

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

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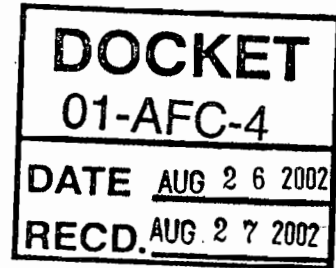
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April 26, 2002

Mr. Bob Haussler,
Environmental Office Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512



Subject: East Altamont Energy Center LLC (EAEC), (01-AFC-4), County of Alameda Community Development Agency (CDA) response to California Energy Commission (CEC) letter of March 7, 2002.

Dear Mr. Haussler:

The following is a response to questions raised in your letter of March 7, 2002 (attached). In the following responses, we identify the number of the question as listed in the March 7 document, and provide a response.

In opening, County staff is confident that the proposed EAEC is consistent with all applicable policies of the Alameda County East County Area Plan (ECAP) as modified by the Measure D Initiative, and that the ECAP does not preclude construction of a power plant outside of the Urban Growth Boundary (UGB) and on lands designated for Large Parcel Agricultural use. The EAEC falls within the definition of "infrastructure" allowable under Policy 14A of the ECAP, and the electricity produced by this facility would certainly be considered a public utility. Following are answers to specific questions raised in the CEC letter.

Question No. 1: Does the County consider a power plant to be part of "urban development"? In light of the allowance of Policy 14A, this question does not touch on any relevant point with respect to the EAEC. However, in the interest of completeness, the following is provided.

In a general sense, the answer is "not inherently and not necessarily." The definition of "urban" is "of, relating to, characteristic of, or constituting a city." Therefore, the setting, circumstances, related land uses and ultimate service area for the use all play a role in helping us to determine what is meant by "urban" and whether or not a given land use may be so considered. In an urban setting, with urban infrastructure and in which a plant would serve primarily that urban area, a power plant would be an urban use. In this case, however, the siting is not urban, there is no existing substantial urban infrastructure, the plant would serve rural as well as urban areas statewide, and the presence of the plant at

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this location would not serve to induce additional urban growth nor would it alter the character or use of the surrounding agricultural land. In this case, then, the power plant, and any power plant not located within and designed primarily to serve an urban setting, would not be considered an urban use by Alameda County.

As this question relates to loss of agricultural land, we believe our agricultural lands mitigation agreement to be adequate to fully mitigate the loss of agricultural use on the affected parcel.

Question No. 2: What is the county's definition of "urbanized?" We define urbanize as "to cause to take on urban characteristics," or the characteristics of a city (refer to the response to Question No. 1 above).

Question No. 3: Does the County see any potential conflicts with ECAP policies 1, 15 and 17? If not, what is the rationale? Again, in light of the infrastructure allowances of Policy 14A these questions do not touch upon relevant issues.

Policy 1 addresses the urban growth boundary, beyond which urban development is not allowed. As stated above, we do not consider the EAEC development, or any similarly-sited and conceived development, as urban; no conflict exists with Policy 1. Policy 15 discusses phasing development to minimize premature loss of agricultural land, and avoidance of leapfrog development is implied as a primary goal. The proposed EAEC is a stand-alone project, designed to serve the basic need for energy statewide, and would not induce growth, including leapfrog development. Urbanization is not relevant to this question. Policy 17 again discusses the role of the urban growth boundary; again, this project is not considered by the County to be an urban development, or to contribute to the urbanization of a rural area.

Question No. 4: Is a power plant use consistent with preservation of "open space areas" as presented under [Policy 56, Sensitive Lands and Regionally Significant Open Space] and defined in ECAP? If yes, please explain the rationale. For the uses defined under this policy, including health and safety, recreational opportunities, production of natural resources, protection of sensitive viewsheds as defined in the ECAP, biological preservation and physical separation of communities, the answer is "yes." The placement of the proposed power plant in this setting would not significantly compromise any of the values stated in this policy, especially with the mitigation that is being proposed for biological resources and loss of farmland. County staff does not see a significant or unavoidable inconsistency with the proposed use. This is further clarified by Policy 58 [Sensitive Lands and Regionally Significant Open Space]: The County shall approve only open space, park, recreational, agricultural, limited infrastructure, public facilities (e.g., limited infrastructure, hospitals, research facilities, landfill sites, jails, etc.) and other similar and compatible uses outside the Urban Growth Boundary.

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Question No. 5: Does the County believe that the EAEC would conform with Policy 76 (preservation of the Mountain House area for agricultural use)? If yes, please explain the rationale. Policies 75 and 76 of the ECAP promote conservation of prime soils and preservation of intensive agricultural use. The CDA staff believe that the project as proposed, without mitigation, would have been inconsistent with these specific policies, and its construction would have resulted in environmental impacts based on these policies. However, the applicant has agreed to mitigate these effects through the preservation of existing farmland on the remainder of the parcel, as well as providing funding to Alameda County for acquisition and preservation of additional agricultural land in the County that would fully mitigate the project's policy impacts. CEC Staff has reviewed a copy of this agreement. With the negotiated agreement in place, the CDA staff believes that the EAEC will be consistent with Policies 75 and 76 of the ECAP.

Question No. 6: How would a power generation facility be a consistent use within the "A" District according to [ECAP Policy 81A, which allows agricultural processing facilities and limited agricultural services...and are not detrimental to long-term agricultural use...] This policy does not absolutely limit the uses in the "A" District to uses that fit these descriptions, when those other uses fall under the provisions of Policy 14A, which allows certain types of public uses, public facilities and infrastructure in support of public utilities. In Policy 14A, the County defines infrastructure as "public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities." County Staff believes that the project is appropriately called a "public facility" as well as "structures and development necessary to the provision of...public utilities" because it would substantially serve a key need of the public at large. County staff have also explained in the past that the proposed EAEC fits within the reasonable definition of "infrastructure," and that the reason for this position is transparent given the definition in the policy. When the ECAP is taken comprehensively and in context, it is evident that the proposed project would be consistent with the provisions of the ECAP, including Policy 81A.

Question No. 7: Does the County consider a merchant power plant to be a "public utility?" County staff considers it to be a "public facility" as described above under Question No. 6. Production of electricity is a public utility function and under Policy 14A it is permissible to develop facilities that would help to provide this utility. The EAEC would be such a facility.

7(a) & (b): Does the County consider the proposed project a conflict with the parameters for a public utility [CEC Staff wording] presented in Policy 14A? If not, what is the rationale? No, County staff perceives no conflict. The rationale is presented above. In its lead-in comment, the CEC staff notes that the facility will be constructed as a privately owned and operated power plant, there is no guarantee that the plant will sell to Alameda County buyers, or that any local needs will be directly satisfied by the presence of this plant. This may be true, but it is disingenuous to make these claims without noting that the energy produced by this plant, whether it is sold to Alameda County or not, is placed on a grid with the electricity produced by many other sources. Whether the energy is sold directly to Alameda County or

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not, the net result will be that more energy would become available on the grid, some of which would be freed up to serve Alameda County customers, and this would be a long-term local benefit.

7(c): Does the County consider the EAEC project to be "other infrastructure"? County staff believes that it could be called "other infrastructure," although it is not specifically that "excessive" infrastructure described in the opening sentence of Policy 14A that may be inconsistent with the Measure D Initiative, but rather the desirable infrastructure described in the last sentence of Policy 14A (see Question No. 6 above).

7(d): Is the EAEC considered to be "necessary to create adequate service for the East County"? County staff believes that the proposed project, and a number of others like it, are necessary to provide adequate service to the East County, the remainder of Alameda County, and other parts of California, especially in view of the potential for additional periods of power shortages and "rolling blackouts" that may result in the event that additional sources are not built. As stated above, County staff believe that additional electrical energy available on the grid is beneficial to all users whether or not the specific energy from that source is sold or used locally.

Question No. 8: Is the County's interpretation of "utility corridor" consistent with the Energy Commission staff's? If not, please provide the county definition of a "utility corridor." We do not have a specific definition for this term; however, the question is not relevant. The infrastructure, of which the EAEC would be an example, is permitted under Policy 14A without reference to utility corridors.

Question No. 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. Yes. Policy 85 must be taken in context with the remainder of the ECAP as amended by Measure D. As explained above, uses that constitute a public facility or segment of the infrastructure necessary to provide adequate utility service to the East County and the rest of Alameda County are consistent with Measure D overall and with these two Policies.

In closing, County staff reiterates that when comparing a project against the policies of an internally consistent local General Plan document, one must account for the whole context of the General Plan document. Policies must be carefully screened for applicability to the issue at hand, or one may inadvertently mischaracterize the issue through lack of proper context, and reach conclusions that are not relevant or even incorrect. County staff strongly considers the project as proposed, and with the farmland mitigation agreement successfully adopted by the Alameda County Board of Supervisors, to be in full compliance with the Alameda County ECAP.

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This concludes ACCDA's responses to the letter of March 7, 2002. We trust that these final responses will be adequate to satisfy the CEC staff's interrogation. If you require other information or clarification of these responses, please feel free to contact Mr. Bruce Jensen at phone (510) 670-6527 or bjensen3@co.alameda.ca.us.

Very truly yours,



Adolph Martinelli,
Community Development Director

cc: Chairman Keese, California Energy Commission
Commissioner Pernell, California Energy Commission
Each Member, Alameda County Board of Supervisors
Susan Muranishi, County Administrator
Richard E. Winnie, County Counsel
James Sorensen, Planning Director
Alicia Torre, Calpine Corporation

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