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Mariposa Energy Project 09-AFC-3

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Response to letter from Chris Bazar regarding the East County Area Plan

Mr. Hoffman,

A reading of the plain language of the East County Area Plan makes it clear that the Mariposa project is incompatible with the ECAP unless, at least, two conditions are satisfied, and neither of them currently are. Before I demonstrate this, can we agree that what is relevant is not the messenger of an argument but the substance of the argument itself? If Alameda County officials say that the ECAP permits unlimited development in Alameda County, certainly this does not make it so, as can be determined by reading the plain language of the law passed by the voters. Argument by authority is of course a logical fallacy. So let's consider what the ECAP actually says:

"The County is prohibited from providing or authorizing expansion of public facilities or other infrastructure that would create more capacity than needed to meet the development allowed by the Initiative. The Initiative does not prohibit public facilities or other infrastructure that have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative."

Contrast this with what Mr. Chris Bazar, Director of the Community Development Agency writes in his letter to the CEC:

"Any use that constitutes a public facility or segment of the infrastructure necessary to provide adequate utility service to the East County is consistent with the ECAP overall and this policy."

The first problem with this statement is that it is plainly false. How do I know this? By simply reading the ECAP as it is written. There are, explicitly stated, three conditions on the permissibility of infrastructure of this type. They are:

- 1) That it must not "create more capacity than needed to meet the development allowed by the Initiative."
- 2) That it must "have no excessive growth-inducing effect on the East County area"
- 3) That it must "have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative."

This is not consistent with Mr. Bazar's assertion in his letter to the CEC. He then proceeds to make the following assertion, which has no basis in any ECAP language, to attempt to justify the violations of (1) and (3) that the Mariposa project represents: "it is not designed to support any quantity of new development in excess of what is permissible under the ECAP." Perhaps Mr. Bazar can provide the CEC with examples

of power plant projects which would be "designed for the purpose of supporting new development in excess of what is permissible under the ECAP". This is nonsensical and a red herring. What aspects of power plant design mark it as being "designed for" development which has not and will not occur? Of course there are none, and so this is no test of permissible power plant projects under ECAP because none could possibly fail it. For the energy commission to simply "defer to" such nonsensical arguments is unbecoming of the energy commission's independence and sole jurisdiction, especially considering the commission staff has, to their credit, explicitly disagreed with this "interpretation" in the past, for example, in the staff assessment of the East Altamont Energy Center. Just as the applicant has a clear financial incentive to try to find justifications for a predetermined favorable outcome for their project, make no mistake that Alameda County officials are also incentivized by the prospect of significant revenues they would like to collect should the project be approved, especially given the location of the project on the far downwind border of the county. Would the energy commission disagree with and then "defer to" the applicant's assertions regarding compliance with LORS? Certainly it would not, as that would be a flagrant abdication of the responsibilities of the commission. Likewise the commission should not simply defer to Alameda County officials who have similar incentives as the applicant to find justifications for a predetermined favorable outcome. Their findings should be treated in the same provisional manner that require independent analysis to verify. In my view any such independent analysis will come to a very different conclusion. In fact, commission staff has already weighed in on this issue in the case of, at least, the East Altamont project and come to the opposite conclusion! That conclusion was well supported by not only the language of the ECAP itself but by the expert testimony of a co-author of the measure itself, Dr. Richard Schneider, whose testimony was unassailable on its own merits.

Mr. Bazar goes on to make some general statements about widespread statewide needs for energy that are reasonable, but are simply irrelevant. The ECAP does not say a single word about easing the conditions of such development should certain statewide energy needs arise. County officials may not simply waive their hands at plainly written law and ignore it when it becomes inconvenient, or when there are financial incentives to do so.

Regards,
Robert Anderson