiation of construction as explained more fully in the petition. The petition requests that several errors of fact in the decision be corrected and that the proper demographic profile be entered into the record of the decision. One error of law related to the Williamson Act exists in the decision as explained later. The reconsideration also requests that the decision clarify the school impact fee as the record is contradictory on the issue.

### Bruns Road Reconstruction

On June 1, 2011 the applicant submitted the Construction Traffic Control and Implementation Plan for the Mariposa Energy Project.<sup>1</sup> The plan calls for the use of Bruns Road as the primary access road for construction vehicles. As the plan details, “*Bruns Road is a north-south road lying along the western border of MEP and intersecting with Byron Highway to the north. An easement off of Bruns Road would provide the entrance, and therefore the direct access, to the project site.*” Since the PMPD conference the condition of Bruns Road has deteriorated due to the construction

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<sup>1</sup> [http://www.energy.ca.gov/sitingcases/mariposa/compliance/submittals/TCP\\_06-01-11.pdf](http://www.energy.ca.gov/sitingcases/mariposa/compliance/submittals/TCP_06-01-11.pdf)

of the Greenvolts Solar Project. As stated by resident Guy Colton at the May 18<sup>th</sup> adoption hearing, “*I don’t know how long it had been since you had driven Bruhns Road prior to that but it was in a lot worse condition than when you had driven it previously. In about six or eight weeks, the Green Volts Energy Project that’s taking place a couple hundred yards down Kelso Road had literally destroyed the road. I mean literally destroyed the road. In that slalom to get around the rubble and they have patches all the way through it.*”<sup>2</sup> Parts of the road have been reduced to gravel with deep ruts. The construction of the MEP will continue the degradation of that road. This is a significant impact which must be addressed. Residents must be provided a safe accessible road to their homes. I have notified the Compliance Project Manager through the public advisor but the CPM has not responded to my inquiry. This issue needs to be addressed through reconsideration since the CPM has not provided a resolution to the issue. The issue could not be raised previously as it is a recent development first mentioned at the Commission adoption hearing on May 18th.

### School Impact Fee

The Commissions final decision states that the applicant is required to pay a school impact fee of \$2,621.<sup>3</sup> On page 4 of the socioeconomic portion of the decision it states, “*As stated in Section 17620 of the Education Code; “The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement for the purpose of funding the construction or reconstruction of school facilities”. Commercial development within the Mountain House ESD (2009) is charged a one-time assessment fee of \$0.36 per square foot of principal building area. The Mountain ESD students attend high school at Tracy USD and therefore split the revenue with Tracy USD. The split is 75 percent of the fee to Mountain House ESD and 25 percent of the fee to Tracy USD. The 7,280 square feet of occupied structure would create approximately \$2,621 in impact fees. Condition of Certification SOCIO-1 is proposed to ensure payment of fees to these districts.*” At the May 5 PMPD conference the applicant stated that the school impact fee was only \$276.

1Generally the way it works is the school district

2 sends us a bill or assessment and we pay it. In fact, in

3 this case they have already sent us the assessment and the

4 amount has already been paid to the school district.

5 HEARING OFFICER CELLI: Was it the \$2,621?

6 MR. WHEATLAND: Chris, do you know how much was

7 the amount that they billed us?

8 MR. CURRY: They only charged us four cents per

9 square foot. It's 7400 square feet so somewhere around \$276

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<sup>2</sup> Commission Business meeting May18th RT 5-18 Page 152

<sup>3</sup> “The 7,280 square feet of occupied structure would create approximately \$2,621 in impact fees. Condition of Certification **SOCIO-1** is proposed to ensure payment of fees to these districts.” Commission Final Decision Page 4

10 that they asked for. That check is working its way through  
11 our accounting department right now and I'll send that out  
12 next week.<sup>4</sup>

As this was discussed at the PMPD conference I expected the decision to provide a true and correct accounting of the school impact fee. The errata was provided to the parties on the afternoon of May 17<sup>th</sup> allowing insufficient time for the parties to investigate possible errors. This is why the errata to CEC Decisions should be provided with adequate time for the parties to review. This common practice of issuing errata hours before a full commission hearing is inadequate and a prejudicial abuse of discretion. Now since none of the parties caught the error The record needs to be reopened to reflect that the applicant is paying only \$276 in school impact fees.

### Project Description

Finding of Fact 8 States that, “*The project will operate on average, 600 hours per year, but if licensed, could run up to 4,000 hours.*” The evidence in the record is that Mariposa Project can operate up to 4,200 hours per year.<sup>5</sup> The decision needs to be changed to reflect the record evidence.

### Air Quality

Finding of Fact Number 6 States, “The District is classified as non-attainment for the state 1-hour and federal 8- hour ozone standards, the state PM10, standards and the state and federal PM2.5 standards. The District meets applicable standards for all other criteria pollutants.” The BAAQMD is not classified non-attainment for the Federal Annual PM 2.5 standard only the Federal 24 Hour PM 2.5 Standard.

### Land Use

The PMPD errata on page 18 states, “*Intervenor, Robert Sarvey commented that the Committee must “override the County’s Agricultural Preserves Objectives, Uniform Rules and Procedure Section,” based on his opinion that the Uniform Rules only permit electrical facilities “accessory to other permitted uses” as a compatible use (Sarvey PMPD Comments, p. 4). However, Mr. Sarvey overlooks the fact that Government Code section 51201(e) provides that compatible uses are defined in either local rules or by the Williamson Act itself. In this case, the Williamson Act expressly recognizes electric facilities as a compatible use, and the evidentiary record establishes that Alameda*

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<sup>4</sup> PMPD Conference RT 5-5-11 Page 42

<sup>5</sup> The MEP facility would be permitted to operate up to 4,000 hours per year plus 300 startup and shutdown cycles. Exhibit 301 Page 4.1-16, The operating assumptions include each CTG firing up to 4,225 hours annually, which allows for about 300 startup events. Exhibit 301 Page 4.1-20, “The total hours of operation allowed for all four turbines combined will be 16,900.” Exhibit 302 Page 14,

*County has never made a finding to the contrary. (Cal. Gov. Code § 51238; 2/24/11 RT 150:4 – 152:22). Additionally, the Uniform Rules cited by Mr. Sarvey expressly recognize that compatible uses are defined by both the Williamson Act and the Alameda County Rules itself. (Alameda County Agricultural Preserves, Objectives, Uniform Rules and Procedures, II(C)(3)(h)).*

The record is quite clear that Alameda County has not once but twice held a public hearing and limited the uses on the MEP property. Exhibit Number 12, Appendix DR1-1<sup>6</sup>, contains a copy of the existing Williamson Act Contract that runs with the property. Page 3<sup>7</sup> 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.*”<sup>8</sup> The MEP is not a co-generation/waste water distillation facility and it is not Grazing, breeding or training of Horses or cattle hence the MEP is not compatible with the existing Williamson Act contact C-89-1195. The county held a public hearing where it passed resolution R-89-947 limiting uses on the MEP property.

Secondly the Alameda County Agricultural Preserves Objectives, Uniform Rules and Procedures (Williamson Act) Section (C) (3) (g) provides the restrictions on the use of Williamson Act Property, “While under contract property may be used only for producing agricultural commodities for commercial purposes, and compatible uses as listed below.” Section C (3) (g) (23) allows for the construction, alteration or maintenance of gas, electricity, water, communication, radio, television, or microwave transmitters and related facilities as **accessory to the other permitted uses.**<sup>9</sup> The MEP is not an accessory to other permitted uses.

The final decision quoted above states that, “*Uniform Rules cited by Mr. Sarvey expressly recognize that compatible uses are defined by both the Williamson Act and the Alameda County Rules itself. (Alameda County Agricultural Preserves, Objectives, Uniform Rules and Procedures, II(C)(3)(h)).*” Section II (C) (3) (h) does not support that conclusion. Agricultural Preserves, Objectives, Uniform Rules and Procedures, II(C)(3)(h) States, “*The authorization of “Agricultural and Compatible Uses” as contained in these rules , the California Land Conservation Act of 1965, or contracts as provided in said Act, is not intended to modify or take the place of any restrictions imposed by any zoning ordinance.*”<sup>10</sup> This section of Alameda County’s LORS does not

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<sup>6</sup> Land Conservation Contract C-89-1195 and Board of Supervisors Resolution R-89-947

<sup>7</sup> Exhibit 12 Page 11 of 77

<sup>8</sup> Exhibit 12 Page 19 of 77

<sup>9</sup> Alameda County’s Agricultural Preserves Objectives Uniform Rules and Procedures.

[http://www.acgov.org/cda/planning/landuseprojects/documents/Uniform\\_Rules-AgPres\\_051491.pdf](http://www.acgov.org/cda/planning/landuseprojects/documents/Uniform_Rules-AgPres_051491.pdf) Page 11,12

<sup>10</sup> Alameda County Agricultural Preserves, Objectives, Uniform Rules and Procedures, II(C)(3)(h)

[http://www.acgov.org/cda/planning/landuseprojects/documents/Uniform\\_Rules-AgPres.pdf](http://www.acgov.org/cda/planning/landuseprojects/documents/Uniform_Rules-AgPres.pdf)

support the compliance with the Williamson Act suggested by the PMPD and the PMPD contains an error of law that is fatal to the Decision.

### Demographics

The decision states that, “*As to the census data concern, the guidelines require the most recent census data to be relied upon in an EJ analysis. Unfortunately in this case, since this case came up in 2009, the most recent census was 2000. Before the inception of the Mountain House Community which came into being at 2003.*”<sup>11</sup> The correct data obtained from the California State Department of finance demographics unit is included in Attachment A. The correct demographics provide the basis for an accurate assessment of the projects impacts for both minority populations and other sensitive receptors. The 2000 data is unreliable and omits the location of sensitive receptors and minority populations. The correct demographics are necessary to determine whether in fact the projects impacts are significant. Without the location of sensitive receptors and minority groups the impacts of the project cannot be assessed. The decision needs to be reopened to provide the correct demographics for the project.

### Conclusion

The decisions numerous errors need to be corrected. The significant impacts to residents near the project area due to the destruction of Bruns Road, which occurred after the close of the record, needs to be addressed before the start of construction. The impacts of the project have not been properly addressed since the Staff failed to provide the proper demographics which provide the location of current sensitive receptors and minority populations. The projects impacts must be reanalyzed in conjunction with proper demographics to make the determination that the project has no significant impacts. The Final Decision commits a clear legal error in ignoring record evidence and current law which forbids the siting of the MEP on the Williamson Act Parcel proposed as the site for the MEP.

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<sup>11</sup> Commission business Meeting RT 5-18-11 Page 161

## **DECLARATION OF SERVICE**

I, Robert Sarvey declare that on June 17, 2011 I served and filed copies of the attached Mariposa Energy Project (MEP) (09-AFC-3) Request for Reconsideration of Intervenor Sarvey. 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**

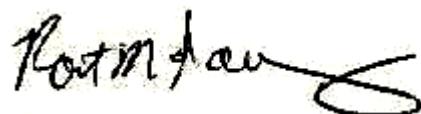
Attn: Docket No. 09-AFC-3

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.



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Robert Sarvey 6-17-11

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**Proposed Power Plant- 6 Mile Radius  
Census 2010 Blocks**

Source: 2010 PL-94 TIGER Files. Map Prepared by DRU, California Department of Finance

2010 Census Redistricting Data Summary File

Blocks within a six-mile radius of Lat: 37.7862432069066 and Long: -121.800752501495







06	077	49582	005206	3	3062	70	7	13	6	0	31	0	0	13	23	19	4 060770052063062
06	077	49582	005206	3	3063	37	2	4	2	0	28	0	0	1	13	12	0 060770052063063
06	077	49582	005206	3	3064	98	19	24	9	0	45	0	0	1	27	27	0 060770052063064
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