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Mr. Craig Hoffman,
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

SUBJECT: Proposed Mariposa Energy Project, Consistency with Alameda County General Plan and Williamson Act Contracts.

Dear Mr. Hoffman:

The following represents the position of 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 (the Project), at the intersection of Bruns Road and Kelso Road on a 10-acre portion of a 158-acre parcel (the Lee Property). The site is in northeastern Alameda County, in an unincorporated area designated for Large Parcel Agriculture (LPA) by the East County Area Plan (ECAP), and is located approximately seven (7) miles northwest of Tracy, six (6) miles south of Byron and 2.5 miles west of the community of Mountain House in San Joaquin County. The site is shared by the existing but unrelated 6.5 MW Byron Power Cogeneration / Water Treatment Plant, which occupies 2 acres of the 158-acre site. The remainder of the parcel is non-irrigated grazing land. The parcel is located in close proximity to the Pacific Gas & Electric (PG&E) 230-kilovolt Kelso Substation and other existing facilities necessary for operation of a power plant.

County staff understands that the project would be a 200-MW natural-gas-fired, simple-cycle electrical generation facility designed to operate as a peaker power supply at times of heavy electrical demand.

General: County staff believes that the proposed Project is, or can be made, consistent with all applicable policies of the Alameda County General Plan -- in particular the ECAP (Alameda County, 2002) -- with judicious use of planning and mitigation measures, and that the ECAP does not preclude construction of a power plant outside the Urban Growth Boundary (UGB) on lands designated for Large Parcel Agriculture use. The Mariposa Power Project falls within the definition of "infrastructure" allowable under Policy 14A of the ECAP, and the electricity produced by this facility would be considered a public utility. Following are specific points regarding policy.

ECAP Pertinent Land Use Policy: The County considers a power generation facility a land use allowed under the LPA description of the ECAP, provided that mitigation for agricultural land permanently removed from production as a result of the construction and presence of the facility is mitigated. ECAP Policy 13 allows certain types of public uses, facilities and infrastructure in support of public utilities. In Policy 13, the County defines infrastructure as "public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities." County Staff believes that the Project is appropriately called a "public facility" as well as "structures and development necessary to the provision of...public utilities" because it would substantially serve a key need of the public at large. County Staff also believe that the proposed facility fits within a reasonable definition of the term "infrastructure" and that the reason for this position is transparent given the definition in the policy. Therefore, the proposed Project would be consistent with the provisions of the ECAP.

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 proposed Mariposa Power Project would be an example of such a use.

Although the Project is reasonably defined as infrastructure, the overall power generation capability of the plant would potentially exceed the specific service demands considered adequate for the East County designated area. Policy 13, provides that no public facilities or infrastructure be authorized "in excess of that needed for permissible development consistent with this Initiative [meaning the ECAP as it presently pertains to the East County]." However, the facility would be constructed to serve areas beyond the East County as defined by the available power grid and the requirements of PG&E and the Cal ISO at identified times of peak demand; it is not designed to support any quantity of new development in excess of what is permissible under the ECAP. The statewide needs for energy into the future will be widespread across Northern and Central California; given the energy needs projected statewide and locally, Alameda County, even with growth constraints built into the ECAP, will require significant electrical energy especially at times of peak demand. The County is likely to receive only a portion of its future energy needs from this project, relying also on other full- or part-time energy sources that also are likely to be built and connected to the grid. Until present and future projected statewide electrical energy needs are satisfied, no plants constructed within California or available to the grid would be considered growth-inducing for Alameda County, and therefore the proposed plant would not be in conflict with Policy 13.

Consistency with General Agricultural Land Use and Policy: The Mariposa Power Project would be consistent with preservation of agricultural/open space areas as presented under Policy 52 of the ECAP, as well as the definition in Table 1 (Sensitive Viewsheds) of the ECAP. For uses defined under this policy, including health and safety, recreational opportunities, production of natural resources, protection of sensitive viewsheds as defined in the ECAP, biological preservation and physical separation of communities, the Project is both compatible and consistent with ECAP. The placement of the proposed power plant in this location would not significantly compromise any of the values stated in this policy, especially with the mitigation being proposed for biological and agricultural resources. County staff does not see a significant

or unavoidable inconsistency with the proposed use. This is further clarified by ECAP Policy 54, which states that "the County shall approve only open space, park, recreational, agricultural, limited infrastructure, public facilities...and other similar and compatible uses outside the Urban Growth Boundary."

Consistency with Mountain House Agricultural Policy: The project is located in the Mountain House area, as defined by the California Aqueduct route and the boundaries of Alameda County with Contra Costa and San Joaquin Counties. Policy No. 72 of the ECAP states that, "The County shall preserve the Mountain House area for intensive agriculture use." The project site, while in the Mountain House area, is not suitable in general for intensive agriculture use. Unlike much of the area, the sloped land is not valley bottomland or characterized by high quality soils, and the land is neither prime farmland nor unique farmland. It has been used for marginal levels of grazing in the past. The Project would therefore not displace any existing or possible intensive agriculture in the area. Further, the project proposes mitigation on the site to enhance the existing agriculture, that of grazing. For these reasons, the project would not undermine preservation of intensive agriculture in the Mountain House area, and would be consistent with this policy.

Consistency with the County Zoning Ordinance: Infrastructure, such as power plants and transmission line facilities, are permitted in the "A" – Agriculture Zoning District; in particular, a power plant such as the Project would be permitted with a Conditional Use Permit (CUP), the process for which would be a direct parallel to the CEC process, and for which the CEC process is a fully acceptable substitute. This position is in accordance with the discussion presented above for Policy 13.

Consistency with existing Williamson Act Contract: The subject site is currently encumbered by a Williamson Act contract for agricultural land conservation. As such, the land has specific defined limitations regarding possible land uses, compatible uses and activities that may be conducted thereon. In general, these uses must either be agriculture-related, supportive of onsite agriculture, or otherwise compatible with agriculture.

Under Government Code 51238, the erection, construction, alteration or maintenance of gas, electric, water or communication facilities on a parcel encumbered by a Williamson Act contract are all considered compatible uses unless the Board of Supervisors, after notice and hearing, makes a finding to the contrary. This includes electrical power generation facilities such as the proposed Project.

There are limitations to compatible uses; the use must meet the requirements of the Principles of Compatibility, which in short require that the new use not compromise, impair, or displace current or reasonably foreseeable agricultural uses on the property or nearby contracted properties, or the long-term productive agricultural capability of the property or nearby contracted properties. The Project, as proposed, would be consistent with these principles and would, through mitigation, improve productivity on a portion of the parcel equal in size to that which it would occupy.

Second, the proposed use must, by virtue of scale, be subordinate and incidental to the primary use, which is agriculture. In the case of the proposed use, a total of ten acres of land out of an available 156 acres of land would be removed from marginal agricultural use, and combined with the Byron Power Cogeneration Plant would occupy 12 acres total. This represents 7.6% of the total parcel size, and would leave 146 acres available for agricultural use. This use of a small fraction of the site is considered compatible by the County, and the added agricultural enhancement on ten acres supports this compatibility. Staff believes that the project is compatible and consistent with the Williamson Act contract, which would require neither cancellation nor non-renewal as a result of this project.

Summary: 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 feel free to contact Mr. Bruce Jensen of my staff at (510) 670-6527 or bruce.jensen@acgov.org.

Very truly yours,

Chris Bazar, Director
Community Development Agency

cc: Each member, Alameda County Board of Supervisors
Susan Muranishi, County Administrator
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