

Comment Set Q

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November 27, 2000

VIA E-MAIL AND CERTIFIED MAIL
(RETURN RECEIPT REQUESTED)

Brad Wetstone, CPUC
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*Re: Comments on the Supplemental Draft Environmental Impact Report for the
Northeast San Jose Transmission Reinforcement Project, No. 99-09-029.*

Dear Mr. Wetstone:

We are writing on behalf of the owners of the McCarthy Ranch property (the "McCarthy Property") to comment on the Supplemental Draft Environmental Impact Report ("Supplemental Report") to the Draft Environmental Impact Report issued in June 2000 ("DEIR") for the above-referenced project proposed by PG&E.

Although we believe that the Proposed Route (as identified on Figure ES-1 of the Supplemental Report) is also flawed in a number of ways, our comments below relate only to the McCarthy Boulevard Alternative Segment, as referred to in the Supplemental Report (the "Alternative Segment").

The Alternative Segment would replace a mile long segment of the Proposed Route that runs along the San Jose/Santa Clara wastewater treatment facilities ("Wastewater Plant"). The Alternative Segment would relocate the high voltage transmission lines and towers from the area adjacent to the Wastewater Plant easterly onto the McCarthy Property.

The only environmental factor identified in the Supplemental Report prompting consideration of an alternative route through this portion of the Proposed Route is the concern raised by some of the commentators to the DEIR about possible incidents of bird collisions with overhead transmission lines on the proposed route, which would run along the sludge drying beds in the Wastewater Plant and cross at one point, according to

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Section B.2.5 of the Supplemental Report, a "large mitigation pond (located just south of Dixon Landing Road) . . ."

As discussed below, the Supplemental Report's analysis regarding the adverse impact of the transmission lines on the local bird population is insufficient and its conclusion that the Alternative Segment is the "environmentally superior alternative" is unsupported in the Supplemental Report. Furthermore, the Supplemental Report fails to meaningfully consider a wide-range of significant environmental impacts, including land use, economic, public health, safety, land use and employment issues, in connection with the Alternative Segment that is proposed, for the first time, in the Supplemental Report.

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A. Supplemental Report's Analysis Regarding Bird Collisions

The conclusion of the Supplemental Report regarding the Alternative Segment, that the reroute "would significantly reduce the potential for bird collision with the new transmission lines . . .", is reached solely through speculation with virtually no factual support. Bare conclusions or opinions manifestly do not satisfy the requirement that EIR's include meaningful detail in facts and analysis to examine project alternatives. See, e.g., *Laurel Heights Improvement Ass'n of San Francisco, Inc. v. Regents of the University of California*, 47 Cal. 3d 376, 404, 406, 253 Cal. Rptr. 426 (1988).

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As reflected on Figure B-5 of the Supplemental Report, the Alternative Route would relocate the transmission lines from the west side of the mitigation pond (as indicated in Section B.2.5) to the east side of the mitigation pond. In order to do this, the transmission lines would be re-routed closer to Coyote Creek and would at two separate points completely transverse the Coyote Creek wetland corridor.² Although the Supplemental Report states that the crossing can be done in areas with little riparian vegetation so as to reduce the impact on the natural habitat, the overhead transmission lines would still present a potential for bird collisions through the corridor.

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The Supplemental Report's conclusion regarding bird collisions is reached without any consideration of the specific bird populations that would be affected by the Proposed Route and Alternative Segment, respectively, or whether the increase in bird collisions would threaten the sustainability of any of the affected populations.

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¹ This "mitigation pond" is not shown anywhere in the Supplemental Report. Although Figure B-4 specifically designates a mitigation pond, it is located to the north of Dixon Landing Road. It appears that the pond referred to in Section B.2.5 is represented in Figure B-5 by a dark area to the south of Milepost 4.9 and to the east of Milepost 5.1.

² The San Francisco Bay Bird Observatory points-out in its comments on the DEIR dated July 27, 2000, that it picks up "an average of 1-2 gulls per week" due to existing transmission lines crossing over Coyote Creek. Two new crossings over the Coyote Creek corridor would compound such a concern.

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Moreover, the Alternative Segment fails to offer the requisite substantial environmental advantages over the Proposed Route. See, e.g., *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 564, 566, 276 Cal. Rptr. 410 (1990). Even with the relocation of the lines to the McCarthy Property, the Alternative Segment is still within very close proximity (within one hundred feet or so) of the mitigation pond as described in Section B.2.5 and reflected in Figure B-5. Accordingly, moving the transmission lines to the Alternative Segment would merely relocate the lines from one side of the mitigation pond to the other without any demonstration of a reduction in the aggregate risk associated with bird collisions along the alternate route. The Supplemental Report fails to evaluate whether the relocation of the transmission towers and lines to the Alternative Segment could, in fact, actually result in an overall increase in the incident of bird collisions when compared to the Proposed Route or the Westerly Route Alternative.

The Supplemental Report acknowledges that bird collisions have been shown to be reduced between fifty-seven percent (57%) and eighty-nine percent (89%) by implementing proven mitigation measures and, in addition to the availability of such measures, the thickness of the transmission lines would otherwise substantially reduce the risk of bird collisions. Nevertheless, the Supplemental Report concludes, without further analysis, that the impact would remain significant along the entire Proposed Route.

The discussions in the Supplemental Report are conclusory, unsupported by fact, and fail to meaningfully articulate the basis for the report's unqualified conclusion that the Alternative Segment is the "environmentally superior" alternative.

B. Environmental Impacts Related to the Alternative Segment

The Supplemental Report fails to consider the impact of the Alternative Segment on the businesses and property owners who would be in the vicinity of the high-voltage transmission facilities along the Alternative Segment. The McCarthy Property is being developed for commercial office use. Its owners and the City of Milpitas have spent considerable time and resources in connection with the rezoning and development of this property for its commercial, office, and R&D uses.

The corridor along McCarthy Boulevard will eventually be the home to a number of technology companies which will collectively employ thousands of employees. For example, Veritas Software is constructing a high-tech office campus on the parcel of the McCarthy Property directly south of the Alternative Segment. A substantial portion of the property on the opposite side of McCarthy Boulevard is being developed by the Irvine Company for approximately one million square feet of research and development space to be occupied by Cisco Systems, Inc. in the next year.

A two hundred thirty (230) kV power line with towers that could approach two hundred feet in height through the middle of this high-tech area will certainly have a negative impact. Among other things, the location of transmission lines will substantially

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increase the expense of project due to the amount and increased cost of the private land necessary for the placement of transmission lines and towers along the Alternative Segment and the significant severance damages that will accrue to the remaining portions of the McCarthy Property.

The Supplemental Report also fails to consider a number of important environmental issues resulting from both the construction (short-term) and operation (long-term) of the transmission facilities, including:

1. Land Use and Public Recreation

The Supplemental Report does not discuss land use effects along the Alternative Segment including, for example: (i) the applicability of zoning restrictions to the construction of transmission facilities along the Alternative Segment (including, for example, municipal height restrictions that may conflict with the EMF mitigation proposals, if applied, as set forth in Section C.8), (ii) the effect of the Alternative Segment on the ongoing development of the area and the effort to attract low-environmental impact, high-paying technology employers to the City of Milpitas or (iii) whether the types of businesses that would be willing to locate on a property enclosed by high power transmission facilities would be different than those which would otherwise have located there and the likely environmental effects attending such a change in use.

2. Noise and Vibration

The Supplemental Report does not discuss the impact of the noise generated by the construction or operation of the high voltage transmission lines (with and without the bird mitigation devices) upon the employees and businesses who will be adjacent to the proposed transmission towers and lines along most of the Alternative Segment.

3. Public, Health, Safety and Nuisance

The Supplemental Report fails to discuss the application of any EMF mitigation strategies to the Alternative Segment, where both technological equipment and employees will be within relatively close proximity to the transmission towers and lines. Even assuming the implementation of EMF mitigation strategies, there is no conclusive scientific evidence that the transmission facilities will not have a substantial harmful effect on the equipment and employees along the Alternative Segment.

4. Socioeconomic and Public Services

The Supplemental Report fails to discuss the substantial socioeconomic and public service impacts of the Alternative Segment. For example, the Alternative Segment might: (i) deter technology employers from locating in one of the remaining undeveloped commercial zones in the City of Milpitas, (ii) reduce or limit the number of high paying

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technology jobs in the City and (iii) adversely affect the City's ability to generate tax revenues in order to provide adequate public services, such as fire protection and law enforcement, to its expanding city population.

5. Visual Resources

The Supplemental Report's analysis of the visual impact is cursory and fails to discuss the impact on the City's plan to make the McCarthy Property the "gateway" to the City or on the thousands of workers who will be exposed to the visual effects of the transmission lines and towers located through this employment hub. The transmission facilities will cause substantial additional blight as a result of the proposed bird mitigation measures discussed in the Supplemental Report and in the event EMF mitigation factors are adopted for the Alternative Segment.

6. Biological Resources

The Supplemental Report fails to discuss the impact on biological resources along the Alternative Route (other than its brief mention of riparian vegetation and the inconclusive discussion regarding possible bird strikes). For example, the discussion in Section C.6.1 does not address the impact of the construction of the transmission facilities on any of the biological resources along the creek.

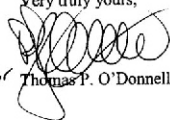
7. Air Quality

The Supplemental Report does not discuss the cumulative impact of construction, in addition to the ongoing and anticipated construction activities, along the Alternative Segment.

8. Traffic and Transportation

The Supplemental Report does not discuss the impact on traffic of the construction (short-term), location and operation (long-term) of transmission lines and towers along McCarthy Boulevard.

We appreciate the opportunity to comment on the DEIR.

Very truly yours,

For Thomas P. O'Donnell

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