

# DOCKET

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From: Stephen Goldfarb <steveg50\_94609@yahoo.com>  
To: Eric Solorio; Public Advisor's  
Date: 2/21/2012 1:58 PM  
Subject: Property owner letter on Quail Brush inadvisability

Dear Mr. Solorio and Public Adviser:

Attached is my letter to the Commission discussing private owner concerns about East Elliott, and recommending against placement of the Quail Brush project in East Elliott.

Thank you.

Stephen Goldfarb

Date: February 21, 2012  
To: Eric K. Solorio, Project Manager  
Public Adviser, California Energy Commission  
From: Stephen Goldfarb  
Re: Quail Brush Project, Docket # 11-AFC-03: East Elliott Property Owner Concerns

I am a past president of the East Elliott Property Owners Association. I am also an East Elliott property owner.

This letter is to bring to the Commission's attention, and to the attention of the applicant, Quail Brush Genco, LLC, a division of Cogentrix Energy, LLC, outstanding and actionable issues of the East Elliott private owners regarding use of the East Elliott property. These issues relate to the applicant's attempt to license a gas-powered electrical generating plant in East Elliott on land designated open space environmental preserve. The land use is defined in the East Elliott Community Plan. The Multiple Species Conservation Program (MSCP) protects and governs use of the land.

Cogentrix Energy, LLC, is a subsidiary of Goldman Sachs. It is a leading power generating company. It owns and operates about 20 power-generating plants in the United States and abroad. Its revenue is estimated to be between 500 million and 1 billion dollars. The Quail Brush Project has the capacity to generate about 100 mega watts of power.

Some of the matters in this letter pertaining to existing laws that do not allow the area's use for a power-generating plant, are identified in the January 13, 2012 Issues Identification Report from Project Manager Eric Solorio to Commissioners Karen Douglas and Carla Peterman. The applicant seeks to circumvent those laws. This letter adds further information and perspective. It describes the private owners long standing grievance about the East Elliott area, and the legal implications of that grievance.

The City has acted to prevent the owners from developing their property as permitted by the MSCP. Placement of a gas-powered electrical generating plant on the property exacerbates this situation. It is wholly inconsistent with the MSCP, contrary to the East Elliott Community Plan, adverse to the owners' interest in developing their property, and further damages the owners.

**History.** The East Elliott Planning Area was originally part of Camp Elliott, a military training base. About 1962, the Federal Government declared Camp Elliott to be surplus. Working with the City of San Diego, the Federal Government sold East Elliott parcels to private owners explicitly for residential development. The Federal Government gave the City 2000 acres for public use. This was to be for open space supporting the residential community. That land became the origin of Mission Trails Regional Park. To this date, the City has not allowed any residential development in East Elliott. The area is raw land, without water, sewage, streets, and utilities.

**The Multiple Species Conservation Program.** In 1997, the City implemented the Multiple Species Conservation Program (MSCP). The MSCP is designed to protect private property rights. Its adoption should have permitted a remedy to the owners' wish to develop their property. The MSCP is represented as enlightened public purpose legislation because it is intended to provide for private economic development while setting aside land for environmental protection. It is based on the Federal Endangered Species Act section on Habitat Conservation Plans. The MSCP permits private owners to develop 25% of their property. Seventy-five percent of the property is given to the City, free of charge, for environmental preserve.

**The East Elliott Revised Community Plan.** The City simultaneously adopted a revised East Elliott Community Plan that eliminates **all** residential development in the MSCP habitat area. This is a violation of the MSCP.

**Inverse Condemnation Lawsuit.** The owners filed a lawsuit for Inverse Condemnation. The case was eventually dismissed without prejudice as not being "ripe." This occurred in January 2000. "Without prejudice" means the owners can re-file. "Not ripe" means the Court held that the suit had been filed too soon. The Court invited further action for the Court to make a determination whether Inverse Condemnation exists. There is reason to believe that changed conditions now make the issues ripe.

**Zoning.** East Elliott is zoned RS1-8. This zoning is for 1-dwelling unit per 40,000 square feet (about 1 acre). This is very low density associated with development in rural areas. This zoning density is consistent with development in the MSCP habitat area.

**City's adopts new restrictive development policy.** In 2003 the City adopted a new policy based on the City's designation of East Elliott as open space as defined in the East Elliott Community Plan. The policy states that the City will only allow development of 1-dwelling unit per *parcel*. That means a private owner holding title to a 25-acre parcel is allowed to develop one (1) dwelling unit.

It is not economically feasible to develop in accordance with this City policy.

These City actions to prevent owner economically feasible residential development are obvious. The City's actions put a lid on property development and value. Private owners hold title to land the City will not permit them to economically develop.

**Quail Brush is inconsistent with the environmental sensitivity of the land.** The East Elliott Community Plan states:

"East Elliott is dominated by native vegetation including sage scrub, chaparral, native grassland and oak and sycamore woodland and constitutes one of the largest and biologically most important remaining open space areas in San Diego. ...A number of endangered and threatened wildlife species inhabit this area."

The Community Plan continues:

“Due to the natural resources on site...a majority of this area is designated for long-term open space use. As such, a majority of the area...will be one of the most important components of the City’s Multiple Species Conservation Plan (MSCP). These open space areas will provide habitat for a number of endangered or threatened wildlife species...”

The proposed Quail Brush power plant consisting of eleven separate generators requiring eleven 100-foot tall smokestacks, and other supporting tanks, buildings and switchyards in the environmental preserve is contrary to the environmental sensitivity of the land. It is an inappropriate use even if a boundary adjustment is made, and the power plant is located on the periphery of a modified preserve.

**Quail Brush is inconsistent with the MSCP.** The MSCP provides for limited economic development. This includes residential development at the existing zoning. It does not provide for commercial development. A power plant is not a recommended use.

**Quail Brush further damages the East Elliott private owners.** Quail Brush adds to the damage endured by the East Elliott owners. It removes property from an area that is suitable for residential development. It adversely affects nearby property by its unsightliness, noise, and pollution. It puts a large industrial site in the middle of an environmental preserve. It will inhibit or exclude use of nearby land for residential development.

**Legal Issues.** It is a problem that the City uses an environmental rationale to restrict the private owners from MSCP permitted development while participating in a process to install a power plant that is contrary to the MSCP and contrary to the City’s own designation of the land as environmentally sensitive. It is a clear matter of law whether the City can improperly restrict permitted development to private owners using an environmental rationale, and then arbitrarily allow a non-compatible, environmentally harmful application on the same property.

For those reasons, I believe the Quail Brush licensing plan is ill considered, and should be halted at the nearest opportunity.

**Issues are outstanding and litigable.** The owners’ issues are outstanding and litigable. The City is violating MSCP fundamental principles. It is violating the intent and purpose of the Federal Endangered Species Act section on Habitat Conservation Plans. The City has harmed the private owners. The Quail Brush project exacerbates these problems. It will cause additional damage to the East Elliott owners. Should litigation ensue, it is inevitable that consideration will be given to naming parties or agencies that interfere, harm, or cooperate with those who interfere or harm, the private owners’ right to develop their property.

Quail Brush is an industrial plant suitable for an industrial zoned location. It is a private profit making venture. It is understandable that astute businessmen would seek placement of the plant in an area where the cost of land acquisition is minimal. In this

case that means placing the plant on environmentally sensitive land. It means acquiring land where values have been artificially suppressed. It means ignoring or taking advantage of the private owners who have lawful area development rights. East Elliott is plainly a wrong location for the Quail Brush power plant.