

DOCKET

09-AFC-4

DATE Mar 14 2011

RECD. Mar 14 2011

From: Joe Ciolek <jciolek@anrtccc.org>
To: Pierre Martinez <pmartine@energy.state.ca.us>
Date: 3/14/2011 10:38 AM
Subject: Fwd: Docket Number: 09-AFC- 4 Oakley Generating Station
Attachments: IMPACT on VINES p110.pdf; CEQA REVIEW 11-09-09.docx

Pierre,

Sorry -- mistakenly had the "z" in your e-mail address and the message bounced back. Should work this time.

Joe

----- Forwarded Message -----

From: "Joe Ciolek" <jciolek@anrtccc.org>
To: "Pierre Martinez" <pmartinez@energy.state.ca.us>
Cc: "Greg Lamberg" <greg.lamberg@radback.com>, "Rebecca Willis" <willis@ci.oakley.ca.us>, "Kevin Romick" <kevin@romick.net>, "Jeff Wiedemann" <jeff@wiedemannranch.com>
Sent: Monday, March 14, 2011 10:28:23 AM GMT -08:00 US/Canada Pacific
Subject: Fwd: Docket Number: 09-AFC- 4 Oakley Generating Station

Pierre,

The session I mentioned in our brief phone conversation this morning was the November 9, 2009 CEC hearing on the Oakley Generating Station (Docket 09-AFC-4). My file would contain more than what I have with me now (away from California this week), but my comments at the hearing were generally:

1. NOT in opposition;
2. Seeking to provide input to Radback, the City and the Commission regarding the unique heritage grape vines at the site (see attached map); and
3. Referencing portions of CEQA regulations (we understand that CEC follows its own process) we feel needed to be considered (see attached outline).

I met prior to that hearing with City Staff (11/3/2009), wrote the message below to Joseph Douglas (11/13/2009) and met (myself and one of our Board Members) with Radback following the hearing (11/25/2009). We have had a series of discussions with City of Oakley on the topic of Ag Preservation, which have specifically addressed the heritage vines in their city, including those at the OGS site. We have also worked with the manager of the vineyard at the site, and have shared ideas and offered our assistance to the City on what has become a recent City initiative to re-locate some of the vines from the site.

We continue to NOT oppose the project and comment again only to ask that the CEC consider what we believe is a significant impact on agricultural resources at the site. We note that much study and consideration has been given in the 90 page Biological Resources section of the FSA and that agricultural resources are mentioned simply as the single word "vineyard" only three times (if I am correct). Our concern is that Oakley (and east Antioch) has unique heritage grape vines and that the agricultural mitigation experience from another project in Oakley just the month before (10/1/2009) be thoroughly considered in deciding on this project. We have to believe that both Radback and the City have determined that the impact on agriculture is not a factor to be addressed specifically in the project, but suggest again that it be looked at more closely.

Thanks for the opportunity to share comments. I recognize we are very late in the process and can explain why, if you feel that is pertinent. You will hear from me later today in follow up to this message.

Joe Ciolek
Executive Director
Agricultural - Natural Resources Trust of Contra Costa County
(925) 588-5351

----- Forwarded Message -----

From: "Joe Ciolek" <jciolek@anrtccc.org>
To: JDouglas@energy.state.ca.us
Cc: "greg lamberg" <greg.lamberg@radback.com>
Sent: Friday, November 13, 2009 4:30:04 PM GMT -08:00 US/Canada Pacific
Subject: Docket Number: 09-AFC- 4 Oakley Generating Station

Joseph,

We met briefly at the 11/9 hearing for the Oakley Generating Station Project. I am preparing brief comments to share with Radback and you, and in the process heard today from the City of Oakley that there is a comment period deadline of 12/10/09 on what I assume is the environmental analysis which is to be/has been issued.

I do not recall the analysis issuance, nor the comment period deadline being mentioned in the hearing, cannot find it on the CEC website for this project and do not see that item or date listed on the schedule proposed by Staff. We have reviewed many CEQA documents in the past, but this is our first experience in the CEC process. Please tell me where I can find a copy of the environmental analysis and confirm the response deadline date set for comments to that analysis.

You and Greg both have v-messages from me at the number provided in materials distributed/business cards collected at the hearing, and I welcome your call to me at (925) 588-5351.

Thanks and regards,
Joe Ciolek
Executive Director
Agricultural - Natural Resources Trust of Contra Costa County.

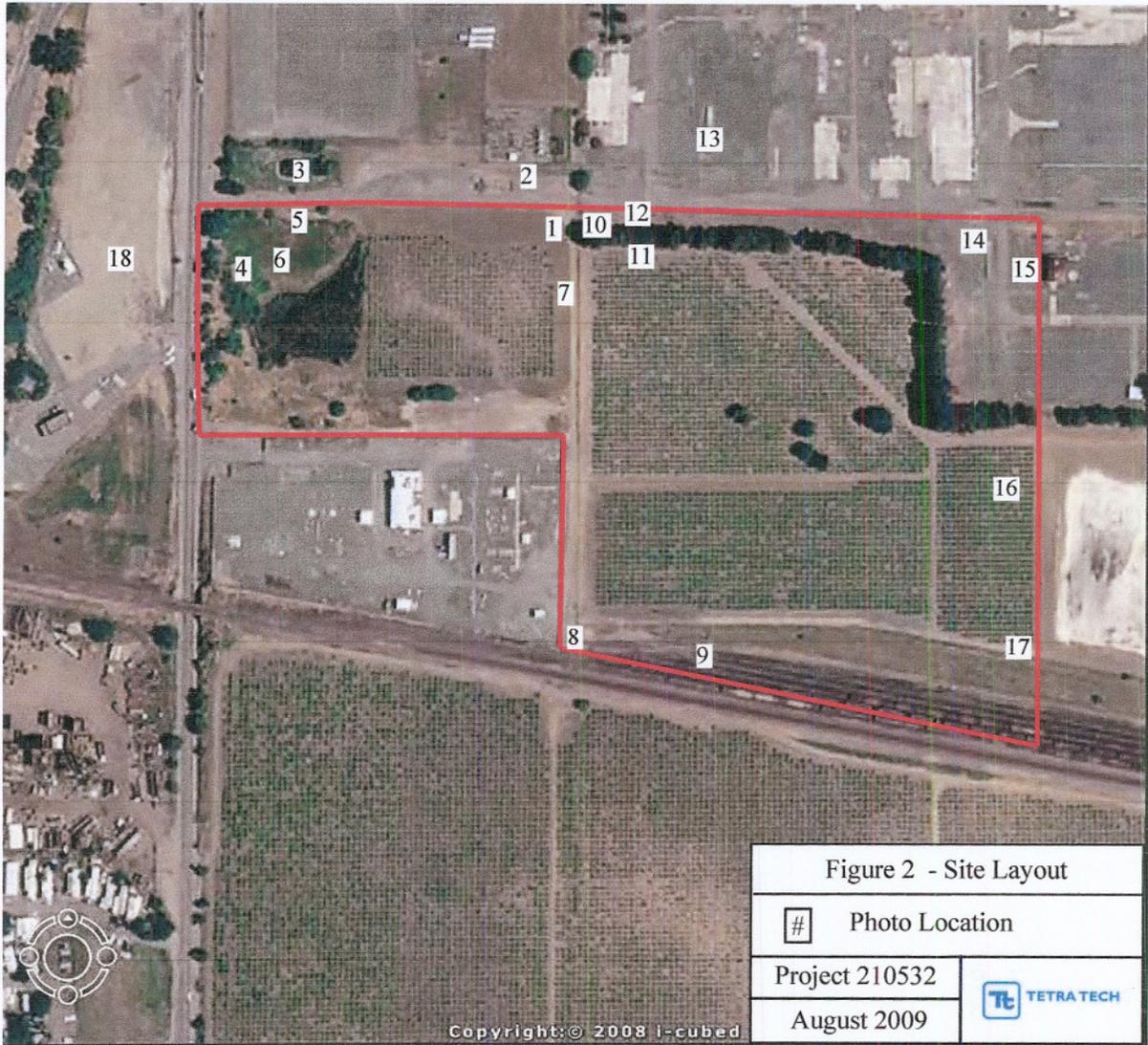


Figure 2. Site Layout

OAKLEY GENERATING STATION PROJECT

CEQA:

15002 (g):

(g) **Significant Effect** on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. (See: Section 15382.) Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. (See: Section 15091.)

15021. DUTY TO MINIMIZE ENVIRONMENTAL DAMAGE AND BALANCE COMPETING PUBLIC OBJECTIVES

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives **or mitigation measures available that would substantially lessen any significant effects** that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT

(c) In determining whether an effect will be adverse or beneficial, **the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency.** Before requiring the preparation of an EIR, the Lead Agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, **the Lead Agency shall consider direct physical changes in the environment which may be caused by the project** and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

15065. MANDATORY FINDINGS OF SIGNIFICANCE

(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(1) **The project has the potential to: substantially degrade the quality of the environment;** substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or **eliminate important examples of the major periods of California history** or prehistory.

(b) (1) Where, prior to the commencement of preliminary review of an environmental document, a **project proponent agrees to mitigation measures** or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would **mitigate the significant effect to a point where clearly no significant effect on the environment would occur**, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.

15126.4 CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS.

(a) Mitigation Measures in General.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) **There must be an essential nexus** (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) **The mitigation measure must be “roughly proportional” to the impacts of the project.** *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be “roughly proportional” to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

15130. DISCUSSION OF CUMULATIVE IMPACTS

Article 12. Special Situations

SECTIONS 15180 TO 15190

15180. REDEVELOPMENT PROJECTS