



## INTRODUCTION

On April 16, 1996 The San Joaquin County Board of Supervisors passed Resolution R-96-196, ordering the formation of Mountain House Community Services District.

On May 20, 1996, the San Joaquin County LAFCo, in accordance with State of California Government Code Section 61000 et seq., as Recorded as Instrument Number 96052700 in the Office of the Recorder, San Joaquin County, California, (attached), formed the Mountain House Community Services District to provide to the Community of Mountain House the following services:

- A. Water Service
- B. Sewer Service
- C. Garbage Service
- D. Fire Protection
- E. Public Recreation
- F. Street Lighting
- G. Library buildings and services
- H. Convert utilities to underground
- I. Police protection
- J. Road maintenance
- K. Transportation Services
- L. Graffiti abatement
- M. CC & R's enforcement
- N. Flood control protection
- O. Pest and weed abatement
- P. Wildlife habitat mitigation
- Q. Telecommunications services
- R. Dissemination of information

State of California Public Resource Code  
California Environmental Quality Act  
Chapter 3. State Agencies, Boards and Commissions  
Section 21104 (a) states:

Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the state lead agency and the city or county...

California Code of Regulations, Title 14, Chapter 3, Guidelines for California Environmental Quality Act.  
Section 15002 (j) states:

Under CEQA, an agency must solicit and respond to comments from the public and from other agencies concerned with the project.

Section 15088 (b) states:

The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

Section 15088 (d) states:

The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR...

On March 10, 2010, the Mountain House Community Services District Board of Directors passed Resolution R-MMX-4.

On April 12, 2010 a copy of the Mountain House Community Services District Resolution R-MMX-4 was noticed to all parties and posted with California Energy Commission regarding the Mariposa Project. (Copy attached)

Transcripts to the March 7, 2001 evidentiary hearing state:

On page 15 lines 14 through 25 and page 16 lines 1 through 7;

14 MR. DIGHE: Are you aware of the racial  
15 demographics of Mountain House?  
16 DR. YUSUF: I'm aware of the fact that there is  
17 diverse population of Mountain House based on the  
18 observations I made during the last two days of hearings  
19 we had at BBID. But I can't stipulate --  
20 MR. DIGHE: Did you also take the Census 2000  
21 data in your consideration when you did your analysis?  
22 DR. YUSUF: Would you repeat that question,  
23 please?  
24 MR. DIGHE: Did you also take the Census 2000  
25 data which the staff took in your analysis of the racial  
1 demographics?  
2 DR. YUSUF: I used the 2000 Census --  
3 MR. DIGHE: Thank you.  
4 DR. YUSUF: -- data.  
5 MR. DIGHE: Are you aware that Mountain House did  
6 not exist in year 2000?  
7 DR. YUSUF: Yes, I'm aware of that.

On page 28 lines 12 through 17;

12 MR. SINGH: Okay. Environmental. Did you  
13 contact -- or how many people you contacted in Mountain  
14 House to look into their feeling about the power plant and  
15 how it is going to impact?

16 DR. YUSUF: I did not personally contact anybody  
17 at Mountain House, but I do understand that there have

On page 36 lines 8 through 14;

8 MR. SINGH: Did you do any analysis in last five  
9 year how the Mountain House is growing or last ten years  
10 how the Mountain House is growing, what is the rate of  
11 growth? What is the rate of depletion of sustained --  
12 those type of analysis have you done on Mountain House?  
13 DR. YUSUF: No. My analysis did not specifically  
14 target or look at Mountain House.

On page 75 lines 10 through 25 and page 76 lines 1 through 3;

10 MS. STENNICK: As I said, we relied on the 2000  
11 Census data. And bear with me -- socioeconomics Figure 1  
12 shows the total population within a six mile radius as 2,  
13 164.  
14 MR. SARVEY: And the Mountain House data was how  
15 many people?  
16 STAFF COUNSEL WILLIS: Just clarification if he's  
17 asking for a survey data or --  
18 MR. SARVEY: Survey data.  
19 HEARING OFFICER CELLI: I think she's got the  
20 answer to the question.  
21 MS. STENNICK: The Mountain House community  
22 demographics, the survey that was done in 2009 shows there  
23 was approximately 9,930 individuals within the Mountain  
24 House community.  
25 MR. SARVEY: Okay. And did you consult with the  
1 Mountain House Community Services District on whether they  
2 considered their Census accurate?  
3 MS. STENNICK: No.

On page 91 lines 11 through 22;

11 On or about -- I don't need an exact date. When  
12 was the staff report prepared?  
13 MS. FORD: The staff assessment?  
14 MR. GROOVER: Yes. I'm sorry.  
15 MS. FORD: December 2010.  
16 MR. GROOVER: Okay. We use 2000 Census that  
17 showed 2000 people in the Census tract and we had  
18 information that there was more than 10,000 people in  
19 Mountain House. Is it normal when to look at the  
20 community and ignore it when there's that big of a  
21 disparity between the numbers you're using and the numbers  
22 that are obviously there?

On page 92 line 25 and page 93 lines 1 through 13;

25 Understanding that the staff actually did look

1 into surveying that Mountain House prepared and staff  
2 would have been aware that there was 10,000 people in  
3 Mountain House, would it then be normal to go and use the  
4 2010 data that says there's only 2000 people in the Census  
5 tracts?

6 HEARING OFFICER CELLI: Is that normal?

7 MS. STENNICK: When staff started the analysis on  
8 this particular project, we probably began our analysis in  
9 2009. The information the Mountain House communities  
10 survey, which is not -- is not Census data. It's a survey  
11 done by the Community Services District, that information  
12 did not become available to us until after we had  
13 published the preliminary staff assessment.

On page 93 lines 21 through 25 and page 94 lines 1 through 6;

21 HEARING OFFICER CELLI: Ms. Stennick, let me just  
22 ask you this, because it's a yes or no question. Is it  
23 normal practice to rely on the Census?

24 MS. STENNICK: Yes, it is normal practice for the  
25 type of analysis that we do at the Energy Commission on  
1 siting cases.

2 HEARING OFFICER CELLI: Okay. Would it be normal  
3 practice in view of the fact that you know factually there  
4 are more people there than is reflected in the Census? Is  
5 would that be a normal practice to rely on the Census?

6 MS. STENNICK: Yes, it would.

On page 108 lines 10 and 11;

10 MS. STENNICK: Our analysis was not focused on  
11 the community of Mountain House. Yes, we are aware that

On page 118 lines 6 through 12;

6 MR. SINGH: Mr. Hoffman, you mentioned that there  
7 was a survey of Mountain House survey being conducted. Do  
8 you know who provided those survey to you?

9 MR. HOFFMAN: I picked it off the website.

10 MR. SINGH: Website of which one?

11 MR. HOFFMAN: The Mountain House Community  
12 Services District.

On page 140 lines through 15;

10 MR. HOFFMAN: Hypothetically, I think I probably  
11 would have worked closer with a public adviser to identify  
12 those sectors that needed may be some additional outreach.  
13 And we do have public adviser and Jennifer is here who's  
14 active in every project. And we do the best we can to  
15 provide the outreach to the communities that every project

## ARGUMENT

The Mountain House Community Services District has been a political subdivision of the State of California since May 20, 1996. The Mountain House Community Services District meets all definitions of a “Responsible Agency” under the State of California CEQA guidelines.

Under CEQA guidelines the California Energy Commission (CEC), acting as lead agency for the Mariposa Project, must notify, solicit comments from, and respond to comments made by Mountain House Community Services District. Reference is made to several pertinent CEQA sections listed above in the Introduction.

On January 5, 2011 the CEC posted a letter to the Docket from San Joaquin County (attached). The letter from San Joaquin County was in response to a request from the CEC to San Joaquin County for a review of the Mariposa Energy Project Supplemental Staff Assessment. So, it is obvious that the CEC staff does know that San Joaquin County does exist as a part of California and that it is contiguous to the county in which this project is sited. It is further evidence that CEC staff is aware it is required by law, as a lead agency, to solicit comments from responsible agencies bordering on, or in close proximity to, the project.

There is no record in the Mariposa Energy Project proceedings that the CEC has complied with those guidelines with regard to the political subdivision of Mountain House Community Services District. All communications from Mountain House Community Services District (MHCS D) to the CEC were unsolicited efforts by MHCS D asking to be heard by the lead agency; and no communication to the CEC from MHCS D has been responded to by the CEC.

In the testimony listed above there are eight quotes, from various professional staff, acknowledging that Mountain House was never considered in the environmental proceedings. One statement by staff, on page 118 and referenced above, has staff picking things from the MHCS D website but not asking MHCS D staff professionals for information. The statement and the meaning behind the comment on page 118 make it obvious that CEC staff knew Mountain House existed but made no effort to solicit comments from it.

The comments on page 93 of the March 7 transcripts by CEC Staff use the excuse that Mountain House was not considered because, “. . .information did not become available to us until after we had published the preliminary staff assessment.” Although, the California Environmental Quality Act specifically requires that a response to a responsible agency become a revision to the preliminary environmental document or as a separate section in the final document. This comment, on page 93 clearly shows that CEC staff did not contact a responsible agency, MHCS D, at least until after the preliminary staff assessment was complete and probably even later than that date if the information became available to CEC, as testified to on page 118, when CEC staff stumbled onto the MHCS D website.

The excuse for a lead agency not to contact a responsible agency during the course of an environmental investigation that, “We didn’t know the city of 10,000 people existed until we

finished our work and we didn't want to change our work once we found out," is not listed in CEQA as an exception to the rules to which a lead agency must comply.

There is, additionally, one admission that staff should have made a better effort for outreach. In the case of a responsible agency, outreach from a lead agency is mandated by California law and should not be subject to untimely, wistful backward thinking and wishes.

In the unsolicited comments from the responsible agency, MHCS D, to the lead agency, CEC, contained in the MHCS D Board of Directors Resolution R-MMX-4, several items of concern were expressed to the CEC. The Applicant has taken it upon itself to address one of those concerns and has entered into an agreement with the Tracy Rural Fire Department. All other concerns addressed in the Resolution stand unaddressed by the lead agency in the Supplemental Staff Assessment. CEQA regulations specify that the environmental document may not be certified until all of the comments are addressed.

The Mariposa Energy Project Supplemental Staff Assessment states the following in the Introduction:

*During this comment period, a public workshop was held on Monday, November 29, 2010, at the Byron Bethany Irrigation District to discuss staff's findings, proposed mitigation, and proposed compliance-monitoring requirements. Based on the workshops and written comments, staff has refined its analysis, corrected any errors, and finalized conditions of certification.*

*This Supplemental Staff Assessment (SSA) has been prepared based upon discussions at the SA workshops and written comments provided by the applicant, agencies, other parties and public.*

At the public workshop, during the open comment period, MHCS D appeared as an Intervenor and repeatedly asked professional staff to address Mountain House as a community in the Supplemental Staff Assessment as is required by CEQA. In response, repeatedly, CEC professional staff assured MHCS D that the Supplemental Staff Assessment would specifically address the community of Mountain House, as is required by CEQA. The Supplemental Staff Assessment for the Mariposa Energy Project is silent with regard to the Community of Mountain House and the responsible agency communication provided to the CEC in the MHCS D Board of Directors Resolution.

## **CONCLUSION**

The Mariposa Energy Project CEC Supplemental Staff Assessment is not in compliance with any of the CEQA guidelines listed in the Introduction above and is therefore not in compliance with state law. The Supplemental Staff Assessment may not be certified until it is brought into compliance with state law.

EXHIBIT 1  
SAN JOAQUIN COUNTY LAFCo DESIGNATION  
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT

96052700 *lynn*

RECORDER  
COUNTY CLERK  
JAMES M. JOHNSTON

96 MAY 20 AM 11:22

SAN JOAQUIN COUNTY

*Rafco*

FEE EXEMPT FROM FEE

CERTIFICATE OF COMPLETION

LAFCo  
1860 East Hazelton Ave.  
Stockton, CA 95205

Short Form Designation:

MOUNTAIN HOUSE REORGANIZATION (LAFCo 21-95)

1. Filed pursuant to action by the Board of Supervisors adopting Resolution No. R-96-196 dated April 16, 1996, certified copy attached.
2. The name of each district or city involved in this change of organization and the type of change ordered for each such city or district are as follows:

<u>CITY OR DISTRICT</u>	<u>TYPE OF CHANGE OF ORGANIZATION</u>
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT	FORMATION
TRACY RURAL FIRE DISTRICT	DETACHMENT

3. The city or districts are located in the following county(ies): San Joaquin County
4. Boundary description for said formation or change has been attached.
5. Terms and conditions, if any, are provided in said resolution, attached.
6. I hereby certify that the action taken by adoption of the above cited resolution complies with the boundaries and conditions specified by the Local Agency Formation Commission of San Joaquin County in Resolution No. 941.

*Gerald F. Scott*  
 \_\_\_\_\_  
 GERALD F. SCOTT, EXECUTIVE OFFICER  
 Local Agency Formation Commission  
 of San Joaquin County

Dated MAY 20, 1996

96052700

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,  
STATE OF CALIFORNIA

R-96-196

RESOLUTION ORDERING THE FORMATION OF THE MOUNTAIN HOUSE COMMUNITY  
SERVICES DISTRICT

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WHEREAS, the Formation of the Mountain House Community Services District entitled "The Mounrain House Reorganization (LAFc 21-1995) Including Formation of the Mountain House Community Services District and Detachment from The Tracy Rural Fire Protection District" was initiated by petition of registered voters which contained signatures of more than 80% of the affected voters and on November 2, 1995, the Executive Officer of the Local Agency Formation Commission of San Joaquin County certified the application filed for processing in accordance with the Local Government Reorganization Act; and

WHEREAS, the Commission held a public hearing on the proposed reorganization on February 23, 1996, in the Board of Supervisors' Chambers, County Courthouse, pursuant to notice of hearing which was published, posted and mailed in accordance with State law; and

WHEREAS, said Commission designated the County of San Joaquin as the conducting authority and authorized the Board of Supervisors to order reorganization without an election;

WHEREAS, this Board of Supervisors held a public hearing on the proposed reorganization on April 16, 1996, in the Board of Supervisors' Chambers, County Courthouse, pursuant to notice of hearing which was published, posted and mailed in

96052700

accordance with State law; and,

WHEREAS, the approval of the formation is not subject to the California Environmental Quality Act because the conducting authority powers at the termination of the public protest hearing are ministerial; and,

WHEREAS, in the alternative an initial study for this approval prepared which demonstrated that this reorganization is within the scope of the Final Environmental Impact Report of the Mountain House Master Plan and Specific Plan I;

NOW, THEREFORE, this Board of Supervisors does hereby find resolve, determine, and order as follows:

Section 1. The exercise of ministerial powers for this approval is not subject to the California Environmental Quality Act; and in the alternative on the information contained in the initial study this reorganization is within in the scope of the Final Environmental Impact Report for the Mountain House Master Plan and Specific Plan I.

Section 2. The above entitled reorganization is approved subject to the terms and conditions contained in Exhibit A.

Section 3. The boundaries are hereby approved as submitted, said boundaries being set forth in Exhibit B.

Section 4. The name shall be the "Mountain House Community Services District".

Section 5. The reasons for the proposal are contained in Exhibit C.

Section 6. The regular county assessment roll will be utilized.

Section 7. The affected territory will not be taxed for existing general bonded indebtedness because none exists for the territory detached from the aforesaid Fire District.

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Section 8. The Clerk of this Board shall transmit six certified copies of this Resolution to the Executive Officer of the San Joaquin County Local Agency Formation Commission.

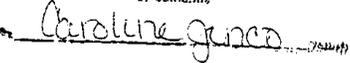
PASSED AND ADOPTED this 16<sup>th</sup> day of April, 1996, by the following vote of the Board of Supervisors, to wit:

- AYES: BARBER, SIMAS, SOUSA, MARENCO, CABRAL
- NOES: NONE
- ABSENT: NONE

  
 ROBERT J. CABRAL, Chairman  
 Board of Supervisors  
 County of San Joaquin  
 State of California

ATTEST: LOIS M. SAHYOUN  
 Clerk of the Board of Super-  
 visors of the County of San  
 Joaquin, State of California

By   
 Deputy Clerk 

THE FOREGOING IS A CORRECT COPY  
 OF THE ORIGINAL ON FILE IN THIS OFFICE  
 ATTEST May 7, 1996  
 Clerk of the Board of Supervisors  
 of the County of San Joaquin, State  
 of California  




96052700

Exhibit A

Terms and Conditions for  
Formation of the Mountain House CSD

1. The name of the district shall be the Mountain House Community Services District.
2. The initial Board of Directors of the community services district shall be the Board of Supervisors of San Joaquin County.
3. The effective date of formation of the community services district and detachment from the fire district shall be the date that the Certificate of Completion is recorded with the County Recorder.
4. The following services are designated as active services of the Mountain House CSD:
  - A. Water service.
  - B. Sewer service.
  - C. Garbage service.
  - D. Fire protection.
  - E. Public recreation.
  - F. Street lighting.
  - G. Library buildings and services.
  - H. Convert utilities to underground.
  - I. Police protection.
  - J. Road maintenance.
  - K. Transportation services.
  - L. Graffiti abatement.
  - M. C C & Rs enforcement.
  - N. Flood control protection.
  - O. Pest and weed abatement.
  - P. Wildlife habitat mitigation.
  - Q. Telecommunications services.
  - R. Dissemination of information.
5. The County Auditor shall transfer property tax revenue, effective for the 1997-98 fiscal year, to the Mountain House Community Services District as follows:
  - (1) From the Tracy Rural Fire District -- all property tax revenue attributable to the fire district within the boundary of the detachment, and
  - (2) From Road District No. 5 -- all property tax revenue attributable to the road district within the formation boundary of the community services district.

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TERMS/CONDITIONS

Page 2

6. The appropriations limit for the community services district required by Article XIII B of the California Constitution shall be \$700,000.
7. Development that exists at the time the district is formed shall not be subject to fees, charges or assessments associated with public facilities necessary to serve new development within the community services district. Such development may be charged to the extent it utilizes facilities (e.g., connections to and use of water or sewer system).
8. The Certificate of Completion for formation of the community services district shall not be recorded until the Board of Supervisors confirms that initial funding for the community services district has been resolved.

EXHIBIT 2  
MOUNTAIN HOUSE BOARD OF DIRECTORS  
RESOLUTION REGARDING MARIPOSA ENERGY PROJECT

**BEFORE THE BOARD OF DIRECTORS OF THE  
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT**

**RESOLUTION**

**R-MMX-4**

**RESOLUTION AMENDING RESOLUTION MMIX-18 OPPOSING THE  
PROPOSED CONSTRUCTION OF A POWER PLANT ON OR NEAR THE  
BORDER OF ALAMEDA COUNTY AND THE MOUNTAIN HOUSE  
COMMUNITY SERVICES DISTRICT**

WHEREAS, Mariposa Energy, LLC has proposed the construction of a 'peaker' power plant in Alameda County near our western border; and

WHEREAS, said proposed power plant will have negative impact in the form of air pollution on our community (in a county already in non-compliance) and our citizens; and

WHEREAS, Mariposa Energy, LLC has acquired or plans to acquire air pollution credits to offset regional or state-wide air pollution, but has not addressed the potential air quality degradation in Mountain House; and

WHEREAS, there is no recognition that First Responder unmitigated obligations rest with the MHCSD safety forces, which include Tracy Fire and San Joaquin County Sheriff; and

WHEREAS, Mariposa Energy, LLC has not specifically addressed any potential impacts that may directly affect the Master Planned Community of Mountain House, which was not in physical existence when the related East Altamont Energy Center (EAEC) was licensed within one mile of the Community in 2004; and

WHEREAS, if the California Energy Commission grants a license to Mariposa Energy, LLC in the Alameda/Altamont area, it will lead to the area becoming a power generation corridor with significant impact to Mountain House; and

WHEREAS, The Mariposa Energy, LLC application does not absolutely limit the hours that the plant may run for perpetuity, so that the plant may apply to become more than a "peaker" plant in the future.

NOW, THEREFORE, BE IT RESOLVED that the Mountain House Community Services District opposes the construction and operation of said proposed power plant until such time as all our concerns have been addressed and mitigated.

BE IT FURTHER RESOLVED that all appropriate state and federal agencies involved in the application process for said proposed power plant be notified of our opposition.

PASSED AND ADOPTED this 10<sup>th</sup> day of March, 2010, by the following vote of the Board of Directors of the Mountain House Community Services District, to wit:

AYES: BALZARINI, LAMB, PAYNE, TINGLE, SU

NOES:

ABSENT:



ANDY SU, PRESIDENT  
Board of Directors of the Mountain House  
Community Services District, County of San  
Joaquin, State of California

ATTEST: MIMI DUZENSKI  
Secretary of the Board of Directors  
of the Mountain House Community  
Services District, County of San  
Joaquin, State of California

By: 



EXHIBIT 3  
SAN JOAQUIN COUNTY  
COMMENTS TO CEC  
REGARDING  
SUPPLEMENTAL STAFF ASSESSMENT



**THOMAS R. FLINN**  
DIRECTOR



P. O. BOX 1810 - 1810 E. HAZELTON AVENUE  
STOCKTON, CALIFORNIA 95201  
(209) 468-3000 FAX (209) 468-2999  
www.sjgov.org/pubworks

**THOMAS M. GAU**  
CHIEF DEPUTY DIRECTOR  
**MICHAEL SELLING**  
DEPUTY DIRECTOR  
**STEVEN WINKLER**  
DEPUTY DIRECTOR  
**ROGER JANES**  
BUSINESS ADMINISTRATOR

December 23, 2010

<b>DOCKET</b> 09-AFC-3	
DATE	DEC 2 2010
RECD.	JAN 5 2011

California Energy Commission  
Roger Johnson, Siting Office Manager  
Siting, Transmission and Environmental Protection Division  
1516 Ninth Street  
Sacramento, California 95814-5512

**SUBJECT: SUPPLEMENTAL STAFF ASSESSMENT FOR THE PROPOSED  
MARIPOSA ENERGY PROJECT**

The San Joaquin County Department of Public Works (Public Works) has reviewed the above referenced document and has the following concerns:

1. All construction traffic plans involving full or partial road or lane closures, as well as over-length vehicle movements within San Joaquin County, shall be routed to Public Works for review. This includes all construction and detour traffic plans.
2. Transportation of facility equipment on San Joaquin County roads that involves traffic control, route surveys, or lane closures requires an Encroachment Permit from the San Joaquin County Department of Public Works.

Thank you for the opportunity to be heard. Should you have questions or need additional information regarding the above comments, please contact me at (209) 468-3085.

Sincerely,

**MARK HOPKINS**  
Senior Planner

MH:mk  
TE-10L041-M1

c: Alex Chetley, Senior Civil Engineer  
Firoz Vohra, Senior Traffic Engineer  
Mark Hopkins, Senior Planner

