

D. Responses to Comments

During the public review period for the Subsequent Mitigated Negative Declaration (August 24, 2007 through September 24, 2007), the CPUC received a total of six comments from agencies and the public. This section presents responses to all comments received during the public comment period.

Table D-1 lists all persons and agencies that submitted comments on the Subsequent Mitigated Negative Declaration (MND) for the Kirby Hills Phase II Natural Gas Storage Facility Project. The following pages present the comment letters. Each of the comment documents has been given a number designation (1, 2, 3, etc.). Responses are provided in Table D-1. No revisions were made to the Subsequent MND based on the comments received.

Table D-1. Comments and Responses

Commenter	Date of Comment	Comment Set Number
Timothy C. Sable, California Department of Transportation <ul style="list-style-type: none"> • Comment noted. The Applicant has indicated, in APM T-1, that it would provide alternative routes, as necessary, to route local traffic around roadway construction. LGS would also obtain a Caltrans Transportation Permit for movement of vehicles that may qualify as oversized or excessive loads. 	September 24, 2007	1
Dennis J. O'Bryant, California Department of Conservation, Division of Land Resource Protection <ul style="list-style-type: none"> • Comment noted. 	September 24, 2007	2
David J. Bowie, Law Office of David J. Bowie, Counsel for Kirby Hill Associates, LLC <ul style="list-style-type: none"> • This letter discusses property rights between the landowners and the Applicant. No comments pertain to the CEQA evaluation in the Subsequent MND. The landowners have withdrawn their motion to file a late protest in A.07-05-009, which raised the same issues about property rights as those set forth in this letter. 	September 19, 2007	3
James W. McTarnaghan, Duane Morris LLP, Counsel for Lodi Gas Storage <ul style="list-style-type: none"> • This letter discusses property rights between the landowners and the Applicant. No comments pertain to the CEQA evaluation in the Subsequent MND. 	September 27, 2007	4
Mallorie Walsh <ul style="list-style-type: none"> • Comment noted. 	September 20, 2007	5
Norma Walsh <ul style="list-style-type: none"> • This letter was forwarded to CPUC from the Solano County Resource Management Department. It seeks information about the project proponent and about gas storage facility safety in general. The Subsequent MND addresses safety in Section B.3.7. 	September 25, 2007	6

Comment Set 1
California State Department of Transportation

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5900
FAX (510) 286-5903
TTY 711



*Flex your power!
Be energy efficient!*

September 24, 2007

SOL012233
SOL-12-19.17
SCH2007082142

Mr. Junaid Rahman
California Public Utilities Commission
505 Van Ness Avenue, Fourth Floor
San Francisco, CA 94102

Dear Mr. Rahman:

Kirby Hills Natural Gas Storage Facility Project – Mitigated Negative Declaration


Thank you for including the California Department of Transportation (Department) in the environmental review process for the Kirby Hills Natural Gas Storage Facility Project. The following comments are based on the Mitigated Negative Declaration:

Traffic Operations

There will be construction work on State Route 12 proposed by Caltrans due to begin summer of 2008 from PM 7.9 +/- to PM 20.6 +/- . During construction, traffic lanes will be reduced from 12 feet to 11 feet, and traffic will be detoured. Since your construction site is around PM 19.17 +/-, please coordinate your work with the Department to avoid traffic impacts at the site.

We may have additional comments from our Highway Operations and Design units. Should you have any questions regarding this letter, please call Christian Bushong of my staff at (510) 286 -5606.

Sincerely,

for 
TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: State Clearinghouse

"Caltrans improves mobility across California"

Comment Set 2

California Department of Conservation, Division of Land Resource Protection

Sep-27-2007 10:34

From-DIVISION OF LAND RESOURCE PROTECTION

19163273430

T-599 P.001/002 F-712

STATE OF CALIFORNIA, RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2655 • WEBSITE conservation.ca.gov

September 24, 2007

VIA FACSIMILE (707) 402-6528

Junaid Rahman
California Utilities Commission
505 Van Ness Avenue, Fourth Floor
San Francisco, CA 94102

Subject: Mitigated Negative Declaration for the Kirby Hills II Natural Gas Storage Facility Project (Solano County)
SCH # 2007082142

Dear Mr. Rahman,

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Mitigated Negative Declaration (MND) for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's impacts on agricultural land and resources.

Project Description

The Kirby Hills II Natural Gas Storage Facility Project (project) proposes to construct an above and underground natural gas reservoir. The project site is located in a rural agricultural area in the Montezuma Hills of southeastern Solano County (County), approximately six miles west of Rio Vista and 16 miles southeast of Fairfield. Most of the project site is located on non-Prime Farmland under Williamson Act contracts. There would be a permanent loss of eight acres of land currently used for grazing and dryland farming. The MND has determined that the construction of the project would not have a substantial effect on the productivity of the land and would not require contract cancellation. Furthermore, the construction of gas facilities has been determined to be a compatible use within any agricultural preserve (pursuant to Government Code Section 51238). Therefore, the Department has no comment related to this project's impacts on agricultural land and resources.

Thank you for giving us the opportunity to respond to this MND. If you have questions regarding our comments, or require technical assistance or information on agricultural

*The Department of Conservation's mission is to protect Californians and their environment by:
Protecting lives and property from earthquakes and landslides; Ensuring safe mining and oil and gas drilling;
Conserving California's farmland; and Saving energy and resources through recycling.*

Comment Set 2, cont.
California Department of Conservation, Division of Land Resource Protection

Sep-27-2007 10:34

From-DIVISION OF LAND RESOURCE PROTECTION

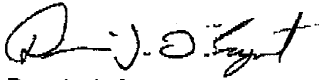
19163273430

T-599 P.002/002 F-712

Junaid Rahman
September 24, 2007
Page 2 of 2

land conservation, please contact Elliott Lum, Environmental Planner, at 801 K Street,
MS 18-01, Sacramento, California 95814; or, phone (916) 324-0869.

Sincerely,



Dennis J. O'Bryant
Program Manager

Comment Set 3
Law Office of David J. Bowie

LAW OFFICE OF DAVID J. BOWIE
Attorney at Law
2255 CONTRA COSTA BLVD., SUITE 305
PLEASANT HILL, CA 94523

DAVID J. BOWIE

Telephone (925) 939-5300
Facsimile (925) 609-9670
Dave@bblandlaw.com

September 19, 2007

Junaid Rahman,
CPUC Project Manager
California Public Utilities Commission
c/o Aspen Environmental Group
8801 Folsom Blvd, Suite 290
Sacramento, CA 95826-3250

Re: Lodi Gas Storage/Proposed Kirby Hill Storage Reservoir
Application: A.07-05-009

Gentlemen:

It is understood that the California Public Utilities Commission, as Lead Agency under CEQA, has prepared a Subsequent Mitigated Negative Declaration and Supporting Initial Study for a proposed project characterized by Lodi Gas Storage, LLC (LGS) as a "Kirby Hills Phase II Natural Gas Storage Facility Project". This letter is intended as a comment concerning the referenced application and the proposed Storage Facility Project.

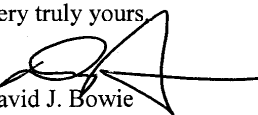
I represent Kirby Hill Associates, LLC., the property owner of the Kirby Hill Ranch and the Lessor under the terms of a certain Gas Storage Lease and Agreement dated March 19, 2005 (Lease) to which LGS is party as Lessee. The substantive basis and claim of legal right upon which the subject LGS Storage Facility Project is grounded is that very Lease with my client. That Lease specifically defines the subsurface areas for which Gas Storage Facility rights have been granted. The subsurface areas of the Ranch available to LGS for gas storage purposes exist between the depths of 1700 and 2300 feet as measured from mean sea level. Certain expansion rights as to the existing gas storage reservoir within the same subsurface depths have been granted pursuant to Lease. Nothing in the Lease, however, grants to LGS any rights of gas storage at the subsurface depths proposed in the subject application.

Comment Set 3, cont.
Law Office of David J. Bowie

LGS has been placed on written notice that its subsequent proposed Gas Storage Facility labeled as a Phase II Project is not sanctioned by its Lease. LGS has been advised that pursuit of the existing application and any actions taken to implement the Project will constitute a trespass in derogation of the private property rights of Kirby Hill Associates, LLC.

On behalf of Kirby Hill Associates, LLC., demand is hereby made that further processing of this application be immediately suspended as LGS as applicant has proceeded without legal right.

Very truly yours,



David J. Bowie

Cc: Kirby Hill Associates, LLC

Comment Set 4
James W. McTarnaghan, Duane Morris LLP

Duane Morris*

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HO CHI MINH CITY

JAMES W. MCTARNAGHAN
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www.duanemorris.com

September 27, 2007

VIA EMAIL AND FIRST CLASS MAIL

ALJ Kirk McKenzie
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: A.07-05-009, Letter from David J. Bowie to Junaid Rahman dated
September 19, 2007 concerning Lodi Gas Storage Expansion**

Dear ALJ McKenzie:

On September 25, 2007, you contacted me regarding the September 19, 2007 letter from David J. Bowie, counsel for Kirby Hill Associates, LLC ("KH Associates") to Junaid Rahman, the CPUC Project Manager for the CEQA process for A.07-05-009 ("KH Associates Letter"). Lodi Gas Storage, L.L.C. ("LGS" or "Lodi") appreciates your contact to us, as we were not provided with a copy of the letter by Mr. Bowie or KH Associates and would have remained unaware of these efforts to suspend processing of this important Application. LGS further appreciates this opportunity to respond to such letter.¹

As detailed here, the KH Associates Letter is: (i) a blatant effort to delay this proceeding due to a commercial dispute, which will be resolved outside of this proceeding, between LGS and KH Associates; (ii) procedurally deficient; and (iii) substantively inaccurate and misleading. Accordingly, LGS requests that the KH Associates Letter be given no weight either as comments on the Subsequent Mitigated Negative Declaration (SMND) or as an untimely Protest of the underlying application. **LGS very strongly opposes as unwarranted any delay in the processing of A.07-05-009 for which approval has been requested and is needed in November 2007 in order to commence engineering and timely construction for storage service in the 2008-2009 winter season.**

¹ To the extent that this communication could be considered a written *ex parte* communication with a decision-maker, LGS has complied with Rule 8.2(c)(4) by providing copies of this letter to all parties on the same day that the communication was sent to the decisionmaker.

DUANE MORRIS LLP

ONE MARKET, SPEAR TOWER, SUITE 2000 SAN FRANCISCO, CA 94105-1104

PHONE: 415.957.3000 FAX: 415.957.3001

Comment Set 4, cont.
James W. McTarnaghan, Duane Morris LLP

Duane Morris

ALJ Kirk McKenzie
September 27, 2007
Page 2

A. The KH Associates Letter is Procedurally Deficient and Must be Disregarded

Application 07-05-009 was filed by LGS on May 8, 2007. The Commission noticed the Application on May 11, 2007 and the last day on which a Protest could be filed was June 11, 2007. Rule 2.6(a) of the Commission's Rules of Practice and Procedure clearly states that: "...a protest or response must be filed within 30 days of the date the notice of the filing of the application first appears in the Daily Calendar." No party filed a protest to the Application. As noted on page 15 of the Application, LGS served a copy of the Application on all landowners directly affected by components of the Kirby Hills II facility, including KH Associates. The Application very clearly states LGS' plan to utilize the Wagenet Reservoir pursuant to its rights under the existing lease agreement with KH Associates. Such lease agreement, which KH Associates now challenges, was executed in March 2005, almost two years before the application was filed. Given full and timely notice of the Application by LGS, there is no legitimate reason for KH Associates' failure to submit a timely protest of the Application if it felt that it had legitimate concerns with the expansion project.

Similarly, the environmental review process under CEQA has moved forward very smoothly with LGS and the CPUC staff working cooperatively to complete the CEQA process as set forth in the CEQA Guidelines. Specifically, after initial study, the Commission made the SMND available to the public and established a date of September 24, 2007 for comments on the SMND. The SMND finds that the proposed project, as modified with mitigation measures, will not have any significant effects on the environment. LGS did not object to the mitigation measures proposed in the SMND and, as such, has accepted them. Thus, the Commission is in the position to adopt the SMND for this project without recirculation, and the next appropriate step in this proceeding would be the preparation of a Proposed Decision granting the relief requested in the Application.

The KH Associates Letter was submitted to Junaid Rahman under the schedule for comments on the SMND but otherwise does not relate to CEQA. Review of such letter immediately shows the failure of the letter to address *any* environmental issue.² Instead, counsel for KH Associates actually states in the first paragraph that "[t]his letter is intended as a comment concerning the referenced application and the proposed Storage Facility Project." The remainder of the letter discusses KH Associates' allegations that LGS does not have rights under the lease agreement as stated in the Application.

However labeled, the KH Associates Letter can only be considered by the Commission as an attempt to insert an irrelevant commercial issue into this proceeding over three months after

² To be very clear, LGS does not dispute the right of any entity to file comments addressing the SMND within the comment period. In this situation, however, KH Associates did not address environmental issues and instead demanded that the Commission suspend further processing of the entire application.

Comment Set 4, cont.
James W. McTarnaghan, Duane Morris LLP

Duane Morris

ALJ Kirk McKenzie
September 27, 2007
Page 3

any protest was due. In context, KH Associates' actions are nothing more than a transparent effort to disrupt timely Commission processing of this Application to try to add leverage to its commercial position.³ By failing to file a timely protest, despite complete notice of the Application, KH Associates waived its right under CPUC Rule 2.6(a) to protest the Application and should not be allowed to misuse the CEQA process to now "comment" upon the Application itself. The KH Associates Letter certainly provides no basis for suspension of a proceeding which is already months into the Commission process.⁴

Finally, LGS submits that any consideration of the KH Associates Letter in this application would set a very dangerous precedent at the CPUC. If the Commission were to give any weight to the KH Associates Letter at all, such unacceptable late efforts to protest applications would likely be used in other proceedings by opportunistic entities as a negotiating ploy in unrelated disputes. To do so also would represent a departure from the Commission's established practice and procedures requiring timely protests and would essentially allow any entity to hold a Commission proceeding hostage.⁵

B. The KH Associates Letter Relates to a Commercial Dispute between LGS and KH Associates Beyond the Scope of the Application and is Substantively Without Merit

In the KH Associates Letter, Mr. Bowie presents one paragraph of one-sided argument before reaching his conclusion that "[n]othing in the Lease, however, grants to LGS any rights of gas storage at the subsurface depths proposed in the subject application." As a result of that "conclusion," Mr. Bowie demands, without citation to any authority, that processing of LGS' Application be immediately suspended. Mr. Bowie does not explain how or under what circumstances such "suspension" would end and does not request that the Commission resolve or even address the dispute between his client and LGS. As briefly explained here, LGS completely disagrees with KH Associates and submits, as stated in the Application, that "the existing surface and storage lease rights provided in the Application will satisfy all surface, storage, and mineral rights for Kirby Hills II..." Application, p. 12.

³ LGS suspects that KH Associates are trying to cause delay in action on the Application in order to gain leverage in a commercial dispute which recently arose after years of cooperation between LGS and KH Associates. LGS notes that such dispute only became active after KH Associates saw a July 2007 announcement that LGS will be sold to Buckeye Partners (subject to CPUC approval in A.07-07-025) for a sizable sum.

⁴ By separate letter to Junaid Rahman, LGS will demonstrate that the KH Associates Letter, which makes no comments on any environmental issue, should also be disregarded in the nearly completed CEQA process.

⁵ The importance of timely challenges to certificate applications is recognized in Public Utilities Code § 1005(a) which requires the Commission to hold a hearing on an application for a certificate of public convenience and necessity upon "timely application for a hearing by any person entitled to be heard." Here, KH Associates did not timely file any requests with the Commission and is not even a party to this proceeding.

Comment Set 4, cont.
James W. McTarnaghan, Duane Morris LLP

Duane Morris

ALJ Kirk McKenzie
September 27, 2007
Page 4

LGS will not get into a lengthy exposition on the merits of the respective claims of LGS and KH Associates with regard to LGS's rights to store gas in the Wagenet Sands under the lease agreement. It should suffice to say that LGS is confident that it has rights to store in the Wagenet Sands under the Agreement and strongly disagrees with Mr. Bowie's statement of his client's new-found interpretation of the Agreement.

In contrast, KH Associates has pursued the commercial dispute even though its interpretation directly conflicts with the specific language of the agreement (and exhibits thereto) and with a substantial course of performance and conduct between the parties which supports LGS's position that it has the right to store gas in the Wagenet Sands.

As the Commission is well aware, LGS has a superlative record of providing natural gas storage for the California market and has successfully expanded its capacity as demanded by and to the benefit of the market. As it would address other commercial disputes in the normal course of business, LGS is fully prepared to resolve this dispute with KH Associates and take all steps necessary to maintain its storage rights under the Agreement. Thus, the dispute does not relate to the Application and its resolution falls outside the jurisdiction of the Commission. As with any such dispute, LGS, as a participant in the competitive gas storage market, bears the risk of resolution and fully expects to resolve this dispute long before it could have any operational impact on the Kirby Hills II Expansion. Further, it is common for an Applicant to have some outstanding commercial matters at the time the Commission grants a certificate to construct a new facility.⁶

LGS urges the Commission to recognize that this dispute is not relevant to this proceeding before it, either environmentally or related to the Application itself, and does not need to be addressed in the Commission Decision addressing the Application. Indeed, neither KH Associates nor LGS have presented this issue for the Commission's resolution. As such, the Commission faces no obstacle to continuing and completing the processing of the application.

C. Processing of A.07-05-009 Should Continue on Track for Timely Resolution of the Application

As detailed in the Application filed in May 2007, the proposed expansion of the Kirby Hills facility, originally certificated in D.06-03-012, is intended to provide additional, much-needed natural gas storage capacity in northern California. In the Application, LGS' reliance on storage rights provided under the Agreement was clearly stated, as was LGS' intent to use the

⁶ For example, LGS notes that at the time of its entry into the California independent gas storage market, the Commission granted it Certificate Application in D.00-05-048 while aware that not all rights necessary to operate the facility in Lodi, California had been obtained. Similarly, Wild Goose Storage Inc. received its certificate of public convenience and necessity in D.97-06-091, and then subsequently obtained property rights necessary for the construction and maintenance of that facility through condemnation proceedings. See D.00-05-048, *mimeo*, p. 7.

Comment Set 4, cont.
James W. McTarnaghan, Duane Morris LLP

Duane Morris

ALJ Kirk McKenzie
September 27, 2007
Page 5

Wagenet Sand reservoir (Application, pp. 3-4, 9, 12). As explained above, KH Associates has long been aware of LGS' planned use of the Wagenet Sand reservoir and was provided with additional notice with the statements contained in the Application regarding its authorization to use such reservoir under its contract with KH Associates. Had KH Associates legitimately objected to LGS' assertion of such rights at that time, KH Associates would have presumably protested the Application at that time. Now, in its effort to gain leverage for its unsupported claim for more money from LGS for use of the reservoir, KH Associates has unreasonably demanded that this Commission abandon all of its normal procedures and suspend all further consideration of the Application before it.

Suspension of this proceeding would necessarily delay a Commission decision well into the future. If the Commission were to consider such suspension just to placate KH Associates, it must realize, in addition to the significant harm to LGS, that many significant entities could be damaged. As set forth in the Application, capacity at the original Lodi Facility and at the existing Kirby Hills facility is fully subscribed. The proposed expansion will add 12 Bcf of total working capacity to the Kirby Hills facility. To measure need for additional capacity, LGS held a non-binding open season prior to filing the Application in which 22 market participants indicated a demand for 26.5 Bcf of storage capacity, more than twice the total capacity of the expansion. Based on the results, LGS has been actively negotiating agreements conditioned on Commission approval of the Application. These entities, which are also transportation customers for PG&E, in turn have relied on these plans for additional storage capacity to support their procurement planning and to reduce price volatility and constraints in the future.

The Commission has long recognized that the development of additional natural gas storage facilities within the state is a critical part of California's natural gas infrastructure and has encouraged additional storage to enhance reliability and mitigate price volatility. LGS, as a storage provider, has a proven record of providing reliable storage services. Suspending this entire proceeding, simply because of KH Associates' procedurally deficient, substantively flawed and unsupported claims, would be harmful to California, its natural gas infrastructure, all customers who benefit from the availability of natural gas storage and LGS. LGS submits that to do so at this point, in an uncontested application which has met CEQA requirements and is otherwise ready for Commission action, will thwart the legitimate goals of LGS to provide additional natural gas storage capacity and will add another unacceptable level of regulatory risk for any future applicant in a similar situation.

Comment Set 4, cont.
James W. McTarnaghan, Duane Morris LLP

Duane Morris

ALJ Kirk McKenzie
September 27, 2007
Page 6

Accordingly, LGS respectfully requests that Application 07-05-009 move forward expeditiously to a Commission Decision granting the relief requested in the Application without further delay or consideration of KH Associates' inappropriate demand for suspension. LGS would be pleased to discuss this issue in more detail with you or, if necessary, to submit a more formal document opposing KH Associates' request for suspension of further processing.

Very truly yours,

/s/ James W. McTarnaghan

James W. McTarnaghan

JWM/bam

cc: President Michael Peevey
Mathew Deal
Junaid Rahman
Service List -- A.07-05-009
David J. Bowie

Comment Set 5
Mallorie Walsh

September 20, 2007

Junaid Rahman,
EPC project manager:

This letter is let you know,
I am totally opposed to the
Kirby Hill project, on Shiloh Road
Suisun City, Burdlandug 94585.
The damage already done to the
area can never be replaced.
With the new project, to begin
in Spring of 2008, this area is
doomed.

Mallorie Walsh
2859 Shiloh Rd
Suisun City California
94585

Comment Set 6
Norma Walsh

Yankovich

RECEIVED
Solano County
Resource Management
SEP 25 2007
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Solano County Resource Management
675 Texas St., Suite 5500
Fairfield, CA 94533

Re: Junaid Rahman Notice

Sir or Mame,

This letter is in regards to the Kirby Hills Phase II Project and the added potential risks a project of this magnitude poses. As a land owner in the immediate area, I would like specific information on the safety record of your company as well as any reports on any situations that your company may have been involved in. I would also like to know if similar projects have experienced any accidental explosions from the storage of the natural gas.

Norma Walsh

Norma Walsh
1290 West K Street
Benicia, CA 94510
(707) 745-2253