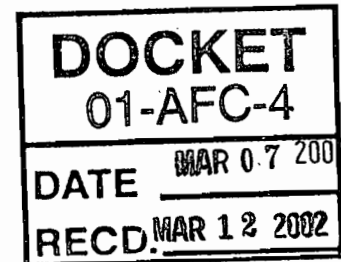


CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 7, 2002

Mr. Adolph Martinelli
Agency Director
Alameda County Community Development Agency
399 Elmhurst St., Rm. 136
Hayward, CA 94544-1307



SUBJECT: East Altamont Energy Center

Dear Mr. Martinelli:

The purpose of this letter is to follow up on our meetings of November 16, 2001 and February 15, 2002, in which we discussed the applications for power generating facilities to be located within eastern Alameda County, the East Altamont Energy Center (EAEC) and the Tesla Power Plant (TPP). At these meetings we informally discussed a number of local land use questions – questions that were included in an appendix to our land use analysis section of the EAEC Preliminary Staff Assessment. Since our initial meeting, we concluded that we need a formal response to our questions regarding the EAEC and TPP projects. Therefore, we sent a February 4, 2002 letter regarding our questions on the Tesla project. This is the counterpart letter for the EAEC project.

Background

The Energy Commission sent your agency a copy of the EAEC Application for Certification (AFC) in April, 2001. The proposed project is within the boundaries of Alameda County's East County Area Plan (ECAP). A copy of the ECAP Land Use Diagram is attached for easy reference.

The Energy Commission is responsible for reviewing and ultimately approving or denying all applications for thermal electric power plants, 50 MW and greater, proposed for construction in California. The Energy Commission is the lead agency under the California Environmental Quality Act (CEQA). As part of our facility certification process, the Energy Commission must assess public health and safety impacts, environmental impacts, and engineering issues associated with a proposed power plant, as well as conformance with all applicable laws, ordinances, regulations, and standards (LORS). To gain a greater understanding of the appropriate LORS, we seek input from local, state and federal agencies such as Alameda County.

Staff has reviewed ECAP; Measure D, adopted by the voters of Alameda County on November 7, 2000; and the Alameda County zoning ordinance. In the course of preparing the land use analysis for the East Altamont project, staff has some questions regarding the project's consistency and conformance with these LORS. Members of the public as well

PROOF OF SERVICE (REVISED 3-12-2) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 3-12-2
R.A.

have questioned the EAEC project's consistency with the land use designation for the site. Energy Commission staff is therefore requesting clarification from the County of Alameda on these matters.

In general, we seek information on four issues:

- Whether the ECAP restrictions on urban development beyond the Urban Growth Boundary, and the protection of agricultural lands and open space, conflict with the construction of a power plant;
- Whether the power plant conforms to the allowable uses for the County's "A" District designation;
- Whether the project can be considered compatible with Alameda County's "Large Parcel Agriculture" general plan land use designation as amended by Measure D; and
- Whether Measure D's prohibition of public facilities or other infrastructure in excess of that needed for permissible development, allows for development of a power plant in the region as a "needed" facility.

Staff has developed a list of questions for the County on these issues. This letter is a request for a written response to the land use questions we have already discussed informally. The County staff's responses to these questions will greatly assist us in assessing whether this project, as proposed, is consistent with the County's LORS.

Staff's Specific Questions

ECAP Policies

Policies 1, 15, and 17 (Subregional Planning / Urban and Rural Development)

Policy 1 states that "[t]he County shall identify and maintain an Urban Growth Boundary that defines areas generally suitable for urban development and areas generally suitable for long-term protection of natural resources, agriculture and other productive resources, recreation, buffers between communities, and public health and safety. The Urban Growth Boundary is intended to be permanent and to define the line beyond which urban development shall not be allowed." Policy 17 further provides that "[t]he County shall approve urban development only if it is located within the Urban Growth Boundary."

Policy 15 states that "[t]he County shall phase development to minimize premature loss of agricultural land. Agricultural land may be urbanized where conversion is a part of phased growth planned to avoid discontinuous (leap-frog) development."

The EAEC project is to be located on agricultural land in an unincorporated area beyond an Urban Growth Boundary and does not appear to be part of any phased growth plan. The ECAP definition for "urban development" includes industrial land uses, which would seem to include power plants. This raises the following questions:

1. Does the County consider a power plant to be part of "urban development"?
2. What is the County's definition of "urbanized"?
3. Does the County see any potential conflicts with ECAP policies 1, 15, and 17? If not, what is the rationale?

Policy 56 (Sensitive Lands and Regionally Significant Open Space)

This policy stipulates that the County is to "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,..." The EAEC project is proposed to be located within agricultural/open space areas. Staff therefore has the following question:

4. Is a power plant a use consistent with preservation of "open space areas" as presented under this policy and defined in the ECAP? If yes, please explain the rationale.

Policy 76 (Sensitive Lands and Regionally Significant Open Space)

Policy 76 states that "[t]he County shall preserve the Mountain House area for intensive agricultural use." Intensive agricultural use, according to the ECAP definition, refers to "high yield agricultural production including vineyards, orchards, and row crops as distinguished from low-intensity agriculture such as cattle and horse grazing."

The Mountain House area includes the proposed site for the EAEC project, and staff does not understand how the power plant would be consistent with the Policy 76 requirement to preserve this area for intensive agricultural use.

5. Does the County believe that the EAEC would conform with Policy 76? If yes, please explain the rationale.

Policy 81A (Sensitive Lands and Regionally Significant Open Space)

This policy provides that the County shall permit agricultural processing facilities and limited agricultural services that support local agricultural activities and are not detrimental to long-term agricultural use in the "A-100," "A-160," and "A-320" Districts. The proposed projects are to be located within the A-100 and A-160 Districts, and do not seem to qualify as either "agricultural support facilities" or "limited agricultural services that support local agricultural activities."

6. How would a power generation facility be a consistent use within the "A" District according to this general plan policy?

Measure D-Amended Policies

Policy 14A (East County Area Plan Amendments)

Policy 14A states that "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 new, expanded, or replacement infrastructure necessary to create adequate service for the East County."

The EAEC facility would be constructed as a privately owned and operated merchant power plant that would generate power for commercial sale, and there is no guarantee that the plant will sell power to buyers within Alameda County's designated east county area. Energy Commission staff cannot say with certainty that this power plant will necessarily satisfy any "needs" within the East County. Staff therefore has the following questions:

7. Does the County consider a merchant power plant to be a "public utility"?
 - a. If yes, does the County consider the proposed project a conflict with the parameters for a public utility presented in Policy 14A?
 - b. If not, what is the rationale?
 - c. Does the County consider the EAEC project to be "other infrastructure"?
 - d. Is the EAEC considered to be "necessary to create adequate service for the East County"?

"Large Parcel Agriculture" description and Policies 81A and 85

The ECAP general plan land use designation for the EAEC site is "Large Parcel Agriculture." When the voters approved Measure D on November 7, 2000 they amended the description of "Large Parcel Agriculture" to include the following language:

"Subject to the provisions of the Initiative, this designation permits agricultural uses, agricultural processing facilities..., limited agricultural support service uses ..., secondary residential units, visitors-serving commercial facilities ..., 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."

It is important to note that the Measure D amendment *deleted* from this list of allowable uses "other industrial facilities appropriate for remote areas and determined to be compatible with agriculture."

Policies 81A and 85 restate that areas designated "Large Parcel Agriculture" may include agricultural processing facilities, limited agricultural support service uses that primarily support Alameda County agriculture, and limited agriculture enhancing commercial uses that primarily support the area's agricultural production.

Finally, Measure D allows for "utility corridors" in areas designated "Large Parcel Agriculture," but staff has not been able to find a definition for what constitutes a "utility corridor" in either the ECAP or the Alameda County zoning ordinance. Staff would typically interpret a "utility corridor" to mean a passageway or strip of land for such uses as transmission lines, canals, cable, or large pipelines. Essentially, staff's understanding is that a utility corridor is a designated land area for the placement of linear facilities. This is different from land area to be used for the siting of a power generation facility. Power generation facilities are often categorized as an "industrial" land use and are required by many local land use regulations to be located in areas designated "industrial" by the City or County.

Staff's questions relating to the definition of "Large Parcel Agriculture" designation and policies 81A and 85 are as follows:

8. Is the County's interpretation of "utility corridor" consistent with Energy Commission staff's? If not, please provide the County's definition of a "utility corridor."
9. Does the County consider a power generation facility to be a use consistent with the amended description for "Large Parcel Agricultural" under Measure D? If yes, please explain.

The Energy Commission is attempting to complete the final staff assessment (FSA) for the EAEC project and wishes to advise the applicant as to the status of their project in a timely manner. We would appreciate your written responses to the questions in this letter. If you have any questions, you may contact Eileen Allen of my staff at eallen@energy.state.ca.us or call (916) 654-4082.

Sincerely,



BOB HAUSSLER, Environmental Office Manager
Systems Assessment & Facilities Siting Division

cc: Mark Hamblin, Land Use & Traffic/Transportation Unit
Cheri Davis, Project Manager – East Altamont Energy Center Project
Jack Caswell, Project Manager – Tesla Power Plant Project
Lisa DeCarlo, Staff Attorney
Darcie Houck, Staff Attorney

Attachments

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE
EAST ALTAMONT ENERGY CENTER
(EAST ALTAMONT)

DOCKET NO. 01-AFC-4
(AFC ACCEPTED 06/27/01)

PROOF OF SERVICE
(*Revised 12/19/01)

I, Raquel Rodriguez, declare that on March 12, 2002, I deposited copies of the attached Letter from Mr. Adolph Martinelli Agency Director Alameda County Community Development Agency Re; East Altamont Center. in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus the required 12 copies to the address below:

**CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
*Attn: Docket No. 00-AFC-4
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.state.ca.us**

* * * *

In addition to the documents sent to the Commission Docket Unit, also send individual copies of any documents to:

APPLICANT

Richard L. Thomas
Senior Vice President
4160 Dublin Blvd
Dublin, California 94568

Ms. Alicia Torre, Project Manager
East Altamont Energy Center, LLC
4160 Dublin Blvd
Dublin, California 94568

Calpine
Steve DeYoung
4160 Dublin Blvd
Dublin, California 94568

Calpine
Susan Strachan
P.O. Box 1049
Davis, CA 95617-1049

COUNSEL FOR APPLICANT

Ellison, Schneider & Harris L.L.P.
Gregory L. Wheatland, Esq.
2015 H Street
Sacramento, CA 95814

INTERVENOR

SJVUAPCD
C/O Seyed Sadredin
Director of Permit Services
1990 East Gettysburg Avenue
Fresno, California 93726-0244

CURE
C/O Marc D. Joseph, Esq.
Mark R. Wolfe, Esq.
Adams Broadwell Joseph & Cardozo
651 Gateway Blvd., Suite 900
South San Francisco, California 94080

¹
* Revisions to POS List, i.e. updates, additions and/or deletions.

***Robert Sarvey**
501 W. Grantline Road
Tracy, CA 95376

INTERESTED AGENCIES

California Regional Water Quality
Control Board
Central Valley Region
3443 Routier Road, Suite A
Sacramento, CA 95827

California Department of Water
Resources
Project Power Planning Branch
State Water Project Analysis Office
Michael Werner, Acting Chief
1416 9th Street
Sacramento, CA 95814

US Department of Commerce
National Marine Fisheries Service
Rebecca Lent, Ph.D.
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213

Kirk Sornborger
Western Area Power Admin
114 Parkshore Drive
Folsom, CA 95630-4710

Al Ghaffari
Stationary Source Division
California Air Resources Board
1001 I Street, 6th Floor
Sacramento, CA 95812

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


[signature]

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ROBERT PERNELL
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Associate Member
MS-32

Major Williams, Jr.
Hearing Officer
MS-9

Cheri Davis
Project Manager
MS-15

Lisa DeCarlo
Staff Counsel
MS-14

PUBLIC ADVISER

Roberta Mendonca
Public Adviser's Office
1516 Ninth Street, MS-12
Sacramento, CA 95814
Email: pao@energy.state.ca.us