

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

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April 30, 2002

Mr. Bob Haussler,
Environmental Office Manager
California Energy Commission
1516 Ninth Street
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DOCKET
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Subject: Proposed Tesla Power Plant Consistency with Alameda County General Plan and Williamson Act Contracts - Alameda County Community Development Agency (CDA) response to California Energy Commission (CEC) letter of February 4, 2002.

Dear Mr. Haussler:

The following is a response to questions raised in your letter of February 4, 2002 (attached). In the following responses, we identify the number of the question as listed in the February 4 document, and provide a response.

In opening, County staff believes that the proposed Tesla Power Plant can be made consistent with all applicable policies of the Alameda County East County Area Plan (ECAP) as modified by the Measure D Initiative with judicious use of mitigation measures, and that the ECAP does not preclude construction of a power plant outside of the Urban Growth Boundary (UGB) and on lands designated for Large Parcel Agricultural use. The Tesla Power Plant proposal falls within the definition of "infrastructure" allowable under Policy 14A of the ECAP, and the electricity produced by this facility would certainly be considered a public utility. Following are answers to specific questions raised in the CEC letter.

Question No. 1: Does the County consider a power generation facility a land use allowed under the "Large Parcel Agriculture description as amended by Measure D? Is the proposed Tesla project consistent with Policies 81A and 85? Yes, with the provision that agricultural land be preserved as a matter of policy by this project. Policies 81A and 85 must be taken in context with the remainder of the ECAP as amended by Measure D.

These policies do not absolutely limit the uses in the "A" District to uses that fit these descriptions, when those other uses fall under the provisions of Policy 14A, which allows certain types of public uses, public facilities and infrastructure in support of public utilities. In Policy 14A, the County defines infrastructure as "public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities."

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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 have also explained in the past that the proposed plant fits within the reasonable definition of “infrastructure,” and that the reason for this position is transparent given the definition in the policy. When the ECAP is taken comprehensively and in context, it is evident that the proposed project would be consistent with the provisions of the ECAP, including Policies 81A and 85.

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 Measure D overall and with these two Policies. The Tesla Power Plant proposed use would be an example of this type of use.

Question No. 2: If the Tesla Power Plant is determined to be infrastructure, the power generation capability of the power plant potentially will exceed service demands...considered adequate for the East County designated area. Does the County consider the proposed project at conflict with the intended parameters for a public utility as presented in Policy 14A? Please explain. No, County staff perceives no conflict. In its lead-in comment, the CEC staff notes that the facility will be constructed to provide energy to areas beyond Alameda County. The statewide need for energy is not limited to Alameda County, but is widespread, and given the energy needs presently projected statewide and locally, Alameda County (even with the growth constraints put in place by Measure D) will need significant additional electrical energy in the near- to mid-term, and is likely to receive only a fraction of the energy produced by this plant, and the energy it needs, from the grid. Until present and future statewide needs for electrical energy are fulfilled, no plants constructed within California would be considered growth-inducing for Alameda County, and would not be in conflict with Policy 14A.

Question No.3: Is the Tesla Power Plant project a use consistent with preservation of “agricultural/open space areas” as presented [under Policy 56, Sensitive Lands and Regionally Significant Open Space] and the definition in Table 1 of ECAP? Yes. For the 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 answer is “yes.” The placement of the proposed power plant in this setting would not significantly compromise any of the values stated in this policy, especially with the mitigation that is being proposed for biological resources, and provided that the loss of agricultural land is to be mitigated by agreement as it has been for the EAEC proposed project, also in Alameda County. County staff does not see a significant or unavoidable inconsistency with the proposed use. This is further clarified by Policy 58 [Sensitive Lands and Regionally Significant Open Space]: The County shall approve only open space, park, recreational, agricultural, limited infrastructure, public facilities (e.g., limited infrastructure, hospitals, research facilities, landfill sites, jails, etc.) and other similar and compatible uses outside the Urban Growth Boundary.

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Question No. 4: Is the Tesla project within the boundaries of the Mountain House designated area?
No. The Mountain House area is defined by the California Aqueduct route in the northeastern corner of the County and the County boundaries with San Joaquin and Contra Costa Counties. As such, the Mountain House area is located entirely north of the Interstate 580 and 205 routes. No Mountain House policies apply to the Tesla project location.

Question No. 5: Thermal power generation facilities or similar uses are not identified as uses allowed within the the County's "A" District, therefore, can it be concluded that this use is not allowed? This conclusion is in error. Infrastructure uses such as power plants are allowable in the "A" Zoning District with a Conditional Use Permit, the process for which would be a direct parallel to the CEC process, and for which the CEC process is an acceptable substitute. Such infrastructure uses are also allowed under ECAP Policy 14A.

Question No. 6: Is a power plant a consistent use under an Alameda County executed Williamson Act contract? Is the Tesla project consistent with Policy 89 as amended by Measure D? The power plant use is not consistent with a Williamson Act contract; this inconsistency is determined not by the County, but by the Department of Conservation and the State Legislature, which have made such determinations. The Tesla project is consistent with Measure D Policy 89 insofar as the County is presently taking steps to rescind the Williamson Act contract that presently applies to this site (not prohibited in general by Measure D), and to execute a land conservation agreement as required by rescission law on an adequate parcel of land nearby. To date, there has been no formal application by the project proponent to begin this rescission, although we believe it to be forthcoming.

In closing, County staff notes that when comparing a project against the policies of an internally consistent local General Plan document, one must account for the whole context of the General Plan document. Policies must be carefully screened for applicability to the issue at hand, or one may inadvertently mischaracterize the issue through lack of proper context, and reach conclusions that are not relevant or even incorrect. If an appropriate agricultural land mitigation agreement is successfully entered into by the County and the applicant, County staff would consider the project as proposed to be in full compliance with the Alameda County ECAP.

This concludes ACCDA's responses to the letter of March 7, 2002. We trust that these responses will be adequate to your needs. If you require other information or clarification of these responses, please feel free to contact Mr. Bruce Jensen at phone (510) 670-6527 or bjensen3@co.alameda.ca.us.

Very truly yours,



Adolph Martinelli,
Community Development Director

Mr. Bob Haussler, California Energy Commission
Alameda County CDA response to CEC letter of February 4, 2002
April 29, 2002

cc: Each Member, Alameda County Board of Supervisors
Susan Muranishi, County Administrator
Richard E. Winnie, County Counsel
James Sorensen, Planning Director
Mr. Scott Busa, FPL Energy
Mr. MacGregor Hay

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identify a power plant as a compatible use under Exhibit "B" of the contract (see Williamson Act Contract #72-26427 and Government Code 51238.3 (c)(2)). The Williamson Act contract runs with the land and renews automatically unless a nonrenewal or cancellation request is filed by the current property owner with the County. The filing of a nonrenewal or cancellation request on the Williamson Act contract has not occurred.

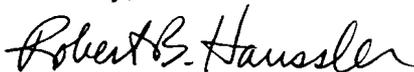
The project owner believes that the power plant is a compatible use on land within a Williamson Act preserve area. Steve Oliva, legal counsel for the California Department of Conservation has expressed the Department would have serious concerns about a power plant being proposed on Williamson Act contracted land.

6. Is a power plant a consistent use under an Alameda County executed Williamson Act contract? If so please explain. Is the Tesla project consistent with Policy 89 as amended by Measure D? The Energy Commission staff is proposing that the applicant either file a request for a partial rescission of Williamson Act Contract No. 72-26427 or a cancellation of the Contract No. 72-26427 with the County.

CONCLUSION

The Energy Commission staff is preparing a preliminary analysis on the Tesla Power Plant project and wishes to advise the project owner as to the land use status of the project. The Energy Commission staff will be meeting with State and County officials regarding these issues. Additionally, we will be conducting an Informational Hearing and site visit on the Tesla Power Plant scheduled for February 19, 2002. We would appreciate the Alameda County Community Development Agency's timely written response to the above questions in order to assist in these discussions. If you have any questions you may contact Mark Hamblin of my staff at mhamblin@energy.state.ca.us or by calling (916) 654-5107.

Sincerely,



R.B. Haussler
Manager
Environmental Protection Office

Cc: Jack Caswell, Project Manager – Tesla Power Plant project
Eileen Allen, Supervisor, Land Use & Traffic/Transportation Unit
Mark Hamblin, Planner II, Land Use & Traffic/Transportation Unit
Darcie Houck, Staff Attorney

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
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REC'D FEB 08 2002



February 4, 2002

Mr. Adolph Martinelli
Community Development Director
Alameda County Community Development Agency
399 Elmhurst St., Rm. 136
Hayward CA 94544-1307

**SUBJECT: Proposed Tesla Power Plant Consistency With Alameda County
General Plan and Williamson Act Contract**

Dear Mr. Martinelli:

The California Energy Commission is currently reviewing an application for a power generating facility to be located within eastern Alameda County, the Tesla Power Plant (TPP). The project is within the boundaries of Alameda County's East County Area Plan (ECAP), adopted by the Alameda County Board of Supervisors on May 5, 1994 (corrected March 1996). A copy of the TPP Application For Certification (AFC) was circulated to the County in mid-October 2001.

We have reviewed the ECAP; Measure D, adopted by the voters of Alameda County on November 7, 2000; and the Alameda County zoning ordinance, specifically the "A" (agricultural) District. The above items constitute the major local land use laws, ordinances, regulations and standards (LORS) relevant to the proposed TPP project.

It should be recognized that Section 25525 of the Warren-Alquist Act (California Energy Commission's enabling legislation) states that:

"The commission shall not certify any facility contained in the application when it finds pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. In making this determination, the commission shall consider the entire record of the proceeding, including, but not limited to, impacts of the facility on the environment, consumer benefits, and electric system reliability. In no event shall the commission make any finding in conflict with applicable federal law or regulation. . ."

In the course of preparing a preliminary land use analysis for the Tesla project, we have developed a list of questions for the County. The County's written explanations to the questions will greatly assist us in determining whether the project, as proposed, is consistent with the County's land use LORS and also allow us to advise the project owner as to how to proceed with their application.

Since the Alameda County Board of Supervisors is charged with the enforcement of Measure D and the Williamson Act contract, several of the actions involving this project will require policy direction and/or interpretation that will go beyond county planning staff involvement. A project consistency determination by the Board of Supervisors will be necessary to resolve these issues. The Energy Commission staff plans to schedule a meeting with County officials regarding this matter.

ECAP POLICIES

“Large Parcel Agriculture” (amended) -The ECAP general plan land use designation for the project site is “Large Parcel Agriculture.” The voters of Alameda County approved Measure D on November 7, 2000 that amended the ECAP’s “Large Parcel Agriculture” description. The amended description found in Measure D on page 8 is currently applicable for the proposed power plant project and states that the

“ . . . Subject to the provisions of the Initiative, this designation permits agricultural uses, agricultural processing facilities (for example wineries, olive presses), limited agricultural support service uses (for example, animal feed facilities, silos, stables, and feed stores), secondary residential units, visitors-serving commercial facilities (by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, windfarms and related facilities, utility corridors, and similar uses compatible with agriculture. Different provisions may apply in the south Livermore Valley Plan Area, or in the North Livermore Intensive Agriculture Area.”

Policies 81A and 85 state that areas designated “Large Parcel Agriculture” may include agricultural processing facilities (for example wineries, olive presses), limited agricultural support service uses that primarily support Alameda County agriculture, and limited agriculture enhancing commercial uses that primarily support the area’s agricultural production, that are not detrimental to existing and potential agricultural uses, demonstrate adequate and reliable water supply, and comply with the other policies and programs of the Initiative.

- i. Does the County consider a power generation facility a land use allowed under the “Large Parcel Agricultural” description as amended by Measure D? Is the proposed Tesla project consistent with Policies 81A and 85?

Policy 14A (amended) - states that “The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative [Measure D]. This Policy shall not bar 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County.”

The Tesla Power Plant involves the construction of a 1,100-megawatt merchant power plant that will generate power for commercial sale to a service area(s) that extends beyond the geographic boundaries of Alameda County’s designated east county area.

2. If the Tesla Power Plant is determined to be infrastructure, the power generation capability of the power plant potentially will exceed service demands (as determined by total megawatts of generation) considered adequate for the east county designated area. Does the County consider the proposed project at conflict with the intended parameters for a public utility as presented in Policy 14A? Please explain your response.

Policy 56 - The Tesla Power Plant project is to be located within an agricultural/open space designated area in the unincorporated area of the County beyond an Urban Growth Boundary. This policy stipulates that the County is to “preserve **open space areas** for the protection of public health and safety, provision of recreational opportunities, production of natural resources (e.g., agriculture, windpower, and mineral extraction), protection of sensitive viewsheds (see definition in Table 1 of ECAP) . . .”

3. Is the Tesla Power Plant project a use consistent with preservation of “agricultural/open space areas” as presented under this County policy and the definition in Table 1 of the ECAP?

Policy 76 – states “The County shall preserve the Mountain House area for **intensive agricultural use** (see definition in Table 1 of the ECAP).” Intensive agricultural use according to the Table 1 definition refers to “high yield agricultural production including vineyards, orchards, and row crops as distinguished from low-intensity agriculture such as cattle and horse grazing.”

4. Please either provide a map showing or describe the geographic boundaries of the “Mountain House” area. Is the Tesla project within the boundaries of the Mountain House designated area? Is the Tesla Power Plant a use that is consistent with the “intensive agricultural use” as defined in Table 1 of the ECAP?

Policy 81A - This policy specifies agricultural processing facilities and limited agricultural services that support local agricultural activities and are not detrimental to long-term agricultural use in the “A-100,” “A-160,” and “A-320” Districts. The Tesla Power Plant project is to be located within the County’s A-160 District.

5. Thermal power generation facilities or similar uses are not identified as uses allowed within the County’s “A” District, therefore can it be concluded that this use is not allowed?

Policy 89 (amended) - states that the “County shall not approve cancellation of Williamson Act contracts within or outside the County Urban Growth Boundary except where findings can be made in accordance with state law, and the cancellation is consistent with the Initiative.” The Tesla Power Plant project is to be located on Williamson Act contracted land in the unincorporated area beyond an Urban Growth Boundary.

The California Land Conservation Contract (a.k.a. Williamson Act Contract) executed between the original property owner (Antonio Martin & wife) and the County of Alameda in 1972 on the approximate 160 acre subject property does not