



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
 COMMISSION OF THE STATE OF CALIFORNIA
 1516 NINTH STREET, SACRAMENTO, CA 95814
 1-800-822-6228 – WWW.ENERGY.CA.GOV

DOCKET	
09-AFC-3	
DATE	Feb 17 2011
RECD.	Feb 17 2011

APPLICATION FOR CERTIFICATION FOR THE
MARIPOSA ENERGY PROJECT
 MARIPOSA ENERGY, LLC

DOCKET No. 09-AFC-3

**COMMITTEE ORDER RESPONDING TO INTERVENOR DIGHE’S MOTION TO HAVE
 ALAMEDA COUNTY REPRESENTATIVE AT EVIDENTIARY HEARING**

I. SUMMARY

On February 8, 2011, Intervenor Rajesh Dighe filed with the Committee his *Motion to have Alameda County representative during evidentiary hearing* [sic] (“Motion”). This Order **GRANTS** the Motion and requests Alameda County provide one or more representatives at the February 24, 2011 Evidentiary Hearing in order to answer questions about County determinations concerning the Mariposa Energy Project (MEP).

II. DISCUSSION

In his Motion, Mr. Dighe opines that the Alameda County Community Development Agency has erred in advising the Commission Staff that the MEP is consistent with all County policies, ordinances and contracts with bearing on the project site. In particular, Mr. Dighe takes issue with the County determination that the MEP would be consistent with the East County Area Plan (ECAP). He is also critical of the Commission Staff’s apparent reliance on the County determination in the Supplemental Staff Assessment.

The ECAP contains policies governing physical development within the area of Alameda County that includes the project site. The East County encompasses 418 square miles of eastern Alameda County and includes the cities of Dublin, Livermore, Pleasanton, and a portion of Hayward, plus surrounding unincorporated areas. (*East County Area Plan (Revised by Initiative Nov. 2000)*, pg. 2). In November 2000, the Alameda County voters approved the Save Agriculture and Open Space Lands Initiative (Measure D), which amended portions of the ECAP. The stated purpose of Measure D is to “preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open space of Alameda County from excessive, badly located and harmful development” (*East County Area Plan (Revised by Initiative Nov. 2000)*, Section 1. “Purposes” pg. ii). The ECAP provides the basis for County zoning and subdivision approvals.

In its May 20, 2010 advisory letter to the Commission Staff, Community Development Director, Chris Bazar, set forth his agency’s determination that the MEP would be



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**APPLICATION FOR CERTIFICATION
FOR THE *MARIPOSA ENERGY PROJECT*
(MEP)**

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 2/8/2011)

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DECLARATION OF SERVICE

I, Maggie Read, declare that on February 17, 2011, I served and filed copies of the attached Committee Order Responding to Intervenor Dighe's Motion to Have Alameda County Representative at Evidentiary Hearing. The original document, filed with the Docket Unit, are accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[\[http://www.energy.ca.gov/sitingcases/mariposa/index.html\]](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:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

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

by personal delivery;

by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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-3

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original signed by: _____

Maggie Read

Hearing Adviser's Office

consistent with relevant land use policies, the existing Williamson Act contract and other County land use provisions. The advisory letter was sent to the Commission pursuant to the Warren-Alquist Act and Commission regulations that require the Commission Staff to request comments from relevant agencies regarding any Application for Certification (AFC) [Pub. Res. Code secs. 25506, 25519(h); Cal. Code of Regs. Tit. 20, sec. 1743 (b)]. The Alameda County comments address the proposed MEP's potential environmental impacts upon Alameda County as well as the plant's ability to comply with the laws, ordinances, regulations and standards of that jurisdiction (*Id*). As in all Commission siting cases, these agency comments must be presented at Evidentiary Hearings on the proposed power plant. [Cal. Code of Regs. Tit. 20, sec. 1743 (c)]. Furthermore, the regulations direct Commission Staff to give "due deference" to comments and recommendations made by an agency regarding matters within that agency's jurisdiction. [Cal. Code of Regs. Tit. 20, sec. 1744 (e)].

These regulations clearly direct the Commission Staff to defer to County land use interpretations which normally lie within the jurisdiction of Alameda County (*Id*). In granting Mr. Dighe's Motion, we believe that the members of the public, the parties in this case, and the members of this Committee will be better informed after hearing from representatives of Alameda County regarding the basis for their May 20, 2010, consistency determination of the MEP. Accordingly, we have invited County representatives to attend the February 24, 2011 Evidentiary Hearing and to answer questions directed through the Committee.

ALL PARTIES ARE ORDERED TO SUBMIT THEIR WRITTEN QUESTIONS FOR THE ALAMEDA COUNTY REPRESENTATIVE TO THE HEARING OFFICER BY 5:00 PM ON TUESDAY, FEBRUARY 22, 2010. THE COMMITTEE MAY ALLOW LIMITED FOLLOW UP QUESTIONS BY THE PARTIES.

Motion is **GRANTED**.

Dated: February 17, 2011 at Sacramento, California.



KAREN DOUGLAS
Commissioner and Presiding Member
Mariposa AFC Committee