

State of California
State Energy Resources Conservation and Development Commission

In the Matter of:)	Docket # 09-AFC-03
)	
Mariposa Energy Project)	
)	Motion: Motion to
)	have Alameda County
_____)	representative during evidentiary hearing

Date: Feb 08-2011
From: Rajesh Dighe

Throughout the entire Mariposa Energy Project application 09-AFC-03 the issue of Alameda County violating/twisting voter approved Measure D has been central of discussion amongst interveners, Mountain House Residents, Tracy Residents and many government elected officials. The issue still remains clearly arguable and not resolved.

Alameda County East Area Plan (ECAP) land use policies prevent large infrastructure development like MEP-09-AFC-03.

From the pr-evidentiary hearing conference discussions it is clear that Land Use will be heavily debated. Interveners Rajesh Dighe (Data Request 5-14 Exhibit 606) offered originally on Feb 08-2010 identified numerous compliance issues with Williamson and Warren Alquist acts.

Mountain House resident(s) have also showed and docketed questions around proper land use of the proposed site for MEP project.

See below transcripts of conversation between Mr. Craig Hoffman and two Mountain House residents. Both had requested Mr. Craig Hoffman to docket their conversations.

On Tue, Dec 7, 2010 at 2:23 PM, Jeremiah Bodnar <jhxyzbodnar@gmail.com> wrote:
Hi guys,

I'm sure nothing in this email is news to any of you, but I thought I would include my conversation with Craig Hoffman in case any of his replies might be of some use to us at some point.

Jeremiah to Craig

One thing I have heard people say is that the open space initiative of Alameda County (ECAP & Williamson ACT) goes against building such a power plant, but that because the county of Alameda considers the plant compatible with the initiative that the CEC defers to their judgment.

I was hoping you could clarify the issue for me. Will the CEC evaluate the issue relative to the relevant law as it stands, as written law, or would the CEC defer to the interpretation of that law by county officials?

Thanks for your help.

Jeremiah

Craig to Jeremiah

- > *We defer to the local jurisdiction. We will stand with Alameda County's*
- > *determination.*
- >
- > *Craig Hoffman*
- > *Project Manager*
- >

Jeremiah to Craig

Hi Craig,

My concerns run in three directions, so I will address them separately:

1. My expectation would be that part of the purpose of a state-wide agency is to offer a perspective that goes beyond the preferences of a local governing body.
2. The citizens of Alameda wrote and passed the law in an explicit attempt to stop their officials from doing what the officials wanted to do, but the citizens did not want to happen (develop the hills). It seems strange to defer to the officials the law was meant to curtail, instead of to the law passed by the citizens themselves to protect themselves against the desires of the officials that were not consonant with the will of the citizens. The initiative is how the citizens speak up for themselves.
3. Taken to the extreme, the stance taken by the CEC seems to say that the CEC will allow any decision made by any local body as long as they say it is consonant with their laws. This effectively seems to take away the whole point of having the CEC review local laws in the first place. Does the CEC really have no power to conclude that a plant violates local law, as long as local officials are willing to say that it does not?

I really appreciate your thoughtful replies, and the way you treated everyone with dignity at the workshop. Thanks for the additional feedback.

Jeremiah

Craig to Jeremiah

Jeremiah

I understand the points you are making

If a member of the public wants to provide a response to the Alameda County letter, we will consider it. We do not have anything on the administrative record to counter what Alameda County provided.

Our land use analysis is consistent with what took place in the Tesla and East Altamont projects.

We do complete an independent analysis of the project. Staff does not disagree with the Alameda County analysis.

Please call me. This response will take too long to type.

*Craig Hoffman
Project Manager*

One more concerning email by Mountain House resident around Land use Project Manager Craig Hoffman.

Originally posted by btra (Bob Anderson – Mountain House Resident)

My letter to the energy commission staff regarding land use:

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

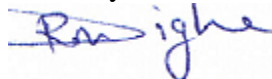
Mitigations and Community Benefits between Mariposa Energy LLC and Alameda County are still not well understood. Intervener Rajesh Dighe has been discussing this with Project Manager Craig Hoffman and had requested multiple times to get all mitigation and benefits to Counties and Agencies documented in Staff Assessment. However this area is still not clearly explained in Staff Assessment.

Additionally, Intervener Rajesh Dighe (and I am assuming other interveners also) would like to cross examine Alameda County representative to get answers to Alameda County's perspective on throwing GHG emissions over Mountain House for their financial benefits by approving MEP on an arguable site zoned for large parcel agricultural usage.

With all of the above said reasons Intervener Rajesh Dighe, makes a motion to have Alameda County Representative to be present during Evidentiary Hearings in order to participate and clarify all open and disputed issues around Land use, Mitigations and similar which interveners and Mountain House residents have as part of application 09-AFC-03.

Without Alameda County's participating during evidentiary hearing, sections Land Use, Mitigation areas will remain a mystery since CEC is clearly stating above: "*We defer to the local jurisdiction. We will stand with Alameda County*".

Thanking you
Sincerely



Rajesh Dighe

STATE OF CALIFORNIA

State Energy Resources

Conservation and Development Commission

In the Matter of: [DOCKET NUMBER 09-AFC-03]

[MARIPOSA ENERGY PROJECT] DECLARATION OF SERVICE

I, [Rajesh Dighe](#) declare that on Feb-09-2011, I served and filed copies of this document dated Feb-09-2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent *Proof of Service* list (most recent version is located on the proceeding's web page at: <http://www.energy.ca.gov/sitingcases/mariposa/index.html>)

The document has been sent to both the other parties in this proceeding (as shown on the *Proof of Service* list) and to the Commission's Docket Unit, in the following manner:

For service to the applicant and all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at [Sacramento, California](#) with first-class postage thereon fully prepaid and addressed as provided on the *Proof of Service* list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. [\[09-AFC-03\]](#)

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docket@energy.state.ca.us

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

Rajesh Dighe

Feb-09-2011

