



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**

**DRAFT**  
**ERRATA TO THE PRESIDING MEMBER'S PROPOSED DECISION**

After reviewing the comments submitted by the parties on or before May 13, 2010, we incorporate the following changes to the April 13, 2011 Presiding Member's Proposed Decision (PMPD):

**FACILITY DESIGN**

**APPLICANT PROPOSES:**

1. **Page 1, 1<sup>st</sup> paragraph, first sentence, change to read as follows:**

The broad engineering assessment of the Mariposa Energy ~~Plant~~ Project consists of separate analyses that examine its facility design, engineering efficiency, and reliability aspects.

ACCEPTED	REJECTED	MODIFIED

**POWER PLANT RELIABILITY**

**STAFF PROPOSES:**

2. **Page 5, Item 4, change to read as follows:**

4. An availability factor of ~~23~~ **92** to 98 percent is achievable by the MEP.

ACCEPTED	REJECTED	MODIFIED

## **TRANSMISSION LINE SAFETY AND NUISIANCE**

### **APPLICANT PROPOSES:**

#### **3. Page 6, Verification for Condition TLSN-1, change to read as follows:**

**Verification:** At least 30 days before starting the ~~upgrade~~construction of the transmission line or related structures and facilities, the project owner shall submit to the Compliance Project Manager (CPM) a letter signed by a California registered electrical engineer affirming that the lines will be constructed according to the requirements stated in the condition.

ACCEPTED	REJECTED	MODIFIED

### **APPLICANT PROPOSES:**

#### **4. Page 6, Condition TLSN-3 and Verification, change to read as follows:**

**TLSN-3** The project owner shall ensure that the rights-of-way of the proposed transmission lines ~~are~~is kept free of combustible material, as required under the provisions of section 4292 of the Public Resources Code and section 1250 of Title 14 of the California Code of Regulations.

**Verification:** During the first 5 years of plant operation, the project owner shall provide a summary of inspection results and any fire prevention activities carried out along the right-of-way of ~~each~~the line and provide such summaries in the Annual Compliance Report.

ACCEPTED	REJECTED	MODIFIED

### **APPLICANT PROPOSES:**

#### **5. Page 7, Condition TLSN-4 and Verification, change to read as follows:**

**TLSN-4** The project owner shall ensure that all permanent metallic objects within the right-of-way of ~~each of the two~~project-related lines ~~are~~is grounded according to industry standards.

**Verification:** At least 30 days before the lines isare energized, the project owner shall transmit to the CPM a letter confirming compliance with this condition.

ACCEPTED	REJECTED	MODIFIED

## **GREEN HOUSE GAS EMISSIONS**

### **STAFF PROPOSES:**

**6. Pages 7-8, change to read as follows:**

As noted above, the CEQA Guidelines do not specify any threshold of significance for the emission of GHGs during project construction. In Avenal, we observed that draft guidance from CARB staff recommends a “best practices” performance standard for construction emissions of industrial projects, because construction emissions tend to be much smaller than operational emissions. [~~See CARB, Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act (Oct. 24, 2008), p. 9 [www.opr.ca.gov/ceqa/pdfs/ Prelim\_Draft\_Staff\_Proposal\_10-24-08.pdf].~~ Last year, the Bay Area Air Quality Management District (BAAQMD) adopted Air Quality Guidelines which treat GHG emissions from construction in a manner similar to the CARB’s Preliminary Draft Staff Proposal. The Guidelines do not specify a threshold of significance for construction-related GHG emissions, but encourage lead agencies “to incorporate best management practices to reduce GHG emissions during construction, as applicable. Best management practices may include, but are not limited to: using alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment of at least 15 percent of the fleet; using local building materials of at least 10 percent; and recycling or reusing at least 50 percent of construction waste or demolition materials.” (See BAAQMD, California Environmental Quality Act Air Quality Guidelines, p. 81 approved June 2, 2010 [www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines\_December%202010.ashx]).

~~The South Coast Air Quality Management District (SCAQMD) approved a different approach to significance of GHG impacts at its December 5, 2008 Board Meeting. Rather than set a threshold for operational emissions, construction emissions are amortized over the life of a project and considered in combination with operational emissions. [See Proposal to Adopt Interim CEQA GHG Significance Threshold for Stationary Sources, www.aqmd.gov/hb/w008/December/081231a.htm].<sup>4</sup> Applying the SCAQMD approach to MEP, GHG emission from construction of MEP, amortized annually over the life of a project, would be 65 MTCO<sub>2</sub>e tons per year, a tiny fraction of a percent of estimated annual emissions from operation.~~

~~Nevertheless, we support the application of a performance standard as recommended by CARB, adopted by BAAQMD, and applied in Avenal, which will minimize GHG~~

~~construction emissions.~~ We find this approach to be consistent with the CEQA Guidelines which permit reliance on performance-based standards. (14 Cal. Code Regs. §15064.4(a)(2)).

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**7. Findings of Fact, Page 18, change to read as follows:**

When it operates, the Mariposa Energy Project will displace generation from less-efficient (i.e., higher-heat-rate and therefore higher-GHG-emitting) power plants in the San Joaquin Valley Greater Bay Area.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**8. Conclusions of Law, Page 20, change to read as follows:**

12. Any new natural-gas-fired power plant that we certify must:
- a) not increase the overall system heat rate for natural gas plants;
  - b) not interfere with generation from existing renewables or with the integration of new renewable generation; and
  - c) have the ability to reduce system-wide GHG emissions.

**We find that MEP is consistent with and meets these requirements.**

ACCEPTED	REJECTED	MODIFIED

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**AIR QUALITY**

**APPLICANT PROPOSES:**

9. **Page 6, first paragraph, change to read as follows:**

(Note: Table 4 presents the construction phase maximum ground-level impacts.)

“Estimates for the highest ~~short-term daily emissions~~ and total annual impacts ~~emissions~~ over the 14-month construction period are shown in Air Quality Table 4.”

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

10. **Page 19, first full paragraph, change to read as follows:**

Mr. Sarvey criticized the mitigation agreement that the Applicant entered into with SJVAPCD (Sarvey Op. Brief, p. 9). Staff acknowledged that the project’s PM emissions could cause **an impact because they will** ~~or~~ contribute to a violation, due in part to the fact that BAAQMD exempts projects with lower emissions, such as the MEP, from offset requirements.

ACCEPTED	REJECTED	MODIFIED

**APPLICANT PROPOSES:**

11. **Page 47, AQ-26 verification, change to read as follows:**

**APPLICANT PROPOSES:**

**Verification:** The results and field data collected during source tests shall be submitted to the District and CPM within 60 days of testing and according to a pre-approved protocol (**AQ-27**). Testing for steady-state emissions shall be conducted upon initial operation and at least once every 12 months. f1

ACCEPTED	REJECTED	MODIFIED

## **HAZARDOUS MATERIALS MANAGEMENT**

### **APPLICANT PROPOSES:**

**12. Page 18, Condition HAZ-2 and Verification, change to read as follows:**

**HAZ-2** The project owner shall concurrently provide an ~~updated~~ Business Plan, an ~~updated~~ Spill Prevention, Control, and Countermeasure Plan (SPCC), and an ~~updated~~ Risk Management Plan (RMP) prepared pursuant to the California Accidental Release Program (CalARP) to the Alameda County Department of Environmental Health (ACDEH) and the CPM for review. After receiving comments from the ACDEH and the CPM, the project owner shall reflect all recommendations in the final documents. Copies of the final ~~updated~~ Business Plan, ~~updated~~ SPCC Plan, and ~~updated~~ RMP shall then be provided to the ACDEH and the Alameda County Fire Department (ACFD) for information and to the CPM for approval.

**Verification:** At least 30 days prior to receiving any hazardous material on the site for commissioning or operations, the project owner shall provide a copy of a final ~~updated~~ Business Plan and ~~updated~~ SPCC Plan to the CPM for approval. At least thirty (30) days prior to delivery of aqueous ammonia to the site, the project owner shall provide the final ~~updated~~ RMP to the ACDEH and the ACFD for information and to the CPM for approval.

ACCEPTED	REJECTED	MODIFIED

### **APPLICANT PROPOSES:**

**13. Pages 19 and 20, Condition HAZ-7, change to read as follows:**

**HAZ-7** The project owner shall also ~~revise the existing~~ or prepare a new site-specific security plan for the commissioning and operational phases that will be available to the CPM for review and approval. The project owner shall implement site security measures that address physical site security and hazardous materials storage. The level of security to be implemented shall not be less than that described below (as per NERC 2002).

The Operation Security Plan shall include the following:

4. B. a statement(s) (refer to sample, Attachment B), signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner), that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the

CPM after consultation with the project owner) certifying that background investigations have been conducted on contractors who visit the project site. Background investigations shall be restricted to determine the accuracy of employee identity and employment history and shall be conducted in accordance with state and federal laws regarding security and privacy.

ACCEPTED	REJECTED	MODIFIED

DRAFT

**APPLICANT PROPOSES:**

14. Page 22, Hazardous Materials Attachment A, change to read as follows:

**Attachment A  
Hazardous Materials  
Proposed for Use at the Mariposa Energy Project\***

Chemical	Use	Quantity	Storage Location (GA Location Code)	State
Aqueous Ammonia (19% NH3 by weight)	Control oxides of nitrogen (NOx) emissions through selective catalytic reduction	8,500 gallons	Onsite storage tanks with secondary containment (38)	Liquid
R 134A (1-1-1-2-Tetrafluoroethane)	Refrigerant in the inlet air chiller system	<del>110,000</del> 26,960 pounds	Inlet air chiller system (21)	Liquid
Cleaning chemicals/detergents	Periodic cleaning of combustion turbines	Varies (less than 300 25 gallons liquids or 100 pounds solids for each chemical)	Chemical storage tote or drums at a protected temporary storage location onsite (40)	Liquid
Diesel No. 2	Fuel back-up fire pump	200 gallons	Permanent onsite storage in above ground storage tank with secondary containment (32)	Liquid
Hydraulic oil	High-pressure combustion turbine starting system, turbine control valve actuators	<del>270</del> 450 gallons	Onsite 55-gallon drums (9), <u>160 gals in CT tanks</u>	Liquid
Laboratory reagents	Water/wastewater laboratory analysis	Varies (less than 5 gallons liquids or 10 pounds solids for each chemical)	Laboratory chemical storage cabinets (stored in original chemical storage containers/bags) (43)	Liquid and granular solid
Lubrication oil	Lubricate rotating equipment (e.g., gas turbine and steam turbine bearings)	<del>3,240</del> 400 gallons	Onsite 55-gallon drums, <del>and</del> 200-gallon waste oil storage tank (5), <u>and 2600 gallons in CT/ Gen tanks</u>	Liquid
Mineral insulating oil	Transformers/switchyard	<del>28,800</del> <u>36,000</u> gallons	Inside the transformers; no mineral actually stored on site (18)	Liquid
Sodium carbonate	Alkalinity source for nitrification reactor	200 pounds	Dry storage area	Solid Powder



Sodium hypochlorite (12.5 % solution)	Biocide/biofilm control for potable, fire, and service water systems	500 gallons	Water treatment chemical feed storage (40)	Liquid
Acetylene	Welding gas	185 pounds	Maintenance / warehouse building (40)	Gas
Oxygen	Welding gas	250 pounds	Maintenance / warehouse building (40)	Gas
Propane	Torch gas	300 pounds	Maintenance /warehouse building (40)	Gas
EPA protocol gases	Calibration gases	<del>25</del> 24 pounds	CEMS enclosures (2), Maintenance/Warehouse (40)	Gas
Cleaning chemicals	Cleaning	Varies (less than 25 gallons liquids or 100 pounds solids for each chemical)	Admin/control building, maintenance/warehouse building (40)	Liquid or solid
Paint	Touchup of painted surfaces	Varies (less than 25 gallons liquids or 100 pounds solids for each type)	Maintenance /warehouse building (40)	Liquid

ACCEPTED	REJECTED	MODIFIED

**BIOLOGICAL RESOURCES**

**APPLICANT PROPOSES:**

15. **Page 3, first paragraph, last sentence, change to read as follows:**

Construction and laydown areas will be located in an existing maintenance yard at the Byron Bethany Bay Irrigation District (BBID) headquarters and in annual grassland immediately adjacent to the MEP site.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

16. Page 12, Paragraph 2, change to read as follows:

Further, Conditions of Certification **BIO-17** (Waters and Wetlands Impact Avoidance and Minimization Measures) and **BIO-18** (Revegetation and Restoration Plan) establish measures to avoid and minimize impacts to the remaining wetlands and waters. These conditions include measures to protect waterways from pollutants including sediment, establish buffer zones, and install erosion control, as well as measures directing revegetation, topsoil storage and use. ~~Indirect impacts, such as impacts from noise, lighting, and traffic could occur but are mitigated with the implementation of~~ **Conditions of Certification BIO-7**. Implementation of Conditions of Certification **BIO-7**, **BIO-9**, **BIO-16**, **BIO-17**, and **BIO-18** reduce impacts to these resources below a level of significance. The USACE must issue a permit for impacts to waters of the United States from this project before the MEP can be constructed. (Ex. 301, p. 4.2-33.)

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

17. Page 20, paragraph 1, change to read as follows:

**Swainson's Hawk (State Threatened)**

MEP grasslands provide Swainson's hawk foraging habitat, and construction of the project will result in the permanent loss of approximately 10.1 acres, and long-term loss of ~~12.1~~ **9.2** acres of this habitat. In addition, certain construction activities within 1/2 mile of an active nest during the breeding season (March 1 - September 15) could cause nest abandonment or forced fledging. Mitigation ratios suggested by CDFG to address foraging habitat loss are outlined in the *Staff Report regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California* (CDFG 1994):

ACCEPTED	REJECTED	MODIFIED

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**STAFF PROPOSES:**

18. Page 29, Table 2, change to read as follows:

**Biological Resources Table 2  
Compliance with Federal, State, and Local LORS**

<b>Applicable LORS</b>	<b>In Compliance</b>	<b>Discussion</b>
<b>Federal</b>		
Section 404 of the Clean Water Act of 1977 (33 USC 1344)	<b><u>Yes</u> Undetermined</b>	Discharge of dredged or fill material into the waters of the United States requires a permit from the U.S. Army Corps of Engineers (USACE). The applicant has completed a wetland delineation report and amendment, and has received a preliminary jurisdictional determination from the USACE Sacramento District. The USACE is currently drafting the CWA 404 authorization to construct the project under Nationwide Permit #12, but the permit cannot be issued to Mariposa Energy until Section 7 ESA consultation is finished (i.e., Biological Opinion sent to the USACE).
Section 401 of the Clean Water Act of 1977 (33 USC 1341)	<b><u>Yes</u> Undetermined</b>	Any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States must obtain a certification from the State in which the discharge originates or would originate, that the discharge would comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility. The applicant has submitted a Section 401 Water Quality Certification Application to the California Regional Water Quality Control Board (CRWQCB) Central Valley Region, and will also submit a memo outlining changes to the original application. Certification from the CRWQCB is pending.

<p>Endangered Species Act (Title 16, United States Code, sections 1531 et seq.; Title 50, Code of Federal Regulations, part 17.1 et seq.)</p>	<p><b><u>Yes</u> Undetermined</b></p>	<p>Potential take of California tiger salamander, California red-legged frog, San Joaquin kit fox, and branchiopods (federally-listed species), requires compliance with the federal Endangered Species Act (ESA). “Take” of a federally-listed species is prohibited without an Incidental Take Statement, which would be obtained through a Section 7 consultation between the USACE and USFWS. The applicant has submitted a Biological Assessment and updates for the project to the USFWS, and the USFWS is currently reviewing this information.</p>
<p>Eagle Act (Title 50, Code of Federal Regulations, sections 22.26 and 22.27) and Bald and Golden Eagle Protection Act (Title 16, United States Code section 668)</p>	<p>Yes</p>	<p>Condition of Certification <b>BIO-16</b> requires protection of compensation habitat for California tiger salamander, California red-legged frog, San Joaquin kit fox, western burrowing owl, and other special-status species. Habitat preserved for these species would also serve as golden eagle foraging habitat.</p>
<p>Migratory Bird Treaty Act (Title 16, United States Code, sections 703–711)</p>	<p>Yes</p>	<p>Condition of Certification <b>BIO-8</b> provides for pre-construction nest surveys, protective buffers, and monitoring if nests are found, and Condition of Certification <b>BIO-7</b> limits off-site disturbance.</p>
<p>Executive Order 11312</p>	<p>Yes</p>	<p>Conditions of certification <b>BIO-7</b> and <b>BIO-18</b> limit species used in revegetation, and also call for a revegetation plan for disturbed areas.</p>

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

19. Page 33, #24, change to read as follows:

Condition of Certification **BIO-16** will ensure ~~reduce~~ impacts to the Golden Eagle from construction and operation of the MEP below the level of significance.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

20. Page 40, **BIO-06 (a)**:

**BIO-6** The project owner shall develop a BRMIMP and submit two copies of the proposed BRMIMP to the CDFG and USFWS for review and comment and the CPM for approval and shall implement the measures identified in the approved BRMIMP.

The BRMIMP shall be prepared in consultation with the Designated Biologist and shall identify:

- a. All biological resource mitigation, monitoring, and compliance measures proposed and agreed to by the project owner;
- ~~b. All applicant-proposed mitigation measures presented in the Application For Certification, data responses, and workshop responses;~~

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

21. Page 47, **BIO-10 #1 (d) iii**, change to read as follows:

Before the start of linear work each morning, the designated biologist or biological monitor shall check for CRLF and CTS under any equipment such as vehicles and stored pipes. The biological monitor shall check all excavated steep-walled holes or trenches greater than 6 inches each morning before sunrise for any CRLF and CTS. CRLF and CTS shall be removed by the Designated Biologist or Biological Monitor and relocated to the USFWS and **CPM CDFG**-approved relocation site. All excavated holes or trenches located outside the MEP site shall be ramped at the end of the work day, or escape boards will be placed in the trench to allow the animals to escape.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**22. Page 47, BIO-10 #1 (i), change to read as follows:**

- i. Bruns Road and Access Road Monitoring:
  - i. During wet-season construction (~~October through April mid-November through October~~, though earlier or later if conditions are wet and CTS are observed) if there will be large volumes of construction traffic (25 vehicles or more) scheduled to arrive or depart after dusk or before dawn. CTS moving between breeding sites and burrows shall be protected by one of these methods:

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**23. Page 49, BIO-10 Verification, change to read as follows:**

**Verification:** No less than 30 days prior to the start of any project-related ground disturbance, the project owner shall provide a final Management Plan to the CPM, CDFG, and USFWS. The final, approved Management Plan shall be incorporated into the BRMIMP within 10 days of completion of the plan, and implemented. ~~No less than 10 days p~~prior to the start of any ground disturbing activities or construction equipment staging, the project owner shall provide the CPM a letter-report describing the findings of the pre-construction surveys, including the time, date, and duration of the survey; identity and qualifications of the surveyor(s); and a list of species observed, number of CTS and CRLF observed and moved, and location to which they were moved. The project owner shall report monthly to the CPM, CDFG and USFWS for the duration of construction on the implementation of CTS and CRLF avoidance and minimization measures. Within 30 days after completion of construction the project owner shall provide to the CDFG and CPM a written construction termination report identifying how mitigation measures described in the plan have been completed.

Within 60 days of completion of the permanent power plant site fence, the project owner shall submit a figure and photographs to the CPM, CDFG, and USFWS of the CTS and CRLF barrier fence.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**24. Page 66, BIO-16 Verification, change to read as follows:**

*If the project owner chooses to mitigate under **Section A** of this Condition:*

Agreements to delegate land acquisition to an approved third party shall be implemented within 6 months of the start of project ground-disturbing activities. If the project owner elects to delegate land acquisition prior to project construction, the project owner shall provide to the CPM, CDFG, and USFWS a delegation proposal that identifies the third party and includes their qualifications to complete land acquisition and initial protection and improvement, and shall obtain approval from the CPM, CDFG, and USFWS, prior to delegation or transfer of funds. The project owner shall remain responsible for demonstrating compliance with the timelines and requirements described below.

No less than 90 days prior to acquisition of the property, the project owner shall submit a formal acquisition proposal to the CPM, CDFG, USFWS, describing the parcels intended for purchase and shall obtain approval from the CPM, CDFG, and USFWS prior to the acquisition.

The project owner, or an approved third party, shall complete and provide written verification to the CPM, CDFG, and USFWS of the compensation lands acquisition and transfer within 18 months of the start of project ground-disturbing activities, or prior to commercial operation, whichever occurs first.

The project owner, or an approved third party, shall provide the CPM, CDFG, and USFWS with a Compensation Lands Management Plan, for approval, within 180 days of the land or easement purchase, as determined by the date on the title. If additional long-term management fees are required, these fees shall be paid by the project owner no more than 90 days from approval of the Management Plan.

~~**Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM, CDFG, and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during project construction. This shall be the basis for the final number of acres required to be acquired.**~~

*If the project owner chooses to mitigate under **Section B** of this Condition:*

No less than 90 days prior to purchase of credits, the project owner shall submit to the CPM and CDFG for review and approval, and the USFWS for review and comment, the proposed conservation bank(s), species to be mitigated at the bank, and evidence that credits are available for purchase.

The project owner shall complete and provide written verification to the CPM, CDFG, and USFWS of the credit purchase within 18 months of the start of project ground-disturbing activities, or prior to commercial operation, whichever occurs first. The verification shall be a letter from the conservation bank, or other method approved by the CPM and CDFG, in consultation with the USFWS, and shall include the name of the



conservation bank, number of credits purchased, and the species covered under the purchase.

**Under either Section A or B of this Condition:**

**Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM, CDFG, and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during project construction. This shall be the basis for the final number of acres required to be acquired.**

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**25. Page 68, BIO-17, paragraph 2, Verification, change to read as follows:**

If bentonite will be used, an Emergency Spill Response Plan, “Frac out” Monitoring Plan, and a Biological Monitoring Plan shall be submitted to the CDFG for review and comment and to the CPM for approval no less than 30 days prior to the start of project ground-disturbing activities **involving bentonite**. Plan approval shall be required before construction using bentonite may commence.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**26. Page 68, BIO-18 Verification, change to read as follows:**

~~If an occupied nest is detected within 2 miles of the project boundary during the inventory, no less than 30 days prior to the start of any pre-construction site mobilization the project owner shall provide the CPM, CDFG, and USFWS with the final version of the Golden Eagle Monitoring and Management Plan. This final Plan shall have been reviewed and approved by the CPM in consultation with USFWS MBO. Plans measures shall be incorporated into the BRMIMP within 10 days of completion of the Plan, and implemented.~~

ACCEPTED	REJECTED	MODIFIED



**LAND USE**

**STAFF PROPOSES:**

**27. Page 6, third paragraph, change to read as follows:**

Two BBID properties are the only lands the project would directly use that are classified as Farmland **of Local Significance**.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**28. Page 8, third paragraph, change to read as follows:**

The project’s pump station would be located near an existing, similar pumping structure on **BBIP BBID** land. The pump station would be a permanent structure that would convert the underlying farmland to non-agricultural use. However, the station’s footprint would be approximately 250 square feet. The **BBIP BBID** lands are designated “Farmland of Local Importance”. Staff analysis concluded that the conversion of 250 square feet of “Farmland of Local Importance” to the non-agricultural use of a pump station on a 23-acre property would not be a-substantial **and would be a less than significant** impact. (Ex. 301, p. 4.12-11.) The turnout structure for the pumping station would be located along the inside bank of canal 45. Apart from the insubstantial conversion of Farmland **of Local Importance** resulting from the pump station and turnout structure, there are no other project components which cause the conversion of additional farmland to non-agricultural use. (*Id.*)

ACCEPTED	REJECTED	MODIFIED

**APPLICANT PROPOSES:**

**29. Page 8, third paragraph, first sentence, change to read as follows:**

The project’s pump station would be located near an existing, similar pumping structure on **BBIPD** land.

ACCEPTED	REJECTED	MODIFIED

**APPLICANT PROPOSES:**

30. Page 8, third paragraph, third sentence, change to read as follows:

The BBIPD lands are designated “Farmland of Local Importance”.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

31. Page 14, first paragraph, change to read as follows:

Condition of Certification LAND-2 is designed to ensure that the existing livestock water supply is maintained on a year-round basis. **Condition of Certification LAND-3 would require reseeding the construction laydown area with an improved seed mix over current site conditions.** (Id. p. 4.12-18.)

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

32. Page 15, footnote 18, change to read as follows:

<sup>18</sup> Conditions of Certification **TLSN-1** through **TLSN-4**, **HAZ-1** through **HAZ-7**, and **WORKER SAFETY-1** through **WORKER SAFETY-5** and **VIS-5**.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

33. Page 16, second paragraph, change to read as follows:

The Contra Costa County General Plan expresses the broad goals, policies, and specific implementation measures which guide the decisions on development, future growth, and the conservation of resources through 2020. Approximately 0.7 miles of the MEP’s water supply pipeline will be located in Contra Costa County. In addition, a temporary pipeline construction laydown and parking area would support pipeline construction. BBID would construct the water supply infrastructure. Staff concluded that **the pipeline construction laydown area because BBID is a public entity, the project** would be consistent with the **PS (Public/Semi-Public) land use designation** ~~Contra Costa General Plan~~ because the area would be used by a construction team

affiliated with a public entity (**BBID**). **Staff concluded the water supply pipeline would be consistent with the AL (Agricultural Lands) land use designation because the loss of agricultural land would not be substantial (250 square feet) and the loss would be at the northern margin of the property. Also, Condition of Certification LAND-1 would ensure no additional loss of agricultural land would occur.** (Ex. 301, p. 4.12-28.) Staff also presented analysis showing MEP’s consistency with four specific policies in the Contra Costa County General Plan.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**34. Page 17, last paragraph, change to read as follows:**

However, the evidence is clear that MEP complies with height requirements within Alameda County and that FAA jurisdiction over the Byron airport preempts most local airport policies. (2/24/11 RT 52-53.) Commission staff also made clear that they gave consideration to the Contra Costa County ALUC’s letter **but did not detect anything in the letter pertaining to land use compatibility and the policies in the ALUCP. Alameda County assessed the project’s compatibility with each applicable ALUCP policy in their September 2010 letter. Staff reported and considered this information in the Land Use SSA. (Ex. 301 pp.4.12-30.) Nevertheless, Staff placed more reliance on the land use determinations of Alameda County, since the MEP site is located in Alameda County jurisdiction. The Contra Costa County ALUC letter identified potential project impacts from plumes on aircraft operations and pilot safety which were analyzed in the Traffic and Transportation section of the SSA. (2/24/11 RT 202-206.)**

ACCEPTED	REJECTED	MODIFIED

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**STAFF PROPOSES:**

**35. Page 19, LAND USE Table 2, change to read as follows:**

Applicable LORS	Consistency Determination	Basis for Determination
<b>State</b>		
<u>California Land Conservation Act of 1965</u> (Williamson Act) (Gov. Code §51238.1(a) )	Yes, as conditioned	Staff agrees with Alameda County and the DOC that the MEP would be consistent with the three principles of compatibility identified in GC § 51238.1(a) of the California Land Conservation Act (CLCA). Staff has concluded the MEP is compatible with the CLCA with the inclusion of the proposed Conditions of Certification <b>LAND-2 and LAND-3.</b>
<b>Local</b>		
<u>East County Area Plan</u> (ECAP) (general plan)		
Land Use Designation:		
Large Parcel Agriculture	Yes, as conditioned	The ECAP does not preclude the construction of power plants on land of such designation and the project would be consistent with the specifications of the Large Parcel Agriculture land use designation. The proposed Conditions of Certification <b>LAND-2 and LAND-3</b> would meet the county's mitigation requirement for loss of land in agricultural production.

**STAFF PROPOSES:**

**36. Page 20, LAND USE Table 2 continued, change to read as follows:**

Public Services and Facilities- -General Services and Facilities; Infrastructure and Services		
<i>Policy 218</i>	Yes, as conditioned	The project would be consistent with the ECAP land use designation for the project site with the inclusion of Conditions of Certification <b>LAND-2 and LAND-3</b> would be consistent with applicable policies, the project is appropriately located in proximity to other electrical infrastructure, and the project is more than 0.25 mile from sensitive receptors and residences.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**37. Page 25, second paragraph, change to read as follows:**

MEP would not significantly contribute to cumulative land use impacts because: (1) It would not physically divide an existing community; (2) MEP would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction **with the inclusion of the proposed Conditions of Certification**; (3) The project would not conflict with the Bethany Reservoir State Recreation Management Plan and General Development Plan and (4) MEP would not be subject to the East Contra Costa County HCP/NCCP because those portions of the MEP which are located within the plan area are on land where the habitat is not sensitive.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**38. Page 28, item 9, change to read as follows:**

9. Local land use ordinances and policies applicable to the MEP include the California Land Conservation Act of 1965 (Williamson Act), the East County Area Plan (ECAP), **and** Alameda County Ordinance Code (Title 17: Zoning), **Contra Costa County General Plan, and Contra Costa County Airport Compatibility Land Use Plan.**

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**39. Page 29, items 12 and 13, change to read as follows:**

12. With the implementation of Conditions of Certification **LAND-2 and LAND-3**, the MEP will be consistent with the three principles of compatibility identified in Government Code section 51238.1(a) of the California Land Conservation Act (CLCA).

- 13. With implementation of Conditions of Certification **LAND-2 and LAND-3**, MEP will comply with the ECAP designation for Large Parcel Agriculture and would meet the county’s mitigation requirement for loss of land in agricultural production. The ECAP does not preclude the construction of power plants on land designed for Large Parcel Agriculture.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

40. Page 30, Items 21, 28 and 29, change to read as follows:

- 21. With implementation of Conditions of Certification **LAND-2 and LAND-3**, the MEP will comply with ECAP Policy 128 (Infrastructure and Services) since it is located in proximity to other electrical infrastructure and is located more than 0.25 mile from sensitive receptors.
- 28. The MEP will comply with applicable provisions of the Contra Costa County General Plan **AL (Agricultural Lands) land use designation concerning agricultural lands** because the minor ~~(250 square feet)~~ loss of agricultural production land associated with the project’s pumping station **would not be substantial (250 square feet) and the loss would be at the northern margin of the property**. Furthermore Condition of Certification **LAND-1** will ensure no additional agricultural land is lost through conversion to urban use and will ensure that the project’s pipeline construction is in accordance with BBID requirements.
- 29. The MEP will comply with Contra Costa County General Plan PS ~~element~~ (Public/ Semi-Public) **land use designation** since the construction area will be used by ~~BBIC~~**BBID**, a public entity.

ACCEPTED	REJECTED	MODIFIED

**TRAFFIC AND TRANSPORTATION**

**STAFF PROPOSES:**

41. Page 1, Paragraph 1, 3<sup>rd</sup> Sentence, change to read as follows:

However, **during** plant operation, traffic impacts tend to be minimal due to the limited number of vehicles involved; still, an increase in hazardous materials delivery to the

area is expected. Any transport of hazardous materials must comply with federal and state laws.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**42. Page 2, Summary and Discussion of Evidence, Paragraph 1, change to read as follows:**

The evidence of record is undisputed regarding the potential impacts of the MEP on all transportation except the Byron Airport which is located in Contra Costa County, slightly less than 3 miles northwest of the site.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**43. Page 3, Paragraph 2, change to read as follows:**

Major access roads located near the MEP may be impacted by ~~construction and operation of the traffic~~ related to construction and operation of the project. These include: Interstate 205 (I-205), ~~which is~~ a freeway located approximately 3.5 miles south of the MEP site; Interstate 580 (I-580), which merges with I-205 about 3.5 miles south of the MEP site; Byron Highway, ~~is an~~ arterial located about 2 miles northeast of the MEP site; Bruns Road, ~~is~~ a north-south road lying along the western border of the MEP property and intersecting with Byron Highway to the north; Kelso Road, ~~is~~ just north of and adjacent to the proposed MEP site; Mountain House Road, which runs north-south and is a local two-lane road in the vicinity of the MEP; and West Grant Line Road, ~~is~~ a two-lane rural roadway in the vicinity of the MEP site.

ACCEPTED	REJECTED	MODIFIED

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**STAFF PROPOSES:**

44. Page 3, Bulleted Items, change to read as follows: :

- Contra Costa County – General Plan, Growth Management Element;  
**For semi-rural areas within Contra Costa County, a high LOS C is the lowest acceptable level of service; and**
- Alameda County Congestion Management Agency– Congestion Management Program  
**For roadways within the Congestion Management Program network (which includes State highways), the Level of Service standard is LOS E, except where F was the LOS originally measured. Where LOS F already exists, LOS F is the standard**
- Alameda County – East County Area Plan

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

45. Page 4, Paragraph 2, change to read as follows:

The record contains analyses of other transportation modes conducted to determine the impacts which the MEP could have upon them. ~~These include: freight and passenger rail is located~~, approximately 7 miles from the MEP site. There are several park-and-ride lots for car pools in the vicinity of the proposed MEP. Local plans do not include planned bikeways or pedestrian pathways within the vicinity of the MEP, and ~~due to~~ road conditions ~~which are~~ not safe for bicycles. There are no pedestrian crosswalks within the vicinity of the project. The Altamont Commuter Express (ACE) provides commuter train service between Stockton and San Jose, with connections to Amtrak and Caltrain into the Bay Area. The ACE stop closest to the proposed MEP site is in Tracy. The Byron Airport, located approximately 2.7 miles northwest of the MEP site, is a small public facility owned by Contra Costa County and is used for general aircraft operations, flight training, skydiving, and ultralight and glider operations. (See **Traffic & Transportation Figure 1.**)

ACCEPTED	REJECTED	MODIFIED



**STAFF PROPOSES:**

**46. Page 7, Paragraph 4 , change to read as follows:**

The Byron Airport has no air traffic control (ATC) tower and lies beneath Class E airspace. This airspace extends for a 5-mile radius around the Airport, from 700 feet AGL up to 18,000 feet above mean sea level (AMSL). **Aircraft operating under visual flight rules (VFR) Pilots** are not required to be in radio communication with any ATC facility, and their flight paths need not conform to published instrument approach or departure patterns when operating within the Byron Airport airspace. Under **VFR visual flight rules (VFR) rules**, aircraft are generally allowed to enter the standard pattern from any direction, provided it does not interfere with other aircraft or violate local noise abatement restrictions.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**47. Page 11, Paragraph 2, change to read as follows:**

Energy Commission staff uses a 4.3 meters per second (m/s) **plume average** vertical velocity threshold for determining whether a plume may pose a hazard to aircraft. This velocity generally defines the point at which general aviation aircraft would begin to experience more than light turbulence.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

**48. Page 12, Second Bullet, change to read as follows:**

At an altitude of 950 feet AGL, the average plume vertical velocity is predicted to be above the threshold velocity of 9.6 mph **(4.3 meters/second)** for only 26 hours of the year, and never above the vertical velocity of 13.6 mph, the upper limit of light turbulence **used in the Katestone analysis.**

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

49. Page 13, First Paragraph after the Bullet, change to read as follows:

In addition, Applicant commissioned CH2MHILL to prepare a Turbine Exhaust Velocity Characterization analysis using computational fluid dynamics (CFD). The two methodologies produced similar results for average plume methodologies at various elevations, **and the Applicant-commissioned analyses and staff's analysis all determined similar results for plume average velocity during calm winds.** (*Id.*, p. 87; 2/25/11 RT 285; **Ex. 301, p. 4.10-62, 63**)

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

50. Page 17, Paragraph 1, change to read as follows:

**PUBLIC COMMENT**

Ron Gawer identified himself as a pilot with an airplane at the Byron Airport. He fears that on a heavy air traffic day at Byron, he may be forced to fly over the power plant. He is concerned about plume effects and ~~on~~ any approach zone restrictions. (*Id.*, RT 296.)

ACCEPTED	REJECTED	MODIFIED

**SOCIOECONOMICS & ENVIRONMENTAL JUSTICE**

**STAFF PROPOSES:**

51. Page 4, change to read as follows:

Similarly, the evidence shows that existing educational, police, medical and emergency services will not be adversely impacted. (Ex. 301, pp. 4.8-7 – 4.8-9.)

**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% of the fee to Mountain House ESD and 25% 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.**

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

52. Page 13, change to read as follows:

No ~~Conditions of Certification are required for this topic because no~~ significant adverse socioeconomics impacts will occur as a result of construction and operation of the MEP. **Condition of Certification SOCIO-1 is required to ensure conformance with LORS.**

ACCEPTED	REJECTED	MODIFIED

**APPLICANT PROPOSES:**

53. Page 13, change to read as follows:

**SOCIO-1 The project owner shall pay the one-time statutory school facility development fee as required by Education Code Section 17620.**

**Verification: At least 20 days prior to the start of project construction, the project owner shall provide to the Compliance Project Manger (CPM) proof of payment of the statutory development fee. The payment shall be provided to the Mountain House Elementary School District (75 percent)/Tracy Unified School District (25 percent).**

ACCEPTED	REJECTED	MODIFIED

**NOISE AND VIBRATION:**

**APPLICANT PROPOSES:**

54. Page 10, Condition NOISE-6, change to read as follows:

**NOISE-6** Heavy equipment operation and noisy construction work relating to any project features shall be restricted to the times delineated below, unless a special permit has been issued by the CPM in consultation

with Alameda County authorizes longer hours:

Mondays through Fridays: 7 a.m. to 7 p.m.  
Weekends: 8 a.m. to 5 p.m.

ACCEPTED	REJECTED	MODIFIED

**VISUAL RESOURCES**

***APPLICANT PROPOSES:***

**55. Page 35, Condition VIS-6, change to read as follows:**

**VIS-6** The Applicant shall provide a comprehensive landscaping and irrigation plan along the northern boundary of the 10 acre facility site and the vehicle access exclusively serving the facility site in accordance with the requirements of Policy 114 of the East County Area Plan. Landscaping shall be installed or bonded prior to the start of commercial operation. In no event shall landscaping be installed any later than 6 months after the start of commercial operation.

The landscaping and irrigation plan shall include a list of proposed plant or tree species prepared by a qualified professional landscape architect familiar with local growing conditions and the suitability of the species for project-site conditions.

The Applicant shall submit to the Director of the Alameda County Community Development Agency Planning Department for comment a comprehensive landscaping and irrigation plan. The Applicant shall provide a copy of the Director of the Alameda County Community Development Agency Planning Department's written comments on the landscaping and irrigation plan.

The Applicant shall not implement the landscaping and irrigation plan until the Applicant receives approval from the CPM. Planting must be completed or bonded by the start of commercial operation, and the planting must occur during the optimal planting season, but not later than 6 months after the start of commercial operation.

**Verification:** Prior to commercial operation and at least 60 days prior to installing the landscaping, the applicant shall provide a copy of the landscaping and irrigation plan to the Director of the Alameda County Community Development Agency Planning Department for review and to the CPM for approval. The applicant shall provide to the CPM a copy of the transmittal letter submitted to the Director of the Alameda County Community Development Agency Planning Department requesting their review of the submitted landscaping and irrigation plan.

The applicant shall notify the CPM within seven days after completing installation of the landscaping and irrigation that the landscaping and irrigation is ready for inspection.

The applicant shall replace dead or dying plantings (plants and trees) listed or shown in the approved landscaping and irrigation plan for the project, annually at the least (e.g., start of Spring), for the life of the project. The landscaping plan must be reviewed and approved by the biology staff to identify any issues related to sensitive species.

ACCEPTED	REJECTED	MODIFIED

**STAFF PROPOSES:**

56. **Page 35, Condition VIS-6, change to read as follows:**

**Landscaping**

**VIS-6** The applicant shall provide a comprehensive landscaping and irrigation plan along the northern boundary of the 10 acre facility site and the vehicle access exclusively serving the facility site in accordance with the requirements of Policy 114 of the East County Area Plan. Landscaping shall be installed or bonded prior to the start of commercial operation. In no event shall landscaping be installed any later than 6 months after the start of commercial operation.

**The landscaping and irrigation plan shall include a list of proposed plant or tree species prepared by a qualified professional landscape architect familiar with local growing conditions and the suitability of the species for project-site conditions.**

The applicant shall submit to the Director of the Alameda County Community Development Agency Planning Department for comment a comprehensive landscaping and irrigation plan. The applicant shall provide a copy of the Director of the Alameda County Community Development Agency Planning Department's written comments on the landscaping and irrigation plan.

The applicant shall not implement the landscaping and irrigation plan until the applicant receives approval from the CPM. Planting must be completed or bonded by the start of commercial operation, and the planting must occur during the optimal planting season, but not later than 6 months after the start of commercial operation.

**The applicant shall replace dead or dying plantings (plants and trees) listed or shown in the approved landscaping and irrigation plan for the project, annually at the least (e.g., start of Spring), for the life of the project.**

**Verification:** Prior to commercial operation and at least 60 days prior to installing the landscaping, the applicant shall provide a copy of the landscaping and irrigation plan to the Director of the Alameda County Community Development Agency Planning Department for review and to the CPM for approval.

The applicant shall provide to the CPM a copy of the transmittal letter submitted to the Director of the Alameda County Community Development Agency Planning Department requesting their review of the submitted landscaping and irrigation plan. **The landscaping plan must be reviewed and approved by the biology staff to identify any issues related to sensitive species.**

The applicant shall notify the CPM within seven days after completing installation of the landscaping and irrigation that the landscaping and irrigation is ready for inspection.

ACCEPTED	REJECTED	MODIFIED

**PUBLIC COMMENTS**

The PMPD addressed all of the public comments received prior to publication. The following comments were received after publication of the PMPD during the 30-day comment period.

***Public Health***

Amber Zigler, Aaron Basilius, Hui Chen, Tony Zhou, Simon Wu, Wentao Li, and the SAMAT FAMILY all submitted written comments opposing the project due to their concerns regarding air pollution and the impacts to the health of Mountain House residents.

**Socioeconomics**

Aaron Basilius, Prashanth Srivastava, Simon Wu, Hui Chen and Wentao Li submitted written comments expressing concern that Mountain House property values will decrease due to the MEP.

Dated: \_\_\_\_\_ at Sacramento, California.

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KAREN DOUGLAS  
Commissioner and Presiding Member  
Mariposa AFC Committee

DRAFT