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ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: Application For Certification For the Mariposa Energy Project	Docket No. 09-AFC-03 **STAFF'S COMMENTS ON PMPD**

I. INTRODUCTION

On April 13, 2011, the Committee for the Application for Certification of the Mariposa Energy Project issued the Presiding Member's Proposed Decision (PMPD). The Committee provided notice to parties that all written comments on the PMPD must be filed and served by April 28, 2011. The following comments are Staff's proposed corrections, additions or deletions to the PMPD presented in bold underline/strikeout type.

II. STAFF'S PROPOSED CHANGES

Air Quality

- **Page 19, First Full Paragraph:** *Staff recommends the following changes:*

Mr. Sarvey criticized the mitigation agreement that the Applicant entered into with SJVAPCD (Sarvey Op. Brief, p. 9). Staff acknowledged that the project's PM emissions could cause **an impact because they will** ~~or~~ contribute to a violation, due in part to the fact that BAAQMD exempts projects with lower emissions, such as the MEP, from offset requirements. [. . .]

Greenhouse Gas (GHG)Emissions

- **Pages 7-8:** *Staff recommends deleting a portion of the discussion of construction GHG emissions impacts that appears in the PMPD. Staff is unaware of this information having any basis in testimony in the MEP record. No party in this proceeding relied upon the significance thresholds for GHG that are discussed on pp. 7-8 of GHG; no party introduced information cited in GHG Footnote 4, which should also be deleted.*

[. . .]

As noted above, the CEQA Guidelines do not specify any threshold of significance for the emission of GHGs during project construction. In Avenal, we observed that draft guidance from CARB staff recommends a “best practices” performance standard for construction emissions of industrial projects, because construction emissions tend to be much smaller than operational emissions. ~~[See CARB, Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act (Oct. 24, 2008), p. 9 [www.opr.ca.gov/ceqa/pdfs/ Prelim_Draft_Staff_Proposal_10-24-08.pdf].~~

~~Last year, the Bay Area Air Quality Management District (BAAQMD) adopted Air Quality Guidelines which treat GHG emissions from construction in a manner similar to the CARB’s Preliminary Draft Staff Proposal. The Guidelines do not specify a threshold of significance for construction-related GHG emissions, but encourage lead agencies “to incorporate best management practices to reduce GHG emissions during construction, as applicable. Best management practices may include, but are not limited to: using alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment of at least 15 percent of the fleet; using local building materials of at least 10 percent; and recycling or reusing at least 50 percent of construction waste or demolition materials.” (See BAAQMD, California Environmental Quality Act Air Quality Guidelines, p. 81 approved June 2, 2010 [www.baaqmd.gov/~/media/Files/Planning%20and%20Research/ CEQA/BAAQMD%20CEQA%20Guidelines_December%202010.ashx]).~~

~~The South Coast Air Quality Management District (SCAQMD) approved a different approach to significance of GHG impacts at its December 5, 2008 Board Meeting.~~

~~Rather than set a threshold for operational emissions, construction emissions are amortized over the life of a project and considered in combination with operational emissions. [See Proposal to Adopt Interim CEQA GHG Significance Threshold for Stationary Sources, [www.aqmd.gov/hb/w008/December/081231a.htm].[4] Applying the SCAQMD approach to MEP, GHG emission from construction of MEP, amortized annually over the life of a project, would be 65 MTCO2e tons per year, a tiny fraction of a percent of estimated annual emissions from operation.~~

~~Nevertheless, we support the application of a performance standard as recommended by CARB, adopted by BAAQMD, and applied in Avenal, which will minimize GHG construction emissions.~~ We find this approach to be consistent with the CEQA Guidelines which permit reliance on performance-based standards. (14 Cal. Code Regs. §15064.4(a)(2)).

- **Findings of Fact, Page 18**: *Staff proposes the following change:*

18. When it operates, the Mariposa Energy Project will displace generation from less-efficient (i.e., higher-heat-rate and therefore higher-GHG-emitting) power plants in the ~~San Joaquin Valley~~ **Greater Bay** Area.

- **Conclusions of Law, Page 20**: *Staff recommends closing the GHG Conclusions of Law with an affirmative statement declaring that the certification is consistent with Conclusion #12.*

12. Any new natural-gas-fired power plant that we certify must:

a) not increase the overall system heat rate for natural gas plants;

b) not interfere with generation from existing renewables or with the integration of new renewable generation; and

c) have the ability to reduce system-wide GHG emissions.

We find that MEP is consistent with and meets these requirements.

Biological Resources

The comments to Biological Resources are minor text edits, additions, and clarifications. Explanations are included with each change.

- **Page 12, paragraph 2:** *This text in strike-out type is repeated in a following paragraph on page 13. Please delete the sentence in strike-out type.*

Further, Conditions of Certification **BIO-17** (Waters and Wetlands Impact Avoidance and Minimization Measures) and **BIO-18** (Revegetation and Restoration Plan) establish measures to avoid and minimize impacts to the remaining wetlands and waters. These conditions include measures to protect waterways from pollutants including sediment, establish buffer zones, and install erosion control, as well as measures directing revegetation, topsoil storage and use. ~~**Indirect impacts, such as impacts from noise, lighting, and traffic could occur but are mitigated with the implementation of Conditions of Certification BIO-7.**~~ Implementation of Conditions of Certification **BIO-7, BIO-9, BIO-16, BIO-17,** and **BIO-18** reduce impacts to these resources below a level of significance. The USACE must issue a permit for impacts to waters of the United States from this project before the MEP can be constructed. (Ex. 301, p. 4.2-33.)

- **Page 20, paragraph 1:** *This figure is a correction to text in Staff Assessment*.

***Swainson's Hawk* (State Threatened)**

MEP grasslands provide Swainson's hawk foraging habitat, and construction of the project will result in the permanent loss of approximately 10.1 acres, and long-term loss of **12.1** ~~**9.2**~~ acres of this habitat. In addition, certain construction activities within 1/2 mile of an active nest during the breeding season (March 1 - September 15) could cause nest abandonment or forced fledging. Mitigation ratios suggested by CDFG to address

foraging habitat loss are outlined in the *Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California* (CDFG 1994):

- **Page 29, Table 2:** *These changes were read into evidence during the evidentiary hearing (RT 3/7/11, p. 409; lines 9-13.)*

Biological Resources Table 2
Compliance with Federal, State, and Local LORS

Applicable LORS	In Compliance	Discussion
Federal		
Section 404 of the Clean Water Act of 1977 (33 USC 1344)	**Yes** ~~**Undetermined**~~	Discharge of dredged or fill material into the waters of the United States requires a permit from the U.S. Army Corps of Engineers (USACE). The applicant has completed a wetland delineation report and amendment, and has received a preliminary jurisdictional determination from the USACE Sacramento District. The USACE is currently drafting the CWA 404 authorization to construct the project under Nationwide Permit #12, but the permit cannot be issued to Mariposa Energy until Section 7 ESA consultation is finished (i.e., Biological Opinion sent to the USACE).
Section 401 of the Clean Water Act of 1977 (33 USC 1341)	**Yes** ~~**Undetermined**~~	Any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States must obtain a certification from the State in which the discharge originates or would originate, that the discharge would comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility. The applicant has submitted a Section 401 Water Quality Certification Application to the California Regional Water Quality

Applicable LORS	In Compliance	Discussion
		Control Board (CRWQCB) Central Valley Region, and will also submit a memo outlining changes to the original application. Certification from the CRWQCB is pending.
Endangered Species Act (Title 16, United States Code, sections 1531 et seq.; Title 50, Code of Federal Regulations, part 17.1 et seq.)	**Yes** ~~**Undetermined**~~	Potential take of California tiger salamander, California red-legged frog, San Joaquin kit fox, and branchiopods (federally-listed species), requires compliance with the federal Endangered Species Act (ESA). "Take" of a federally-listed species is prohibited without an Incidental Take Statement, which would be obtained through a Section 7 consultation between the USACE and USFWS. The applicant has submitted a Biological Assessment and updates for the project to the USFWS, and the USFWS is currently reviewing this information.
Eagle Act (Title 50, Code of Federal Regulations, sections 22.26 and 22.27) and Bald and Golden Eagle Protection Act (Title 16, United States Code section 668)	Yes	Condition of Certification **BIO-16** requires protection of compensation habitat for California tiger salamander, California red-legged frog, San Joaquin kit fox, western burrowing owl, and other special-status species. Habitat preserved for these species would also serve as golden eagle foraging habitat.
Migratory Bird Treaty Act (Title 16, United States Code, sections 703–711)	Yes	Condition of Certification **BIO-8** provides for pre-construction nest surveys, protective buffers, and monitoring if nests are found, and Condition of Certification **BIO-7** limits off-site disturbance.
Executive Order 11312	Yes	Conditions of certification **BIO-7** and **BIO-18** limit species used in revegetation, and also call for a revegetation plan for disturbed areas.

- **Page 33, #24:** *This correction based on impact analysis language.*

24. Condition of Certification **BIO-16** will **ensure** ~~**reduce**~~ impacts to the Golden Eagle from construction and operation of the MEP below the level of significance.

- **Page 40, BIO-06 (a):** *Staff is requesting only the final mitigation measures.*

BIO-6 The project owner shall develop a BRMIMP and submit two copies of the proposed BRMIMP to the CDFG and USFWS for review and comment and the CPM for approval and shall implement the measures identified in the approved BRMIMP.

The BRMIMP shall be prepared in consultation with the Designated Biologist and shall identify:

a. All biological resource mitigation, monitoring, and compliance measures proposed and agreed to by the project owner;

~~**b. All applicant-proposed mitigation measures presented in the Application For Certification, data responses, and workshop responses;**~~

- **Page 47, BIO-10 #1 (d) iii:** *These changes are a minor addition and a correction.*

iii. Before the start of linear work each morning, the designated biologist or biological monitor shall check for CRLF and CTS under any equipment such as vehicles and stored pipes. The biological monitor shall check all excavated steep-walled holes or trenches greater **than 6 inches** each morning before sunrise for any CRLF and CTS. CRLF and CTS shall be removed by the Designated Biologist or Biological Monitor and relocated to the USFWS and **CPM** ~~**CDFG**~~-approved relocation site. All excavated holes or trenches located outside the MEP site shall be ramped at the end of the work day, or escape boards will be placed in the trench to allow the animals to escape.

- **Page 47, BIO-10 #1 (i):** *This change reflects the correct months of wet-season construction.*

i. Bruns Road and Access Road Monitoring:

i. During wet-season construction (**October through April** ~~**mid-November through October**~~, though earlier or later if conditions are wet and CTS are observed) if there will be large volumes of construction traffic (25 vehicles or more) scheduled to arrive or depart after dusk or before dawn. CTS moving between breeding sites and burrows shall be protected by one of these methods:

- **Page 49, BIO-10 Verification:** *This correction is to remove language inconsistent with Condition language.*

Verification: No less than 30 days prior to the start of any project-related ground disturbance, the project owner shall provide a final Management Plan to the CPM, CDFG, and USFWS. The final, approved Management Plan shall be incorporated into the BRMIMP within 10 days of completion of the plan, and implemented. ~~**No less than 10 days p**~~**P**rior to the start of any ground disturbing activities or construction equipment staging, the project owner shall provide the CPM a letter-report describing the findings of the pre-construction surveys, including the time, date, and duration of the survey; identity and qualifications of the surveyor(s); and a list of species observed, number of CTS and CRLF observed and moved, and location to which they were moved. The project owner shall report monthly to the CPM, CDFG and USFWS for the duration of construction on the implementation of CTS and CRLF avoidance and minimization measures. Within 30 days after completion of construction the project owner shall provide to the CDFG and CPM a written construction termination report identifying how mitigation measures described in the plan have been completed.

Within 60 days of completion of the permanent power plant site fence, the project owner shall submit a figure and photographs to the CPM, CDFG, and USFWS of the CTS and CRLF barrier fence.

- **Page 66, BIO-16 Verification:** *Text is moved because it should apply to Section A and Section B, so it needs to be moved to the end of the Verification.*

If the project owner chooses to mitigate under **Section A** of this Condition:

Agreements to delegate land acquisition to an approved third party shall be implemented within 6 months of the start of project ground-disturbing activities. If the project owner elects to delegate land acquisition prior to project construction, the project owner shall provide to the CPM, CDFG, and USFWS a delegation proposal that identifies the third party and includes their qualifications to complete land acquisition and initial protection and improvement, and shall obtain approval from the CPM, CDFG, and USFWS, prior to delegation or transfer of funds. The project owner shall remain responsible for demonstrating compliance with the timelines and requirements described below.

No less than 90 days prior to acquisition of the property, the project owner shall submit a formal acquisition proposal to the CPM, CDFG, USFWS, describing the parcels intended for purchase and shall obtain approval from the CPM, CDFG, and USFWS prior to the acquisition.

The project owner, or an approved third party, shall complete and provide written verification to the CPM, CDFG, and USFWS of the compensation lands acquisition and

transfer within 18 months of the start of project ground-disturbing activities, or prior to commercial operation, whichever occurs first.

The project owner, or an approved third party, shall provide the CPM, CDFG, and USFWS with a Compensation Lands Management Plan, for approval, within 180 days of the land or easement purchase, as determined by the date on the title. If additional long-term management fees are required, these fees shall be paid by the project owner no more than 90 days from approval of the Management Plan.

~~**Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM, CDFG, and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during project construction. This shall be the basis for the final number of acres required to be acquired.**~~

If the project owner chooses to mitigate under **Section B** of this Condition:

No less than 90 days prior to purchase of credits, the project owner shall submit to the CPM and CDFG for review and approval, and the USFWS for review and comment, the proposed conservation bank(s), species to be mitigated at the bank, and evidence that credits are available for purchase.

The project owner shall complete and provide written verification to the CPM, CDFG, and USFWS of the credit purchase within 18 months of the start of project ground-disturbing activities, or prior to commercial operation, whichever occurs first. The verification shall be a letter from the conservation bank, or other method approved by the CPM and CDFG, in consultation with the USFWS, and shall include the name of the conservation bank, number of credits purchased, and the species covered under the purchase.

Under either Section A or B of this Condition:

Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM, CDFG, and USFWS an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during project construction. This shall be the basis for the final number of acres required to be acquired.

- **Page 68, BIO-17, paragraph 2, Verification:** *This addition is provided for clarification.*

If bentonite will be used, an Emergency Spill Response Plan, “Frac out” Monitoring Plan, and a Biological Monitoring Plan shall be submitted to the CDFG for review and comment and to the CPM for approval no less than 30 days prior to the start of project ground-disturbing activities **involving bentonite**. Plan approval shall be required before construction using bentonite may commence.

- **Page 68, following BIO-18 Verification, last paragraph:** *This text is from a condition that is no longer necessary and should be deleted.*

~~**If an occupied nest is detected within 2 miles of the project boundary during the inventory, no less than 30 days prior to the start of any pre-construction site mobilization the project owner shall provide the CPM, CDFG, and USFWS with the final version of the Golden Eagle Monitoring and Management Plan. This final Plan shall have been reviewed and approved by the CPM in consultation with USFWS MBO. Plans measures shall be incorporated into the BRMIMP within 10 days of completion of the Plan, and implemented.**~~

Land Use

- **Page 6, third paragraph**: *Staff added text for consistency with cited Land Use section of the Supplemental Staff Assessment (SSA).*

Two BBID properties are the only lands the project would directly use that are classified as Farmland **of Local Significance**.

- **Page 8, third paragraph**: *Staff edited typographical errors and clarified statements made in the following paragraph that had been misstated from the Land Use section of the SSA. There is a difference between "not a substantial impact" and "not substantial".*

The project's pump station would be located near an existing, similar pumping structure on ~~**BBIP**~~ **BBID** land. The pump station would be a permanent structure that would convert the underlying farmland to non-agricultural use. However, the station's footprint would be approximately 250 square feet. The ~~**BBIP**~~ **BBID** lands are designated "Farmland of Local Importance". Staff analysis concluded that the conversion of 250 square feet of "Farmland of Local Importance" to the non-agricultural use of a pump station on a 23-acre property would not be ~~**a**~~ substantial **and would be a less than significant** impact. (Ex. 301, p. 4.12-11.) The turnout structure for the pumping station would be located along the inside bank of canal 45. Apart from the insubstantial conversion of Farmland **of Local Importance** resulting from the pump station and

turnout structure, there are no other project components which cause the conversion of additional farmland to non-agricultural use. (*Id*.)

- **Page 14, first paragraph:** *Staff added Condition of Certification **LAND-3** which was discussed during staff's testimony.*

Condition of Certification LAND-2 is designed to ensure that the existing livestock water supply is maintained on a year-round basis. **Condition of Certification LAND-3 would require reseeding the construction laydown area with an improved seed mix over current site conditions.** (*Id.* p. 4.12-18.)

- **Page 15, footnote 18 below second paragraph:** *Staff added **VIS-5** to the list of Conditions of Certifications in footnote 18 for consistency with text in the Land Use section of the SSA.*

[18] Conditions of Certification **TLSN-1** through **TLSN-4, HAZ-1** through **HAZ-7**, ~~**and**~~ **WORKER SAFETY-1** through **WORKER SAFETY-5 and VIS-5.**

- **Page 16, second paragraph:** *Staff's conclusions made in the Land Use section of the SSA regarding the project's consistency with the Contra Costa County General Plan was summarized incorrectly.*

The Contra Costa County General Plan expresses the broad goals, policies, and specific implementation measures which guide the decisions on development, future growth, and the conservation of resources through 2020. Approximately 0.7 miles of the MEP's water supply pipeline will be located in Contra Costa County. In addition, a temporary pipeline construction laydown and parking area would support pipeline construction. BBID would construct the water supply infrastructure. Staff concluded that **the pipeline construction laydown area** ~~**because BBID is a public entity, the project**~~ would be consistent with the **PS (Public/Semi-Public) land use designation** ~~**Contra Costa General Plan**~~ because the area would be used by a construction team affiliated with a public entity **(BBID). Staff concluded the water supply pipeline would be consistent with the AL (Agricultural Lands) land use designation because the loss of agricultural land would not be substantial (250 square feet) and the loss would be at the northern margin of the property. Also, Condition of**

Certification LAND-1 would ensure no additional loss of agricultural land would occur. (Ex. 301, p. 4.12-28.) Staff also presented analysis showing MEP's consistency with four specific policies in the Contra Costa County General Plan.

1. **Page 17, last paragraph**: *Staff has corrected text in the PMPD cited from staff testimony. The deleted text was not part of the staff testimony and is not accurate. Staff's clarification includes a statement cited from the Land Use section of the SSA that helps explain the reporting of the statements made in the Alameda County September 2010 letter.*

However, the evidence is clear that MEP complies with height requirements within Alameda County and that FAA jurisdiction over the Byron airport preempts most local airport policies. (2/24/11 RT 52-53.) Commission staff also made clear that they gave consideration to the Contra Costa County ALUC's letter **but did not detect anything in the letter pertaining to land use compatibility and the policies in the ALUCP. Alameda County assessed the project's compatibility with each applicable ALUCP policy in their September 2010 letter. Staff reported and considered this information in the Land Use SSA. (Ex. 301 pp.4.12-30.)** ~~**Nevertheless, Staff placed more reliance on the land use determinations of Alameda County, since the MEP site is located in Alameda County jurisdiction**~~ **The Contra Costa County ALUC letter identified potential project impacts from plumes on aircraft operations and pilot safety which were analyzed in the Traffic and Transportation section of the SSA.** (2/24/11 RT 202-206.)

- **Page 19, LAND USE Table 2:** *Staff added Condition of Certification **LAND-3** to several sections of LAND USE Table 2 consistent with staff's land use testimony.*

Applicable LORS	Consistency Determination	Basis for Determination
State		
California Land Conservation Act of 1965 (Williamson Act) (Gov. Code §51238.1(a))	Yes, as conditioned	Staff agrees with Alameda County and the DOC that the MEP would be consistent with the three principles of compatibility identified in GC § 51238.1(a) of the California land Conservation Act (CLCA). Staff has concluded the MEP is compatible with the CLCA with the inclusion of the proposed Conditions of Certification **LAND-2 and LAND-3.**
Local		
East County Area Plan (ECAP) (general plan)		
Land Use Designation:		
Large Parcel Agriculture	Yes, as conditioned	The ECAP does not preclude the construction of power plants on land of such designation and the project would be consistent with the specifications of the Large Parcel Agriculture land use designation. The proposed Conditions of Certification **LAND-2 and LAND-3** would meet the county's mitigation requirement for loss of land in agricultural production.

- **Page 20, LAND USE Table 2 continued**: *Staff added Condition of Certification **LAND-3** to several sections of LAND USE Table 2 consistent with staff's land use testimony.*

Public Services and Facilities- -General Services and Facilities; Infrastructure and Services		
Policy 218	Yes, as conditioned	The project would be consistent with the ECAP land use designation for the project site with the inclusion of Conditions of Certification **LAND-2 and LAND-3** would be consistent with applicable policies, the project is appropriately located in proximity to other electrical infrastructure, and the project is more than 0.25 mile from sensitive receptors and residences.

- **Page 25, second paragraph**: *Staff added the text below to be consistent with conclusions reported in the Land Use section of the SSA.*

MEP would not significantly contribute to cumulative land use impacts because: (1) It would not physically divide an existing community; (2) MEP would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction **with the inclusion of the proposed Conditions of Certification;** (3) The project would not conflict with the Bethany Reservoir State Recreation Management Plan and General Development Plan and (4) MEP would not be subject to the East Contra Costa County HCP/NCCP because those portions of the MEP which are located within the plan area are on land where the habitat is not sensitive.

- **Page 28, item 9:** *Staff added text to include the other two applicable LORS staff consulted that were omitted from the PMPD.*

9. Local land use ordinances and policies applicable to the MEP include the California Land Conservation Act of 1965 (Williamson Act), the East County Area Plan (ECAP), ~~**and**~~ Alameda County Ordinance Code (Title 17: Zoning)**, Contra Costa County General Plan, and Contra Costa County Airport Compatibility Land Use Plan.**

- **Page 29, items 12 and 13**: *Staff added Condition of Certification **LAND-3** to reflect additions to the Land Use section of the SSA made in staff's testimony.*

12. With the implementation of Conditions of Certification **LAND-2 and LAND-3**, the MEP will be consistent with the three principles of compatibility identified in Government Code section 51238.1(a) of the California Land Conservation Act (CLCA).

13. With implementation of Conditions of Certification **LAND-2 and LAND-3**, MEP will comply with the ECAP designation for Large Parcel Agriculture and would meet the county's mitigation requirement for loss of land in agricultural production. The ECAP does not preclude the construction of power plants on land designed for Large Parcel Agriculture.

- **Page 30, items 21, 28 and 29:** *Staff added Condition of Certification **LAND-3** to reflect additions to the Land Use section of the SSA made during staff's testimony. Staff also edited items 28 and 29 as these items were incorrect.*

21. With implementation of Conditions of Certification **LAND-2 and LAND-3**, the MEP will comply with ECAP Policy 128 (Infrastructure and Services) since it is

located in proximity to other electrical infrastructure and is located more than 0.25 mile from sensitive receptors.

28. The MEP will comply with applicable provisions of the Contra Costa County General Plan **AL (Agricultural Lands) land use designation** ~~**concerning agricultural lands**~~ because the minor ~~**(250 square feet)**~~ loss of agricultural production land associated with the project's pumping station **would not be substantial (250 square feet) and the loss would be at the northern margin of the property**. Furthermore Condition of Certification **LAND-1** will ensure no additional agricultural land is lost through conversion to urban use and will ensure that the project's pipeline construction is in accordance with BBID requirements.

29. The MEP will comply with Contra Costa County General Plan PS ~~**element**~~ (Public/ Semi-Public**) land use designation** since the construction area will be used by ~~**BBIC**~~**BBID**, a public entity.

Power Plant Reliability

- **Page 5, Item 4.** *This appears to be typographical error.*

4. An availability factor of ~~23~~ **92** to 98 percent is achievable by the MEP.

Socioeconomics

The Socioeconomic section of the PMPD does not address the applicable LORS for Socioeconomics, although they are listed in Appendix A-32 of the PMPD.

- **Page 4:** *A paragraph should be added on p. 4 to explain California Education Code, Section 17620 and how Condition of Certification **SOCIO-1** would ensure project conformance.*

Similarly, the evidence shows that existing educational, police, medical and emergency services will not be adversely impacted. (Ex. 301, pp. 4.8-7 − 4.8-9.)

As stated in Section 17620 of the Education Code; "The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement for the purpose of funding the construction or reconstruction of school facilities". Commercial development within the Mountain House ESD (2009) is charged a one-time assessment fee of $0.36 per square foot of principal building area. The Mountain ESD students attend high school at Tracy USD and therefore split the revenue with Tracy USD. The split is 75% of the fee to Mountain House ESD and 25% of the fee to Tracy USD. The 7,280 square feet of occupied

structure would create approximately $2,621 in impact fees. Condition of Certification SOCIO-1 is proposed to ensure payment of fees to these districts.

- **Page 13:** *Condition of Certification **SOCIO-1** was omitted from the PMPD. The second paragraph of under Conclusions of Law should be replaced with the following:*

No ~~**Conditions of Certification are required for this topic because no**~~ significant adverse socioeconomics impacts will occur as a result of construction and operation of the MEP. **Condition of Certification SOCIO-1 is required to ensure conformance with LORS.**

- **Page 13:** *Please add **SOCIO-1** back into the PMPD, to read as follows:*

SOCIO-1 The project owner shall pay the one-time statutory school facility development fee as required by Education Code Section 17620.

Verification: At least 20 days prior to the start of project construction, the project owner shall provide to the Compliance Project Manger (CPM) proof of payment of the statutory development fee. The payment shall be provided to the Mountain House Elementary School District (75%)/Tracy Unified School District (25%).

Traffic and Transportation

The comments on Traffic and Transportation are minor text edits and additions for clarification. Technical corrections have been made on pp. 1-3, 4, 7, 11-13, and 17.

- **Page 1, Paragraph 1, 3rd Sentence**:

However, **during** plant operation, traffic impacts tend to be minimal due to the limited number of vehicles involved; still, an increase in hazardous materials delivery to the area is expected. Any transport of hazardous materials must comply with federal and state laws.

- **Page 2, Summary and Discussion of Evidence, Paragraph 1:**

The evidence of record is undisputed regarding the potential impacts of the MEP on all transportation except the Byron Airport which is located in Contra Costa County, slightly less than 3 miles **northwest**~~**east**~~ of the site.

- **Page 3, Paragraph 2:**

Major access roads located near the MEP may be impacted by ~~**construction and operation of the**~~**traffic** related to construction **and operation** of the project. These include: Interstate 205 (I-205),~~**which is**~~ a freeway located approximately 3.5 miles south of the MEP site**;** ~~.~~Interstate 580 (I-580)**, which** merges with I-205 about 3.5 miles south of the MEP site; ~~.~~Byron Highway**, ~~is~~an** arterial located about 2 miles northeast of the MEP site;~~.~~ Bruns Road**,**~~is~~ a north-south road lying along the western border of the MEP property and intersecting with Byron Highway to the north;~~.~~ Kelso Road**,** ~~**is**~~ just north of and adjacent to the proposed MEP site**;**~~.~~ Mountain House Road**, which** runs north-south and is a local two-lane road in the vicinity of the MEP**; and**~~.~~ West Grant Line Road**,**~~**is**~~ a two-lane rural roadway in the vicinity of the MEP site.

- **Page 3,** *Bulleted Items, please delete bullets preceding, "For semi-rural areas…" and "For roadways within…":*

- Contra Costa County – General Plan, Growth Management Element;

  For semi-rural areas within Contra Costa County, a high LOS C is the lowest acceptable level of service; and

- Alameda County Congestion Management Agency– Congestion Management Program

  For roadways within the Congestion Management Program network (which includes State highways), the Level of Service standard is LOS E, except where F was the LOS originally measured. Where LOS F already exists, LOS F is the standard

- Alameda County – East County Area Plan

- **Page 4, Paragraph 2**:

The record contains analyses of other transportation modes conducted to determine the impacts which the MEP could have upon them. ~~**These include: f**~~**Freight** ~~**and passenger**~~**rail is located** ~~**,**~~ approximately 7 miles from the MEP site. There are several park-and-ride lots for car pools in the vicinity of the proposed MEP. Local plans do not include planned bikeways or pedestrian pathways within the vicinity of the MEP**, and** ~~**due to**~~ road conditions ~~**which a**~~re not safe for bicycles. There are no pedestrian crosswalks within the vicinity of the project. The Altamont Commuter Express (ACE)

provides commuter train service between Stockton and San Jose, with connections to Amtrak and Caltrain into the Bay Area. The ACE stop closest to the proposed MEP site is in Tracy. The Byron Airport, located approximately 2.7 miles **northwest~~east~~** of the MEP site, is a small public facility owned by Contra Costa County and is used for general aircraft operations, flight training, skydiving, and ultralight and glider operations. (See **Traffic & Transportation Figure 1**.)

- **Page 7, Paragraph 4:**

The Byron Airport has no air traffic control (ATC) tower and lies beneath Class E airspace. This airspace extends for a 5-mile radius around the Airport, from 700 feet AGL up to 18,000 feet above mean sea level (AMSL). **Aircraft operating under visual flight rules (VFR)** ~~**Pilots**~~ are not required to be in radio communication with any ATC facility, and their flight paths need not conform to published instrument approach or departure patterns when operating within the Byron Airport airspace. Under **VFR**~~**visual flight rules (VFR) rules**~~, aircraft are generally allowed to enter the standard pattern from any direction, provided it does not interfere with other aircraft or violate local noise abatement restrictions.

- **Page 11, Paragraph 2**:

Energy Commission staff uses a 4.3 meters per second (m/s) **plume average** vertical velocity threshold for determining whether a plume may pose a hazard to aircraft. This velocity generally defines the point at which general aviation aircraft would begin to experience more than light turbulence.

- **Page 12, Second Bullet:**

  At an altitude of 950 feet AGL, the average plume vertical velocity is predicted to be above the threshold velocity of 9.6 mph **(4.3 meters/second**) for only 26 hours of the year, and never above the vertical velocity of 13.6 mph, the upper limit of light turbulence **used in the Katestone analysis.**

- **Page 13, First Paragraph after the Bullet:**

In addition, Applicant commissioned CH2MHILL to prepare a Turbine Exhaust Velocity Characterization analysis using computational fluid dynamics (CFD). The two methodologies produced similar results for average plume methodologies at various elevations, **and the Applicant-commissioned analyses and staff's analysis all determined similar results for plume average velocity during calm winds.** (*Id.*, p. 87; 2/25/11 RT 285**; Ex. 301, p. 4.10-62, 63**)

- **Page 17, Paragraph 1**:

PUBLIC COMMENT

Ron Gawer identified himself as a pilot with an airplane at the Byron Airport. He fears that on a heavy air traffic day at Byron, he may be forced to fly over the power plant. He is concerned about plume effects and ~~on~~ any approach zone restrictions. (Id. RT 296.)

Visual Resources

2. **Page 35, Condition of Certification VIS-6** : *The PMPD Visual Resources section, **VIS-6** Condition of Certification, does not include the additions to the condition agree to by Staff, the Applicant, and Intervenor Bob Sarvey. The condition should read as follows:*

Landscaping

VIS-6 The applicant shall provide a comprehensive landscaping and irrigation plan along the northern boundary of the 10 acre facility site and the vehicle access exclusively serving the facility site in accordance with the requirements of Policy 114 of the East County Area Plan. Landscaping shall be installed or bonded prior to the start of commercial operation. In no event shall landscaping be installed any later than 6 months after the start of commercial operation.

The landscaping and irrigation plan shall include a list of proposed plant or tree species prepared by a qualified professional landscape architect familiar with local growing conditions and the suitability of the species for project-site conditions.

The applicant shall submit to the Director of the Alameda County Community Development Agency Planning Department for comment a comprehensive landscaping and irrigation plan. The applicant shall provide a copy of the Director of the Alameda

County Community Development Agency Planning Department's written comments on the landscaping and irrigation plan.

The applicant shall not implement the landscaping and irrigation plan until the applicant receives approval from the CPM. Planting must be completed or bonded by the start of commercial operation, and the planting must occur during the optimal planting season, but not later than 6 months after the start of commercial operation.

The applicant shall replace dead or dying plantings (plants and trees) listed or shown in the approved landscaping and irrigation plan for the project, annually at the least (e.g., start of Spring), for the life of the project.

Verification: Prior to commercial operation and at least 60 days prior to installing the landscaping, the applicant shall provide a copy of the landscaping and irrigation plan to the Director of the Alameda County Community Development Agency Planning Department for review and to the CPM for approval.

The applicant shall provide to the CPM a copy of the transmittal letter submitted to the Director of the Alameda County Community Development Agency Planning Department requesting their review of the submitted landscaping and irrigation plan. **The landscaping plan must be reviewed and approved by the biology staff to identify any issues related to sensitive species.**

The applicant shall notify the CPM within seven days after completing installation of the landscaping and irrigation that the landscaping and irrigation is ready for inspection.

Dated: April 27, 2011

Respectfully submitted,

Kerry A. Willis

KERRY A. WILLIS
Senior Staff Counsel

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

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

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 3/18/2011)

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*indicates change

DECLARATION OF SERVICE

I, **Rhea Moyer**, declare that on **April 27, 2011**, I served and filed copies of the attached **Staff's Comments on PMPD** dated **April 27, 2011.** 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]**. 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:

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

_____ by personal delivery;

__x__ 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:

__x__ **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.

Rhea A. Moyer