



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Chris Bazar
Agency Director

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Re: *Proposed Mariposa Energy Project, Consistency with Alameda County
General Plan*

www.acgov.org/cda

Dear Mr. Hoffman:

The following supplements and clarifies the May 20, 2010 correspondence from Alameda County Planning staff with respect to the California Energy Commission's (CEC's) consideration of approval of the Application for Certification by Mariposa Energy, LLC for its proposed Mariposa Energy Project (Project).

As reflected in the May 20 correspondence, County staff believes that the proposed Project is consistent with all applicable policies of the Alameda County General Plan, including the East County Area Plan (ECAP). This letter refers to ECAP provisions applicable to the Byron Airport, located in Contra Costa County, which the County had already considered in its May 20 response, but did not expressly reference therein. Alameda County Planning Staff is submitting this supplemental letter as a result of additional information and analysis provided by Mariposa Energy, LLC in response to various queries from Contra Costa County and the CEC Staff, as well as the many hours of public hearings held at the Contra Costa County Airport Land Use Commission (CCC-ALUC) on this matter. It is our understanding that the CCC-ALUC is considering making a determination of compatibility with its Airport Land Use Commission Plan (CCC-ALUCP), asserting jurisdiction under Public Utilities Code 21676, including the necessity to comply with overrule protocol if a determination of inconsistency is made.

It is the opinion of Alameda County Planning staff that the CCC-ALUC lacks jurisdiction over this Project, as the Project is located within Alameda County, not Contra Costa, and an ALUC's jurisdiction does not extend beyond its county's boundaries. (See, e.g., 74 Ops.Atty. Gen 58.) Further, this geographical limitation of jurisdiction is specifically addressed in sections of the CCC-ALUCP (CCC-ALUCP, § 1.3.1(c).) For projects within Alameda County but also within Byron Airport's influence area, the CCC-ALUCP notes that the ALUC's land use role is limited to providing comments to Alameda County should such comments be solicited. (CCC-ALUCP, pp. 1-3, 2-5, 2-8, App. H-13.)

The respective roles of Alameda County and the CCC-ALUC are further set forth in ECAP Policy 150, as implemented by ECAP Program 64, which provide that Alameda County refer discretionary permit applications for projects within the CCC-ALUC's influence/referral area to the CCC-ALUC for review and comment. Program 64 expressly states that "This action shall not constitute a referral as described under state ALUC law, Public Utilities Code section 21676." Because the Project is within the CEC's exclusive jurisdiction, there are no discretionary permit applications for the Project pending before Alameda County, nor has there been a referral from Alameda County to the CCC-ALUC. Whether or not an application has been referred to the CCC-ALUC, the applicable LORS for the Project provide that the decision about whether a proposed project is compatible with Byron Airport's operations is Alameda County's, not the CCC-ALUC's.

Alameda County recognizes that the FAA, which has sole jurisdiction over airborne aircraft and pilot safety issues, has already issued Determinations of No Hazard to Air Navigation for the Project's power poles and stacks. Moreover, the Determinations of No Hazard to Air Navigation issued for the four stacks did not just address the physical structures, but specifically addresses the potential plumes produced from the stacks. We believe that these Determinations of No Hazard to Air Navigation from a federal agency are sufficient for a finding of compatibility for the Project with the Byron Airport, with respect to air safety.

We note that the CCC-ALUCP places the Project in Compatibility Zone D, which has few restrictions (residential uses are not restricted, allowable intensities for nonresidential activities are not restricted, and no uses are specifically prohibited). Additionally, in reviewing the record, Alameda County Staff feels that that the Project is in compliance with compatibility criteria in the CCC-ALUCP which may have bearing (including Byron Airport Policies 6.7.4, 6.9.3, and 6.9.4 as well as Countywide Policy 4.3.6).

Byron Airport Policy 6.7.4 addresses height limitations. The Project meets all the criteria set forth in this policy, namely that all of the Project's facilities are below 100' AGL as required by Compatibility Zone "D" criteria, and all of the Project's facilities are below the Air Protection Surfaces.

Byron Airport Policy 6.9.3 addresses hazards to flight, namely visual hazards, birds, and electronic interference. For visual hazards, the Project's lights will be shielded to prevent glare and there will be no visible plumes from the Project stacks. For birds, the intermittent thermal plume will not attract birds, especially given the abundant naturally occurring thermals in the area due to the hilly terrain and typical local weather patterns, along with the lack of any food source at the Project site. Finally, for electronic interference, the Project's communication equipment is in a different bandwidth than aviation VHF radios, the Project will use equipment that is approved by the FCC, and the Project equipment will not interfere with aviation electronic equipment (Countywide Policy 4.3.6 addresses the same issues as Byron Airport Policy 6.9.3; as the Project is compatible with that Policy, it is also compatible with Countywide Policy 4.3.6.)

Byron Airport Policy 6.9.4 addresses "Open Land" issues. Because there are existing structures on the 158-acre property the project would occupy (e.g., an existing cogeneration facility

and several high voltage transmission lines), the property would not qualify as "Open Land" under Policy 6.9.4.a -- even though the Project site occupies 10 of 158 acres, thus potentially falling within the limits of Policy 6.9.4.b. However, the Project must fall under both sections of Policy 6.9.4 for the site to be considered "Open Land". As it does not, the Project should be deemed compatible with this Policy.

Further, Alameda County notes that the Project is compatible with the land use in the vicinity of the proposed parcel. Located on the same parcel is the Byron Cogeneration Plant, built in 1990, as well as two 500kV transmission lines that pre-date 1968, and 230kV high-voltage power lines that date from 1993. Across the street, the PG&E Bethany Gas Compressor Station, which was constructed prior to 1993, includes capacity to vent the high-pressure gas pipelines that run through the area. Also across the street from the parcel is the PG&E Kelso Substation, which was also constructed prior to 1993. Further east on Kelso Road is the Western Area Power Administration's substation, which was constructed in 1952. Further west on Kelso Road is the Harvey O. Banks - Delta Pumping Station, which was constructed in 1963. All of these facilities were already in existence prior to the construction of the Byron Airport and the adoption of the CCC-ALUCP. Thus, the existence of extensive energy and water infrastructure in the area demonstrates conclusively that aircraft can navigate safely in proximity to uses such as the Project.

In sum, based on the record, Alameda County staff feels that that the Project is compatible with the CCC-ALUCP and Byron Airport's operations, and will not have an adverse impact on airport operations or airport safety. Moreover, Alameda County staff submits that, by definition, any decision that the CCC-ALUC may come to on this Project is extra-jurisdictional, and as such, cannot be considered part of the applicable LORS for the Project.

Therefore, as set forth in our May 20 correspondence, Alameda County staff considers the Mariposa Energy Project to be consistent with all County policies, ordinances and contracts with bearing on the Project site. We hope that this discussion will be adequate to the needs of the CEC. If you require other information or clarification to these responses, please free to contact Mr. Bruce Jensen of my staff at (510) 670-6527 or bruce.jensen@acgov.org.

Very truly yours,



Chris Bazar, Director
Alameda County Community Development Agency

cc: Bruce Jensen, Senior Planner
Richard E. Winnie, County Counsel
Albert Lopez, Planning Director
Bohdan Buchynsky, Diamond Generating Corporation