



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT

<b>DOCKET</b>	
<b>09-AFC-3</b>	
DATE	JUN 08 2010
RECD.	JAN 21 2011

Chris Bazar  
Agency Director

June 2, 2010

Agenda Item # **6**  
June 8, 2010

Albert Lopez  
Planning Director

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West Winton Ave.  
Room 111

Hayward  
California  
94544

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510.670.5400  
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Honorable Board of Supervisors  
Administration Building  
1221 Oak Street, Fifth Floor  
Oakland, CA 94612

Dear Boardmembers:

**SUBJECT:** Mariposa Energy Project Cooperation Agreement (“Agreement”) by and between the County of Alameda, California, a political subdivision of the State of California (“County”), and Mariposa Energy, LLC, a Delaware limited liability company and subsidiary of Diamond Generating Corporation (“Mariposa”).

Dear Board Members:

**RECOMMENDATION:**

That the Board approve the proposed Cooperation Agreement (Attachment A) in which Mariposa agrees to provide various community benefits as mitigation and compensation should the California Energy Commission (CEC) approve construction of the Mariposa Energy Project, a 200 MW natural gas-fired peaker power plant.

**SUMMARY:**

Mariposa has proposed to construct a 200-MW natural-gas-fired peaker power plant in eastern Alameda County on 10 acres of a 158-acre parcel, Assessor’s Parcel No. 099B-7050-001-10, the certification of which the CEC is expected to decide by November 2010. The Cooperation Agreement would require that the applicant provide a community benefit package as mitigation and compensation for the ability to construct the project after CEC approval. This action would constitute the County’s approval of the agreement and authorize County Staff to finalize the documentation.

**DISCUSSION:**

Mariposa Energy, LLC has submitted an Application for Certification to the CEC to construct and operate the Mariposa Energy Project, a 200 MW natural gas-fired power plant on 10 acres of a 158-acre site at the corner of Bruns Road and Kelso Road in Eastern Alameda County (refer to FIGURES 1 and 2, REGIONAL SETTING, immediately at the end of this report). The aforementioned parcel is currently covered by a Williamson Act Land Conservation Contract. The entire property is planned and zoned for agriculture and has historically been used for grazing of cattle; and it presently remains in this use, except for a small 6.5 MW cogeneration plant on site which is already specified as a compatible use in the Contract.

Although the provisions of the existing contract are not explicit on this point, the Department of Conservation has opined that the contract would permit the construction of a power plant on this parcel as a compatible use, due to the small footprint of the facility, the ability to continue agriculture on the majority of the site, and the project proposal to enhance agriculture on a comparably sized 10-acre portion of the site. The CEC is the lead agency for all thermal power plant proposals greater than 50 MW in the State of California, and is currently processing the application for the power plant at the State level. In this instance, Alameda County is an interested/affected agency, but not a permitting agency. The County is currently in the process of planning for the reduction of greenhouse gases and other types of air pollution, which have effects on both the environment and human health; within Alameda County, this project would represent an increase in these types of emissions. Mitigation is being required at the State level through its certification process for some of these effects, but the certification speaks little to the issue of greenhouse gases and their effects on the environment, health, or the County's ability to regulate these emissions. The proposed Cooperation Agreement would help enhance these efforts.

Provisions of the Agreement. Per this agreement the County acknowledges the need for expeditious processing of applicable County permits (including encroachment permits, franchises and easements), provision of appropriate government services, and assistance in acquisition of real property and rights-of-way necessary for construction. Mariposa agrees to provide improvements and community benefits including the following:

- (1) \$600,000 for a health care facility or youth center in the Tri-Valley area (details to be determined by the County);
- (2) \$150,000 for the County's Community Climate Action Plan (CCAP) environmental analysis pursuant to CEQA, and/or any other analysis or effort related to alternative energy, energy efficiency or greenhouse gas reduction.
- (3) \$450,000 for the unincorporated East County PACE Program for Climate Zone 12 (includes all of the unincorporated area eastward from the crest of the ridge between Hayward/Fremont and the Pleasanton-Sunol area), to be applied to various efforts including:
  - a. Training and certification for contractors to meet the standards required for the PACE program. Certification ensures a higher standard for energy efficiency work and provides additional comfort to owners in this new field.
  - b. Climate Zone 12 Priority Grants for PACE participants of up to \$5,000 or 50% of the cost of implementing the climate zone energy efficiency improvements as identified and prioritized in the California First Program Handbook.
  - c. Revolving Loan Fund to Non-Market Rate Borrowers. Interest income and loan repayments subsidize PACE loans for non-market rate "moderate income" borrowers, who are defined by HUD as having income at 120% of area median income.

These contributions would be given upon commencement of construction of the Mariposa Energy Project and within 90 days following receipt by Mariposa of the County's request for funding for each such County Project. The agreement also includes normal and reasonable language pertaining to rights and responsibilities of both parties entered into the agreement.

Mariposa Energy LLC  
Cooperation Agreement  
June 8, 2010  
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**ENVIRONMENTAL REVIEW:**

The approval of this agreement is exempt under CEQA as it does not in and of itself constitute a project with physical effects on the environment.

The complete record, including the Draft Agreement, is attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bazar". The signature is fluid and cursive, with the first name "Chris" and last name "Bazar" clearly distinguishable.

Chris Bazar  
Director of Community Development

cc: County Administrator  
County Counsel  
County Auditor-Controller  
County Assessor  
County Recorder  
State Department of Conservation  
Mariposa Energy LLC  
Mr. Bohdan Buchynsky

## MARIPOSA ENERGY PROJECT COOPERATION AGREEMENT

This Mariposa Energy Project Cooperation Agreement (the "Agreement") is entered into this 8<sup>th</sup> day of June, 2010 by and between the County of Alameda, California, a political subdivision of the State of California ("County"), and Mariposa Energy, LLC, a Delaware limited liability company and subsidiary of Diamond Generating Corporation ("Mariposa"). Hereinafter, the County and Mariposa may be referred to individually as a "Party" or collectively as "the Parties."

### RECITALS

WHEREAS, Mariposa proposes to develop a simple cycle power plant with a nominal capacity of 200 MW, to be known as the Mariposa Energy Project ("MEP" or "the Project"), on real property located southeast of the intersection of Bruns Road and Kelso Road on a 10-acre portion of a 158-acre parcel, known as "the Lee Property," in the County of Alameda, California.

WHEREAS, under the Warren-Alquist State Energy Resources Conservation and Development Act ("Warren-Alquist Act"), beginning at Section 25500 of the Public Resources Code, construction and operation of the Project is subject to approval by the California Energy Commission ("CEC"), which is given the exclusive authority to certify (approve) sites and related facilities for any proposed thermal power plant over 50-megawatts in generating capacity. Under the Warren-Alquist Act, such approval by the CEC is in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

WHEREAS, pursuant to Sections 21080.5 and 25519(c) of the Public Resources Code, the power plant siting process of the CEC is a certified state regulatory program under the California Environmental Quality Act ("CEQA"). Thus, for MEP, the CEC is the lead agency for all matters of compliance with CEQA. The CEC is not required to issue or certify an Environmental Impact Report for the Project, but will issue a comprehensive environmental document through its staff (the "Final Staff Assessment"), and the CEC's review and permitting processes require extensive review of all environmental matters concerning the Project, including potential project impacts (such as air quality, public health, hazardous materials usage, waste management, biological and cultural resources, facility design, plant safety and reliability, land use, noise, socioeconomic effects, visual impacts, water and soils, and local system effects); conformance with local, state and federal legal requirements; and project alternatives.

WHEREAS, it is anticipated that CEC will adopt a final decision (the "**Final Decision**") certifying the MEP site and related facilities. The Final Decision will include extensive environmental mitigation requirements, project design, construction and operation requirements, compliance verification, and other conditions of certification of the Project, which may be modified by the CEC from time to time in accordance with its rules and procedures (collectively, the "**Conditions of Certification**"). Mariposa and the Project will be required to strictly comply with all Conditions of Certification contained in the CEC Permit.

WHEREAS, notwithstanding the foregoing, design, construction, and operation of MEP will require substantial County services, including review of plans in connection with issuance of permits.

WHEREAS, development of MEP will provide substantial benefit to the County, and the County's provision of services will provide substantial benefit to MEP.

WHEREAS, the Parties see mutual benefit in establishing a cooperative relationship for the development of MEP within the County.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants set forth herein, Mariposa and the County enter into this Agreement, on the terms and conditions set forth herein.

## **ARTICLE 1 COOPERATIVE EFFORTS**

**1.1 Purposes.** In addition to the purposes recited above or elsewhere in this Agreement, the purposes of this Agreement include the following: (a) to establish a cooperative working relationship between the Parties; (b) to provide certain benefits to the community; (c) to set forth the County's commitments for the timely delivery of services and actions in connection with this Agreement, and (d) to summarize the basis of funds payable by Mariposa in connection with the Project; all as more specifically defined and described in this Agreement.

### **1.2 Timelines.**

**1.2.1 Project Schedule.** The County and Mariposa will use their best efforts to move forward so that the Project can receive a Final Decision from the CEC on or before November 1, 2010 and so that the Project can become operational within approximately twenty (20) months after issuance of the Final Decision.

**1.2.2 Processing.** The County shall cooperate in expediting the review and processing of Mariposa's applications for any required County permits, approvals, or recommendations and any required communication or actions with the CEC or other regulatory agencies that is time critical to the Project schedule.

The County shall arrange for County staff to participate in any meetings, workshops or hearings in connection with the CEC approval process, when such participation is requested by the CEC or Mariposa. Further, the County shall coordinate communications between County departments concerning the Project and provide Mariposa with a single point of contact with the County.

The Parties acknowledge and agree that one or more separate agreements (the "Related Agreements") may be necessary in order to implement this Agreement. The Director of the County Community Development Agency is hereby delegated the authority to execute all such Related Agreements for and on behalf of the County necessary for the implementation of this Agreement and consistent with the terms and conditions of this Agreement.

**1.2.3 Delivery of County Services and Actions.** The County shall provide all appropriate governmental services and actions to meet the goal of the CEC issuing the Final Decision on or before November 1, 2010 and Mariposa starting MEP operations on schedule, and, subject to any provisions of this Agreement, at standard rates and applicable terms, if any to the extent fees are customarily charged by the County for performing such services, as may be established from time to time by the County Board of Supervisors and normally charged to or imposed on other users of the services being provided by the County. For the avoidance of doubt, the County will not assess any charges to Mariposa for services that the County typically performs without charge to users of such services.

**1.2.4 Encroachment Permits/Franchises/Easements.** For and in consideration of Mariposa's Contribution (as defined below) to be made pursuant to Section 4.2 of this Agreement, the County shall grant to Mariposa, Byron Bethany Irrigation District, or any public utility, as designated by Mariposa, such encroachment permits, licenses, franchises and/or easements as may be required for the installation of any water pipelines, electric lines, gas pipelines, communications lines, storm drain pipelines and related equipment necessary to operate MEP within County-owned or County-controlled rights of way at no additional cost. In particular, neither Mariposa nor the designated public utilities shall be required to pay any initial or annually recurring fees for any of such encroachment permits, licenses, franchises and/or easements.

**1.3 Conditions to Obligations.** All of Mariposa's obligations under this Agreement, other than those set forth in Article 2, shall be conditioned upon (a) the issuance of the CEC Permit for the Project and, (b) the final decision of Mariposa to proceed with the construction of the Project after review of the CEC's Final Decision and conditions and all required corporate determinations of Diamond Generating Corporation ("DGC") with regard to financing and construction of MEP. Unless and until a written notice of the determination by Mariposa to proceed is given to the County, no obligations, including without limitation with respect to the expenditure of money, of any Party under this Agreement, other than planning and permitting activity and Mariposa's obligations under Article 2 shall become operative. If Commencement of Construction of the Project, as defined in Section 4.4, occurs without Mariposa's having provided the County with written notice of the determination to proceed with the construction of the Project, such Commencement of Construction shall be deemed and shall constitute Mariposa's notice of election to proceed hereunder.

## **ARTICLE 2 PROCESSING OF PERMITS AND APPLICATIONS**

**2.1 Expedited Review.** The County shall provide expedited review of all applications, plans, permits, approvals, and plan checks submitted by Mariposa in connection with MEP, including, without limitation, any reviews undertaken pursuant to this Agreement and any requests for review by the CEC, and participation in CEC hearings, meetings or workshops. Such expedited review shall include the County's engagement, subject to reimbursement by Mariposa, of such consultants as the County deems reasonably appropriate. The County may also make appropriate assignments of County staff to evaluate and coordinate the work of the consultants engaged by the County ("County Consultants").

**2.2 Reimbursement.** Mariposa shall reimburse the County for charges to the County by the County Consultants for services described in Section 2.1. In addition, Mariposa shall reimburse the County for County staff involved in the reviews described in Section 2.1 at the regular internal staff time charges.

### **ARTICLE 3 LINEAR FACILITIES RIGHTS OF WAY**

**3.1 Generally.** Mariposa currently anticipates development, construction, and operation of a natural gas pipeline, an electric transmission line and a waterline, in connection with the development, construction and operation of MEP. Such gas pipeline, electric transmission line, and water line, and any other communications lines and/or storm drain pipelines are hereinafter referred to as “**Linear Facilities.**” To the extent permitted by law, the County agrees to assist Mariposa with the acquisition of any real property interests in private real property, County roads or County rights-of-way necessary for Linear Facilities or road improvements related to the development, construction, and operation of MEP, in the case that Mariposa is unable to acquire such real property interests through its own good faith efforts. This Agreement is not, however, a commitment nor an announcement of an intent by the County to acquire any real property interests that may be necessary for rights-of-way for such Linear Facilities or road improvements.

### **ARTICLES 4 COMMUNITY BENEFITS TO COUNTY**

**4.1 Understanding.** The Parties agree that in furtherance of the objectives of this Agreement Mariposa shall fund certain “County Project(s)” as described in Section 4.2 of this Agreement. The Parties further agree that the County Projects described in Section 4.2 are not necessary to mitigate the potential impacts of the Project, but are instead funded solely in furtherance of the mutual benefits of the County Programs and Facilities accruing to the Parties as described in this Agreement. The Parties are in further agreement that the Contribution to County Programs and Facilities should be funded and expended as set forth in this Agreement.

**4.2 MEP Contribution to County Programs and Facilities.** Provided the conditions precedent set forth in Section 4.3 have been satisfied, Mariposa shall contribute to the County in one or more installments, the sum of One Million Two Hundred Thousand United States Dollars (\$1,200,000) (the “Contribution”). Such funds are expected to be utilized by the County as delineated below. However, the County is authorized to reallocate the funds as necessary among these County Programs.

- 1) \$600,000 for a health care facility or youth center in the Tri-Valley area, details to be determined by the County.
- 2) \$150,000 for the County’s Community Climate Action Plan (CCAP) environmental analysis pursuant to CEQA, whether an EIR or Negative Declaration, and/or any other analysis or effort related to alternative energy, energy efficiency or greenhouse gas reduction, including but not limited to programs, ordinances and environmental work

related to wind energy, solar energy, biofuel, or other alternative energy source, and/or home and commercial installations of these technologies.

- 3) \$450,000 for the unincorporated East County PACE Program for Climate Zone 12. Climate Zone 12 is the area east of the coastal hills in Alameda County, and requires significantly more degree days of heating in the winter and significantly more degree days of cooling in the summer. These funds will be applied to the following programs:
- a) Contractor training. There are few certified building performance contractors who have been trained to meet the standards required for the PACE program. Certification ensures a higher standard for energy efficiency work and provides additional comfort to owners in this new field. Certification courses for contractors cost approximately \$2,500 per contractor.
  - b) Climate Zone 12 Priority Grants up to 50% or \$5,000 in energy efficiency improvements. Provide, to PACE participants, grants of up to 50% of the cost of implementing the climate zone energy efficiency improvements as identified and prioritized in the California First Program Handbook. The installation cost of these measures is estimated to be no more than \$10,000 on a typical residence. A maximum grant would be \$5,000.
  - c) Revolving Loan Fund to Non-Market Rate Borrowers. Interest income and loan repayments subsidize PACE loans for non-market rate "moderate income" borrowers, who are defined by HUD as having income at 120% of area median income.

On December 1, 2009, the Alameda County Board of Supervisors adopted Resolution No. R-2009-467, adopting the statewide California First AB811 Financing Program for property assessed clean energy improvements (PACE). The Community Development Agency (CDA) has been tasked with the development and implementation of energy efficiency programs Countywide. CDA seeks to develop an East County Energy Efficiency Program which includes PAC-type financing as well as other program and financing methods targeted to Climate Zone 12.

Provided the conditions precedent to the payment of the Contribution set forth in Section 4.3 have been satisfied, Mariposa shall make the Contribution described above to the County, in one or more installments, the full amount of each request for funds submitted by the County, to be utilized by the County for the County Projects within ninety (90) days following receipt by Mariposa of the County's request for funding for each such County Project. If the County proceeds with any of the specified projects before satisfaction of the conditions precedent to such Contribution set forth in Section 4.3, Mariposa agrees that the County may request reimbursement of actual costs previously incurred by the County for the respective County Project up to the maximum amount set forth in this Section, once such conditions precedent have been satisfied.

**4.3 Condition Precedent to Mariposa's Obligations.** Mariposa's obligation to make the Contribution described in this Article 4 shall be conditioned upon Commencement of Construction of the Project as defined in Section 4.4.

**4.4 Definition of Commencement of Construction.** The Commencement of Construction of the Project shall be deemed to occur upon completion of site preparation for the MEP Site, including any grading and compaction activities required, and the commencement of on-site work to install permanent equipment or structures on the MEP Site. Construction does not include (a) the installation of environmental monitoring equipment, (b) soil or geological investigation, (c) topographical survey, (d) any other study or investigation to determine the environmental acceptability or feasibility of the use of the MEP Site for any particular facility, or (e) any work to provide access to the MEP Site for any of the purposes specified in subparts (a), (b), (c), or (d).

## **ARTICLE 5 MISCELLANEOUS**

**5.1 Governing Law.** This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California.

**5.2 Joint Effort.** The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

**5.3 Captions.** The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

**5.4 Counterparts.** This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

**5.5 Time is of the Essence.** Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement.

**5.6 Authority.** Mariposa hereby represents and warrants to the County that the persons who have executed this Agreement have been authorized to do so by Mariposa.

**5.7 Other Agreements/Documents.** Each Party hereby represents and warrants to diligently pursue negotiation and execution of any agreements and documents identified herein, and/or any other agreements or any other project to be undertaken pursuant to this Agreement. The County hereby expressly authorizes its staff to proceed in such a manner, and when appropriate, to enter into such agreements, without the need for further review, consideration, or approval by the County Board of Supervisors.

**5.8 Notices.** All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the County or Mariposa at the addresses set forth below, or to any other address provided by one (1) Party to the other Party in writing. Mariposa reserves the right to change the identity of the Party to whom notices to Mariposa hereunder should be sent by notifying the other Party in writing.

**Notices to the County:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

**Mariposa**

Mariposa Energy, LLC  
333 South Grand Avenue, Suite 1570  
Los Angeles, California 90071 USA  
Attn: President  
Fax: (213) 620-1170  
Phone: (213) 473-0080

The effective date of such written notice shall be the date of personal delivery or the date of receipt by certified mail.

**5.9 Venue.** In the event that suit shall be brought by any Party, the Parties agree that trial of such action shall be held in a State Court of the County of Alameda or in a U.S. District Court for the Northern District of California.

**5.10 Entire Agreement.** This Agreement, together with the other agreements referenced herein, contains the entire understanding between the Parties with respect to the subject matters herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed or referenced herein. This Agreement may not be amended except by written instrument signed by all the Parties.

**5.11 No Third Party Beneficiary.** The Parties hereto mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party. There is no third party beneficiary to this Agreement.

**5.12 Counterparts.** This Agreement may be executed in counterparts.

**5.13 Assignment.**

**5.13.1 Generally.** This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Except as provided in Section 5.13.2, no Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

**5.13.2 Certain Exceptions.** Notwithstanding the provisions of Section 5.13.1, the Parties agree that Mariposa may, upon not less than ten (10) business days' prior written notice to the County, but without County's prior written consent, assign its rights and delegate its duties to (a) an Affiliate of Mariposa, (b) a successor-in-interest by merger, consolidation or reorganization, or

(c) a purchaser or other transferee of the Project once the Project becomes operational (provided that, in the event of any such transfer to a purchaser or other transferee of the Project occurring while any performance or payments required by Article 2, Article 3, or Article 4 of this Agreement are still outstanding, Mariposa shall have provided the County assurances reasonably satisfactory to the County that such obligations will be assigned to a person or entity financially capable of performing or causing said payments to be made. As used herein, the terms "Affiliate of" or "entity affiliated with" a specified entity or person means any other entity or person that directly, or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity or person specified. For purposes of the foregoing, "control," "controlled by," and "under common control with," with respect to any entity or person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity or person, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

**5.13.3 Release.** Upon the execution of a written assignment and assumption agreement pursuant to which any such permitted assignee expressly assumes the obligations of the assignor hereunder, the assignor shall automatically be released and discharged from any and all liability and obligations arising out of or relating to this Agreement that arise after the date of such assignment, provided that, in the event of any such assignment by Mariposa occurring while any performance or payments required by Article 2, Article 3, or Article 4 are still outstanding, Mariposa shall have provided the County assurances reasonably satisfactory to the County that such obligations will be assigned to a person or entity financially capable of performing or causing said payments to be made. No Project Lender shall be required to assume the obligations of Mariposa hereunder in connection with any assignment of Mariposa's rights and obligations under this Agreement as collateral to support the Project Financing contemplated in Section 5.13.2 above.

**5.13.4 Other Assignments Null and Void.** Any assignment in violation of this Section 5.13 shall be null and void and of no force or effect whatsoever.

**5.14 Development as a Private Undertaking.** No partnership, joint venture or other association of any kind by or between the County and Mariposa is formed, implied or deemed to have arisen by operation of this Agreement.

**5.15 Further Assurances.** Each Party shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as either Party may reasonably require in order to carry out the intent and purpose of this Agreement.

**5.16 Nonwaiver.** Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such right or remedy, whether theretofore or thereafter arising or occurring. The waiver by a Party of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

### **5.17 Performance Criteria.**

**5.17.1** During the term of this Agreement, the Parties shall work together in good faith using best efforts (as defined below) to carry out the purposes of this Agreement (including, without limitation, the purposes and Project schedule set forth or otherwise referred to in Sections 1.1 and 1.2 above). For purposes of this Agreement, the term "best efforts" shall mean each Party shall work together with the other Party in good faith and a spirit of cooperation in making such reasonably prompt, substantial and persistent efforts which under the circumstances are commercially, technically, legally and financially reasonable in order to achieve the intent and purposes of this Agreement, but best efforts does not require any person or entity to take any extraordinary or unusual actions that would not be commercially, technically, legally and financially reasonable in the particular circumstances.

**5.17.2** Each Party agrees to attempt in good faith (a) to identify and attempt to resolve any and all problems arising with respect to the Project and the other matters described herein; and (b) to take all reasonable steps and perform all reasonable actions necessary to accomplish the purposes and intent of this Agreement.

**5.18 Estoppel.** The County shall, at any time upon not less than ten (10) business days' prior written notice from Mariposa, execute, acknowledge and deliver to Mariposa a statement in writing certifying that (a) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and identifying each modification); (b) there are not, to the County's knowledge, any uncured defaults on the part of Mariposa or County hereunder, or specifying such defaults if any are claimed, and (c) any other matters which Mariposa or any prospective purchaser or encumbrancer, shall reasonably request. In the event that the County fails to deliver such statement within such ten (10) business day period, Mariposa shall send a second notice (by registered mail or courier) requesting such statement be delivered by the County to Mariposa within the five (5) business day period commencing with receipt of the second notice. The County's failure to deliver such statement within either of such time periods shall constitute a breach of this Agreement.

**5.19 Release on Performance.** If Mariposa ceases to be the owner of the Project and a new owner of the Project has fulfilled all or part of the obligations contemplated in this Agreement, then, to the extent Mariposa has not previously been released from those obligations under Section 7.14.3 hereof, Mariposa shall be relieved of those obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives as follows:

MARIPOSA ENERGY, LLC

County of Alameda

By: \_\_\_\_\_

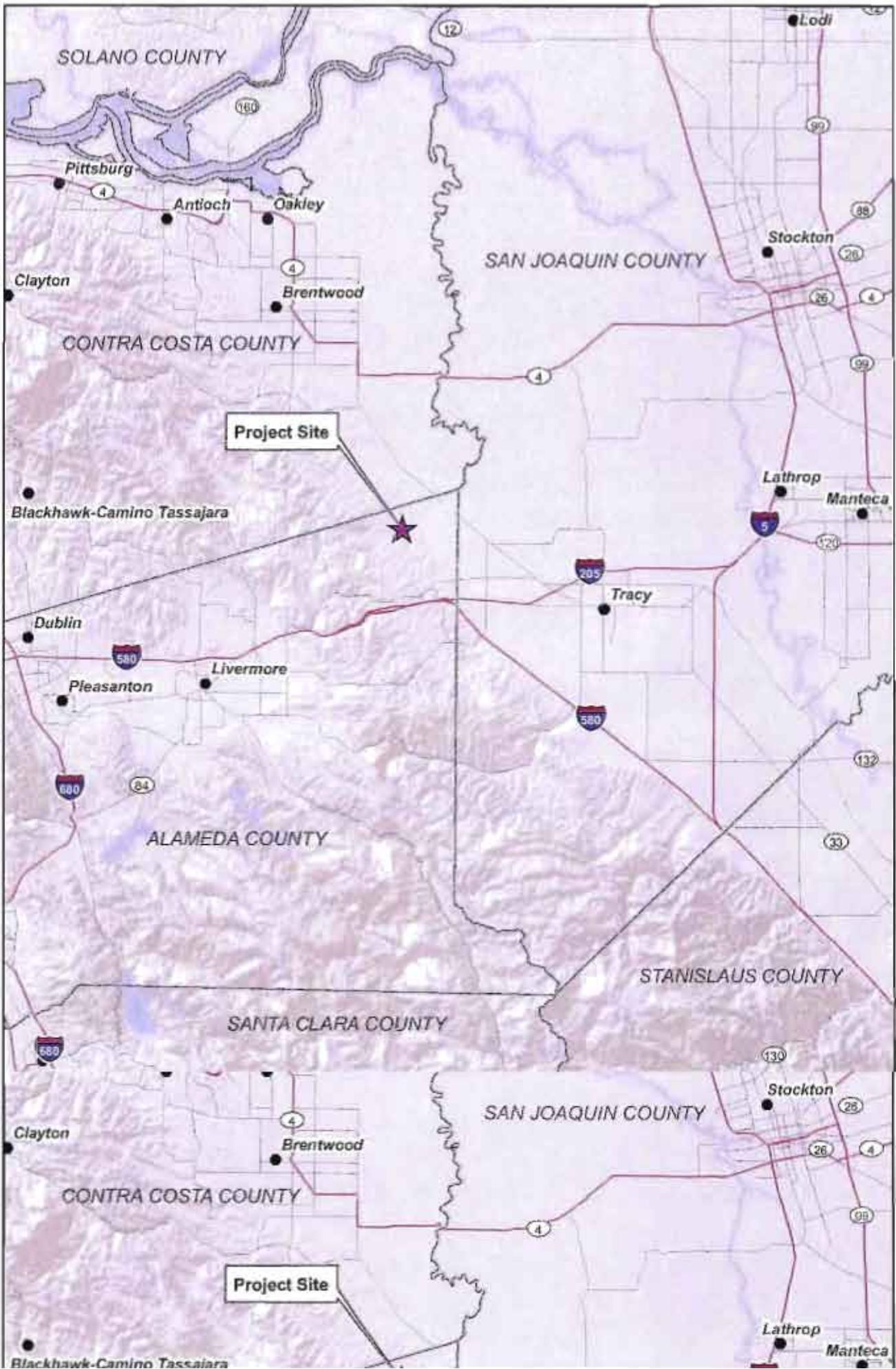
By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_





**DECLARATION OF SERVICE**

I, Robert Sarvey declare that on January 21, 2011 I served copies of the following exhibits:

- Exhibit 403 Air quality Testimony of Robert Sarvey
- Exhibit 404 Alameda County MEP Cooperation Agreement
- Exhibit 405 Hazardous Materials Testimony of Robert Sarvey
- Exhibit 406 Alternatives Testimony of Bill Powers
- Exhibit 407 Worker Safety and fire Protection Testimony of Robert Sarvey
- Exhibit 408 Alternatives testimony of Robert Sarvey
- Exhibit 410 Compensation award in A. 09-09-021
- Exhibit 411 Mulqueeny Ranch Pump Storage FERC Application
- Exhibit 412 PSD Increment Consumption Status Report April 16, 2008 BAAQMD
- Exhibit 413 CPUC Proceeding PG&E data Response Page 0296
- Exhibit 414 East County Area Plan

The documents has been sent electronically to 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 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-3  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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

*Rotm*

---

1-21-2011

[b.buchynsky@dgc-us.com](mailto:b.buchynsky@dgc-us.com)  
[Doug.Urry@CH2M.com](mailto:Doug.Urry@CH2M.com)  
[glw@eslawfirm.com](mailto:glw@eslawfirm.com)  
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