

Allen Matkins Leck Gamble Mallory & Natsis LLP
Valentine S. Hoy (Bar No. 121766)
Jeffrey A. Chine (Bar No. 131742)
501 West Broadway, 15th Floor
San Diego, California 92101-3541
Attorneys for Intervenor HomeFed Fanita Rancho, LLC

California Energy Commission DOCKETED 11-AFC-3
TN # 68215 OCT 25 2012

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:) 11-AFC-03
)
QUAIL BRUSH GENERATION) **DECLARATION OF**
PROJECT) **VALENTINE S. HOY IN SUPPORT OF**
_____) **MOTION BY INTERVENOR**
) **HOMEFED FANITA RANCHO, LLC**
) **TO EXTEND DISCOVERY PERIOD**

I, VALENTINE S. HOY, declare:

1. I am an attorney admitted to practice in the State of California and am a partner with the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP working on the above-captioned matter. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. The current scheduling order was based on the applicant's representation that it would submit Supplement #3, containing substantial changes to the design of the project, on or before June 22, 2012. The applicant submitted those revisions more than sixty days late, docketing them on August 31, 2012.

3. I attended the October 16 Status Conference held in Hearing Room A at 1516 Ninth Street, Sacramento, California. At that time, the applicant notified all parties that it would be requesting findings under section 25525 of the Warren-Alquist Act (LORS override factors), which was not the case when the scheduling order was made. Further, the Committee was particularly interested in the impact of the San Diego City Council's September 24, 2012, denial

of the applicant's appeal of the City of San Diego Planning Commission's denial of the applicant's zoning change request by a unanimous vote, which effectively ending the applicant's attempt to change the area land use from open space to industrial use. HomeFed wishes to conduct discovery into the applicant's forthcoming alternatives analysis.

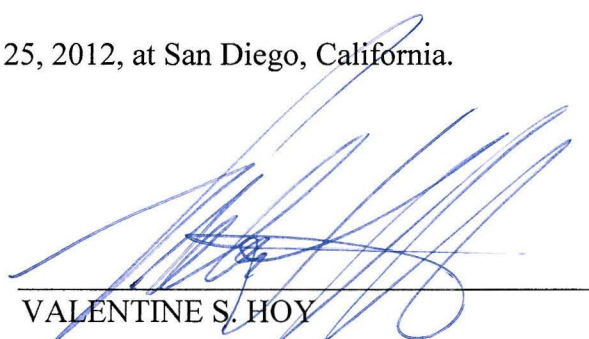
4. Also at the October 16 Status Conference, Raoul Renaud observed: "Perhaps one thing we can begin to glean from this discussion so far is the importance of the override section of this decision. The override section, if the Committee is not able to make the override findings then the Committee is not able to approve the project. So the parties need to focus in their evidence on ensuring that the Committee has an ample evidentiary record upon which it can base its override decision, yea or nay. But we need to have a very, very thorough, complete record of evidence upon which to base that portion of the decision." Attached hereto as Exhibit "A" is a true and correct excerpt from the transcript of the October 16, 2012 Status Conference before the Energy Resources Conservation and Development Commission of the state of California, reflecting Mr. Renaud's comments.

5. In telephone and email correspondence this week, CEC staff cited gaps in the applicant's prior discovery responses as the reason for serving data requests on HomeFed. Attached hereto as Exhibit "B" is a true and correct copy of my e-mail exchange with CEC Project Manager Eric Solorio.

6. During proceedings before the City of San Diego regarding its request for a zoning change, the applicant obtained a 60-day extension of time to prepare its case, and associated delays further extended the time period. Attached hereto as Exhibit "C" is a true and correct copy of the Planning Commission of the City of San Diego's Minutes from April 26, 2012 granting the extension until June 28, 2012. Attached hereto as Exhibit "D" is an excerpt from a true and correct copy of the applicant's August 2, 2012, appeal to the San Diego City Council, which sets forth the procedural history of the proceedings before the Planning Commission. A final decision was not issued by the City of San Diego until September 24, 2012.

7. On October 17, the Applicant docketed a letter from SDG&E purporting to demonstrate a need for the proposed project. In light of this new information, Homefed is in the process of retaining a consultant to analyze the issues associated with SDG&E's letter. This item takes on heightened importance after the October 16 status hearing. Homefed will be prepared to submit data requests on these issues in November.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on October 25, 2012, at San Diego, California.



VALENTINE S. HOY

EXHIBIT A

STATUS CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:)
)
Application for Certification for) Docket No.
the Quail Brush Generation Project) 11-AFC-03
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 16, 2012

10:30 a.m.

Reported by:
John Cota
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

1 that will become clearer as the record develops.

2 And I think that's about it other than the City
3 Council action does seem to ensure that we are going to have
4 LORS non-conformance at the end of the day.

5 HEARING OFFICER RENAUD: All right, good, that's
6 helpful and thank you for that.

7 Perhaps one thing we can begin to glean from this
8 discussion so far is the importance of the override section
9 of this decision. The override section, if the Committee is
10 not able to make the override findings then the Committee is
11 not able to approve the project.

12 So the parties need to focus in their evidence on
13 ensuring that the Committee has an ample evidentiary record
14 upon which it can base its override decision, yea or nay.
15 But we need to have a very, very thorough, complete record
16 of evidence upon which to base that portion of the decision.

17 Obviously part of the override findings pertains
18 to the alternatives analysis. And that's the second part of
19 25525 which says if there are not more prudent and feasible
20 means of achieving public convenience and necessity.
21 Whether or not there is a more prudent and feasible means
22 is, by definition, a discussion of alternatives.

23 25525 also calls for a determination that the
24 facility is required for public convenience and necessity.
25 And those of you who are lawyers will understand that that

EXHIBIT B

Hoy, Val

From: Solorio, Eric@Energy [Eric.Solorio@energy.ca.gov]
Sent: Thursday, October 25, 2012 12:15 PM
To: Hoy, Val
Cc: Kaup, John; Adams, Stephen@Energy
Subject: RE: QBGP_Data Request

Thanks for your understanding, Val.

To avoid any confusion, staff's data requests to HomeFed were made to fill in data gaps regarding HomeFed's Fanita Ranch project, only. The scope of our data requests do not extend beyond the Fanita Ranch project. To the extent that we had previously requested information from the applicant, regarding HomeFed's proposed Fanita Ranch project then yes, HomeFed's response will "fill in some data gaps".

Also, its important to reiterate staff's concern with relying on the city of Santee's "decertified EIR" which you recommended we obtain the data from. Our strong preference is not to rely on that document but rather review the underlying technical reports and obtain the most current data from the project owner then decide which data, if any, is reliable.

Regarding your questions below, HomeFed is the only intervener (so far) who has a proposed project that falls within staff's cumulative impacts analysis. It is this intervener status that subjects HomeFed to the "rights and responsibilities of a party". As you may know, we only issue data requests to parties. It follows that since there is no other party with a proposed project within our cumulative impacts area, we will not be issuing data requests to any additional parties to fill in any potential, remaining data gaps relevant to our cumulative impacts analysis.

Staff does plan to issue additional data requests to further the balance of our CEQA analysis and will be able to complete our discovery by October 31, 2012.

On that note, will you please advise us of HomeFed's intention to move forward with the proposed Fanita Ranch project, in light of the Appellate Court's decision on October 19, 2012? We would like to know if HomeFed is considering alternative project designs, other changes and or terminating the application with the city of Santee. Again, it is relevant to our cumulative impacts analysis and HomeFed is the best source for this information. If you are willing to provide a written response then please let me know when that will be forthcoming so staff can avoid having to issue another formal data request.

Feel free to call me with any questions if you would like to discuss. Thank you again for your understanding and cooperation.

Respectfully,
Eric Solorio, *Project Manager*

California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 9th Street, MS-15
Sacramento, CA 95814

(916) 651-0966

From: Hoy, Val [mailto:vhoy@allenmatkins.com]
Sent: Thursday, October 25, 2012 11:22 AM

To: Solorio, Eric@Energy
Cc: Kaup, John; Adams, Stephen@Energy
Subject: RE: QBGP_Data Request

Dear Mr. Solorio:

Thank you for speaking with me yesterday on the telephone about staff's data requests recently served on HomeFed.. You assured me that staff's data requests were not intended to harass HomeFed as retribution for intervening, but are narrow follow up to earlier data requests directed to the applicant seeking the same information about all projects within a 6 mile radius. I believe your words were that the data requests to HomeFed were needed to fill in gaps left by the applicants responses. I will relay that information to HomeFed and we will work diligently to respond to the data requests as soon as we can.

As I mentioned to the Committee on October 15, we are preparing a motion to extend the discovery period. We would like to know whether staff plans to (1) send data requests to gather similar gap-filling information about other surrounding properties and (2) send any further data requests for any purpose? We appreciate any information you are willing to provide.

Thank you.

Val Hoy

Valentine S. Hoy

Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor, San Diego, CA 92101-3541
(619) 233-1155 (main) / (619) 235-1521 (direct) / (619) 233-1158 (fax)
www.allenmatkins.com

Allen Matkins

From: Solorio, Eric@Energy [<mailto:Eric.Solorio@energy.ca.gov>]
Sent: Monday, October 22, 2012 2:34 PM
To: Hoy, Val
Cc: Kaup, John
Subject: QBGP_Data Request

Val,
Can you give me a call when you have time? I'd like to briefly discuss the data request we issued this afternoon. I'm generally available from 7:00a.m. - 3:30pm, M-F. Thanks.

Respectfully,
Eric Solorio, *Project Manager*

California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 9th Street, MS-15
Sacramento, CA 95814

(916) 651-0966

that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used or relied upon, and cannot be used or relied upon, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

EXHIBIT C

**PLANNING COMMISSION OF THE CITY OF SAN DIEGO
MINUTES OF REGULAR SCHEDULED MEETING OF
APRIL 26, 2012
IN CITY COMMITTEE ROOM - 12TH FLOOR
CITY ADMINISTRATION BUILDING**

CHRONOLOGY OF THE MEETING:

Chairperson Naslund called the meeting to order at 9:13 a.m. Chairperson Naslund adjourned the meeting at 12:22 p.m.

ATTENDANCE DURING THE MEETING:

Chairperson Eric Naslund - present
Vice-Chairperson Tim Golba - present
Commissioner Robert Griswold – present
Commissioner Susan Peerson - present
Commissioner Mary Lydon - absent
Commissioner Mike Smiley – present
Commissioner Stephen Haase - present

Staff

Nina Fain, City Attorney – present
Christine Rothman, Development Services Dept. – Planning Division – present
Mike Westlake, Development Services Dept. – absent
Cecilia Gallardo, Development Services Dept. – present
Jeff Strohming, Development Services Dept. - present
Don Weston, Development Services Dept. - present
Brenda Clark, Recorder - present

PLANNING COMMISSION MINUTES FOR APRIL 26, 2012

ITEM - 1: **ANNOUNCEMENTS/PUBLIC COMMENT - ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:**

Davis Richardon, Katheryn Rhodes, Stephen Whitburn.

ITEM - 2: **REQUESTS FOR CONTINUANCE AND/OR ITEMS TO BE WITHDRAWN:**

ITEM #8 – QUAIL BRUSH COMMUNITY PLAN AMENDMENT INITIATION – PROJECT NO. 270282 CONTINUED TO JUNE 28, 2012.

ITEM #9 – VERIZON SCRIPPS RANCH – PROJECT NO. 223834 CONTINUED TO JULY 12, 2012.

Chairperson Naslund called for a 10 minute break from 10:20 am to 10:30 am.

ITEM - 3: **REQUESTS FOR ITEMS TO BE PLACED ON THE CONSENT AGENDA:**

ITEM #10 – AT&T MOBILITY RANCHO BERNARDO COMMUNITY PARK LTE – PROJECT NO. 238695

ITEM #11 – TOWERCO CITY HEIGHTS – PROJECT NO. 224500

ITEM #13 – SPRINT INGRAHAM – PROJECT NO. 244423

ITEM - 4: **DIRECTOR'S REPORT:**

Vernal Pool Habitat Conservation Plan

The second workshop for the Vernal Pool Habitat Conservation Plan (HCP) was held on March 15, 2012. The draft vernal pool boundary maps were presented and a third workshop to discuss the HCP technical white papers will be held in August, 2012. The power point, summary of the public comments received and staff responses as well as the vernal pool preserve maps have been posted to DSD/MSCP website.

Morena Blvd Station Area Study

The City released the Request For Proposals to hire a consultant for the Caltrans funded grant project. The study will provide land use, urban design and mobility recommendations to support the planned Mid Coast Trolley extension at the Clairemont Drive and Tecolote stations as well as the existing Morena Transit Station. The implementation of the recommendations would require future community plan amendments. The pre proposal meeting is today at 1:30 in the DSD 4th Floor Training Room.

PLANNING COMMISSION MINUTES FOR APRIL 26, 2012

Euclid + Market Land Use and Mobility Plan

The next EMLUMP Working Group meeting will be this evening from 5:30 pm-7:30 pm at the Jacobs Center, 404 Euclid Avenue. The group will discuss land use, the Chollas Creek environment, and what function the Euclid and Market Land Use and Mobility Plan will serve in the overall community plan update.

Old Town SD – Midway Pacific Hwy CPU

Staff and the consultant team for the Old Town – Midway Pacific Highway CPU will be sharing draft land use alternatives with the community plan update committees this summer. We plan to have a community workshop for each community in the fall to present the land use alternatives.

San Ysidro CPU

For the last few months of the San Ysidro CPU we have been refining the preliminary land uses with the community and discussing circulation and urban form within the Village area. We hope to begin our traffic modeling within the next month and resume public meetings this fall.

ITEM - 5: **COMMISSION COMMENT:**

NONE

ITEM – 6: ***Trailed from April 12, 2012***

MONUMENT FLAG POLE – PROJECT NO. 262168

City Council District: 3

Plan Area: Uptown

Staff: Renee Mezo

Speaker slips in favor of the project submitted by Ross Burns, Michael Tactay, Jennifer Sieber, Dwayne Crenshaw, Neal Ector, Allison Paul, Melissa Espinal, Darcey Carson, Rick Cervantes, Kurt Facius, Michele Chagnon, Eddie Reynoso, Michael Brennan, Cassandra Ramhap, Lisa Weir, Michael Callis, Jesse Gonzalez, Jamie Andrade, Kory Ness, Christopher Ward, Stefen Chilcote, Chris Shaw, Matthew Ramon, Richard Willis, Ben Nicholls, Sean Sala, Johnathan Hahe, John Stump.

No speaker slips in opposition to the project.

COMMISSION ACTION:

COMMISSIONER GOLBA MADE THE MOTION TO DENY THE PROJECT. Commissioner Smiley seconded the motion. The motion

PLANNING COMMISSION MINUTES FOR APRIL 26, 2012

passed by a vote of 4-2-1 with Commissioners Smiley, Peerson, Griswold and Golba voting yea and with Commissioners Naslund and Haase voting nay and with Commissioner Lydon absent.

ITEM – 7: *Appeal of Hearing Officer's decision on February 15, 2012*

VIA RIALTO STORM DRAIN – PROJECT NO. 222828

City Council District: 1

Plan Area: La Jolla

Staff: Helene Deisher

No speaker slips in favor of the project.

Speaker slips in opposition to the project submitted by Cory Briggs.

COMMISSION ACTION:

COMMISSIONER GRISWOLD MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE COASTAL DEVELOPMENT PERMIT NO. 79264 AND SITE DEVELOPMENT PERMIT NO. 79265. Commissioner Smiley seconded the motion. The motion passed by a vote of 6-0-1 with Commissioners Naslund, Haase, Smiley, Peerson, Griswold and Golba voting yea and with Commissioner Lydon absent.

ITEM – 8: *Continued from March 15, 2012*

**QUAIL BRUSH COMMUNITY PLAN AMENDMENT INITIATION
– PROJECT NO. 207282**

City Council District: 7

Plan Area: East Elliot

Staff: Daniel Monroe

Speaker slips in favor of the continuance submitted by Congressman Bob Filner, Council Member Marty Emerald, Chris Wahl, Johnny Simpson, Paul Carson, Michelle Penny, Terralyn Hartman, Tom Henderson, Lorenzo Burton, Danielle Paulkner, Eric Nyberg, John Gibson, Gary Sallis, Lori Ziebart, Rob Dickenson, Paul Webster, Pauline Ma, Camille Sartman.

Speaker slips in opposition to the continuance submitted by Susan Wu, Alan Breimimger, Kevin Brushn, Vicki Call, Stephen Houlahan, Mia Mortellaro, Sonja Ramos, Sandy Kunte, David Richardson, Van Collinsworth, Floyd Fredson, Retha Knight, Jeff Keeln, Rosalind

PLANNING COMMISSION MINUTES FOR APRIL 26, 2012

Vargheft, Michael Piess, Mike Walker, James Burton, Jay Powell, Patrick Hurley, Heidi Handy, Cory Briggs, John Stump.

Speaker slips in favor of the project submitted by John Spurner.

Speaker slips in opposition to the project submitted by Phil Connor, Rudy Reyes, Josan Feathers, Pete Hasapopoulos, David Ries, Jay Powell, Stephen Goldfarb, Geri Breininger, Alan Breininger, Dennis Bollman, David Richardson, Congressman Bob Filner, Johnny Pappas, Stephen Houlahan, Mike Walker, John Mustol, James Bruton, Patricie Murphy, Kevin Brewster, Van, Rose Dermody, Retha Knight, Nancy Vorrath, Mia Mortellaro, Robert Cook, Par Sartausky, Tina Nagel, Elizabeth Frice, Charles Ringer, Katheryn Rhodes, Jeff Kahn, Sandy Kuntz, Lyla Prince, Theresa McCarthy, Roslind Varghese, Margie Logue, Hugh Moore, Alfred Piselli, Susan Lewitt, Pete Ramos, Sonja Ramos, Susan Wu, Nate Hausman, Pete Hasapopoulos, A J Ewnce, Michael Pless

COMMISSION ACTION:

COMMISSIONER GRISWOLD MADE THE MOTION TO CONTINUE THIS ITEM IN 60 DAYS TO JUNE 28, 2012. Commissioner Smiley seconded the motion. The motion passed by a vote of 4-2-1 with Commissioner Smiley, Peerson, Griswold and Golba voting yea and with Commissioners Naslund and Haase voting nay and with Commissioner Lydon absent.

ITEM – 9: **VERIZON SCRIPPS RANCH – PROJECT NO. 223834**
City Council District: 5 Plan Area: Scripps Miramar Ranch

Staff: Karen Lynch-Ashcraft

Speaker slips in favor of the project submitted by Shelly Kilbourn

No speaker slips in opposition to the project.

COMMISSION ACTION:

COMMISSIONER PEERSON MADE THE MOTION TO DENY THE CONDITIONAL USE PERMIT NO. 797438 AND DENY PLANNED DEVELOPMENT PERMIT NO. 880135. Commissioner Golba suggested the motion be set for continuance.

COMMISSIONER PEERSON WITHDREW HER PREVIOUS MOTION.

COMMISSIONER PEERSON MADE THE MOTION TO CONTINUE THIS ITEM TO A DATE CERTAIN OF JULY 12, 2012. Commissioner

PLANNING COMMISSION MINUTES FOR APRIL 26, 2012

Golba seconded the motion. The motion passed by a vote of 5-0-2 with Commissioners Naslund, Haase, Smiley, Peerson, Golba voting yea and with Commissioner Griswold recusing and with Commissioner Lydon absent.

ITEM – 10: **AT&T MOBILITY RANCHO BERNARDO COMMUNITY PARK
LTE – PROJECT NO. 238695**

City Council District: 5

Plan Area: Rancho Bernardo

Staff: Simon Tse

Speaker slips in favor of the project submitted by Shelly Kilbourn.

No speaker slips in opposition to the project.

COMMISSION ACTION:

COMMISSIONER GOLBA MADE THE MOTION TO PLACE THIS ITEM ON CONSENT. Commissioner Smiley seconded the motion. The motion passed by a vote of 5-0-2 with Commissioners Naslund, Haase, Peerson, Smiley and Golba voting yea and with Commissioner Griswold recusing and with Commissioner Lydon absent.

ITEM – 11: **TOWERCO CITY HEIGHTS – PROJECT NO. 224500**

City Council District: 3

Plan Area: City Heights

Staff: Simon Tse

No speaker slips in favor of the project submitted.

No speaker slips in opposition to the project submitted.

COMMISSION ACTION:

COMMISSIONER GOLBA MADE THE MOTION TO PLACE THIS ITEM ON CONSENT. Commissioner Smiley seconded the motion. The motion passed by a vote of 5-0-2 with Commissioner Naslund, Haase, Smiley, Peerson and Golba voting yea and with Commissioner Griswold recusing and with Commissioner Lydon absent.

ITEM – 12: **AMENDMENT TO THE OUTDOOR LIGHTING REGULATIONS**

City Council District: All

Plan Area: Citywide

Staff: Amanda Lee

PLANNING COMMISSION MINUTES FOR APRIL 26, 2012

Speaker slips in favor of the project submitted by William Lekas, John Stump.

Speaker slips in opposition to the project submitted by John Stump.

COMMISSION ACTION:

COMMISSIONER GRISWOLD MADE THE MOTION TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE AMENDMENTS TO THE OUTDOOR LIGHTING REGULATIONS INCLUDING APPROVAL OF A NEW OUTDOOR LIGHTING MAP LAYER. Commissioner Golba seconded the motion. The motion passed by a vote of 6-0-1 with Commissioners Naslund, Haase, Smiley, Peerson, Griswold and Golba voting yea and with Commissioner Lydon absent.

ITEM – 13: **SPRINT INGRAHAM – PROGRAM NO. 244423**
City Council District: 2 Plan Area: Pacific Beach

Staff: Simon Tse

Speaker slips in favor of the project submitted by Shave Borba, Becky Siskowski.

No speaker slips in opposition to the project.

COMMISSION ACTION:

COMMISSIONER GOLBA MADE THE MOTION TO PLACE THIS ITEM ON CONSENT. Commissioner Smiley seconded the motion. The motion passed by a vote of 5-0-2 with Commissioner Naslund, Haase, Smiley, Peerson and Golba voting yea and with Commissioner Griswold recusing and with Commissioner Lydon absent.

EXHIBIT D



Quail Brush Genco, LLC

A Project Company of Cogentrix Energy, LLC

RECEIVED
CITY CLERK'S OFFICE

12 AUG -2 PM 12:03

SAN DIEGO, CALIF. KC

9405 Arrowpoint Boulevard
Charlotte, North Carolina 28273-8110
(704) 525-3800
(704) 525-9934 - Fax

August 2, 2012

City Council
City of San Diego
c/o City Clerk's Office
202 "C" Street, 2nd Floor
San Diego, CA 92101

California Energy Commission
DOCKETED
11-AFC-2
TN # 66912
AUG 23 2012

Re: Appeal of Planning Commission Denial to Initiate an Amendment of the City's General Plan and the East Elliot Community Plan on behalf of Quail Brush Genco, LLC (Project Number 270282)

Dear City Councilmembers

Pursuant to the City of San Diego General Plan, Land Use and Community Planning Element Policy LU-D.8, Quail Brush Genco, LLC respectfully appeals the San Diego City Planning Commission's denial on July 19, 2012 of Quail Brush's request to initiate an amendment of the City's General Plan and the East Elliot Community Plan.

Please find enclosed: (1) a Development Permit / Environmental Determination Appeal Application (Form DS-3031); and (2) a Statement of Grounds for Appeal of the Planning Commission's July 19, 2012 Denial of Request to Initiate Amendment.

Regards,

C. Richard Neff
Vice President

SAN FRANCISCO
Calendar and Court Services
Received: August 17, 2012
c/m# 0000355699
Dates to be Entered
Please advise re dates to carry
The attorney, whose initials appear below, has reviewed the applicable court rules, and has verified that the above dates are correct.
Atty: _____
Date Processed: 8/17/12
Received via: Mail/InBox/Fax/ECF
or Other Fedex
Routed to: E. Gannon
Processed by: DK



City of San Diego
Development Services
 1222 First Ave. 3rd Floor
 San Diego, CA 92101
 (619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
 MAY 2010

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- | | |
|---|---|
| <input type="checkbox"/> Process Two Decision - Appeal to Planning Commission
<input type="checkbox"/> Process Three Decision - Appeal to Planning Commission
<input type="checkbox"/> Process Four Decision - Appeal to City Council | <input type="checkbox"/> Environmental Determination - Appeal to City Council
<input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit
<input checked="" type="checkbox"/> Other |
|---|---|

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: Quail Brush Genco, LLC [contact: C. Richard Neff, Vice President]	E-mail Address: rickneff@cogentrix.com
Address: 9405 Arrowpoint Boulevard	City: Charlotte NC State: NC Zip Code: 28273 Telephone: (704) 525-3800

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
Project Number 270282	July 19, 2012	D. Monroe; C. Rothman

Decision (describe the permit/approval decision):

Quail Brush is appealing the Planning Commission's denial on July 19, 2012 of its request to initiate an amendment of the City's General Plan and the East Elliott Community Plan.

5. Grounds for Appeal (Please check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Factual Error (Process Three and Four decisions only)
<input type="checkbox"/> Conflict with other matters (Process Three and Four decisions only)
<input type="checkbox"/> Findings Not Supported (Process Three and Four decisions only) | <input type="checkbox"/> New Information (Process Three and Four decisions only)
<input type="checkbox"/> City-wide Significance (Process Four decisions only)
<input checked="" type="checkbox"/> Other |
|---|---|

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Per directions from City staff on July 23, 2012, Quail Brush has included in the attached document the Statement of Grounds for Appeal of the Planning Commission's July 19, 2012 Denial of Request to Initiate Amendment.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Date: August 2, 2012
 C. RICHARD NEFF - VP, EHS

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

RECEIVED
 CLERK'S OFFICE
 12 AUG - 2 PM '12
 SAN DIEGO, CALIF.

**STATEMENT OF GROUNDS FOR APPEAL
OF PLANNING COMMISSION'S JULY 19, 2012
DENIAL OF REQUEST TO INITIATE AMENDMENT**

Quail Brush Genco, LLC (Quail Brush) respectfully appeals the City of San Diego Planning Commission's July 19, 2012 denial of its request to initiate an amendment of the City's General Plan and the East Elliott Community Plan (Project Number 270282) (hereinafter the "Proposed Amendment"). Quail Brush's Proposed Amendment request is "worthy of further analysis" and therefore the City Council should approve initiation.

I. INTRODUCTION

Quail Brush proposes to develop and operate a 100 megawatt (MW) gas-fired intermediate peaker plant on a privately owned 21.6 acre parcel located in the City of San Diego, south of the Sycamore Landfill and north of State Route 52 (Project). The Project is well-situated as it is in close proximity to high-voltage transmission lines and natural gas lines. The current land use designation under the East Elliott Community Plan is Open Space and zoned residential. This land use designation is inconsistent with the development and operation of an energy generation facility (i.e. a power plant) on this property.

The City has a unique two-step process for amending land use plans, which begins with a request for initiation. Consistent with this, Quail Brush requested that the Planning Commission approve initiation allowing Quail Brush to submit an application to amend the land use designation of the Project site. On July 19, 2012, the Planning Commission denied Quail Brush's request for initiation. Quail Brush is appealing that decision to the City Council because the Proposed Amendment satisfies the City's Initiation Criteria and because the energy, economic and environmental benefits of the proposed Project make the Proposed Amendment worthy of further analysis.

In the State of California, the California Energy Commission (CEC) is responsible for reviewing and ultimately approving or denying all applications to construct and operate thermal electric power plants that are 50 MW or greater. As explained in more detail below in Section VI, during its review of a project, the CEC coordinates with applicable local, state and federal agencies. In making its decision on a project, the CEC must determine whether the proposed project would be consistent with all applicable laws, ordinance, regulations and standards (LORS) of these local, state and federal agencies. Pursuant to its regulations, the CEC has and will continue to ask City staff for information on the City's LORS, including the City's land use designation. Due to the inconsistency with the current land use designation, in order for the CEC to approve the proposed Project, either the City would ultimately need to amend the land use designation or the CEC would have to override the LORS inconsistency. Therefore, not only is initiation appropriate under the City's Initiation Criteria, the City Council should approve initiation and activate the City's evaluation of the amendment request in order to ensure that San Diego's interests are represented in the CEC review process.

II. PROCEDURAL BACKGROUND

On January 27, 2012, Quail Brush submitted its request for initiation of the amendment process to the City (Project Number 270282). Quail Brush also submitted two letters to the Planning Commission in support of its request for initiation on June 21, 2012 (attached as Exhibit A) and on July 10, 2012 (attached as Exhibit B). The Planning Commission held hearings to consider Quail Brush's request to initiate on March 15 (continuation requested by Councilmember Emerald and granted), April 26 (continuation requested by Quail Brush and granted), June 28 (3-2 vote not to initiate trailed to July 19), and July 19, 2012. The Planning Commission denied Quail Brush's request for initiation of amendment process on July 19, 2012 by a 4-1 vote without any substantive explanation of why initiation was not warranted under the City's Initiation Criteria. Quail Brush now asks the City Council to overturn the Planning Commission's denial and to direct City staff to evaluate the amendment request in accordance with City regulations.

III. THE CITY'S DECISIONMAKING PROCESS

A. The City's Amendment Process and Initiation Criteria

The first step in the City's amendment process was for Quail Brush to request that the Planning Commission approve "initiation" of the land use designation amendment. Initiation is "a limited decision and is neither an approval nor denial of the plan amendment." (*The City of San Diego General Plan and Community Plan Amendment Manual: A Companion to the General Plan*, August 24, 2011 (Manual), p. 1). Instead, the Planning Commission must ask "the more fundamental question of whether the proposed change to the General Plan and the community plan is worthy of further analysis based upon compliance with the Initiation Criteria." (*Id.*, p. 2). The Initiation Criteria for the Planning Commission to use in considering privately-proposed land use changes are set forth in Policy LU-D.10 of the City's General Plan:

LU-D.10(a): "[T]he amendment request appears to be consistent with the goals and policies of the General Plan and community plan and any community plan specific amendment criteria."

LU-D.10(b): "[T]he proposed amendment provides additional public benefit to the community as compared to the existing land use designation, density/intensity range, plan policy or site design."

LU-D.10(c): "[P]ublic facilities appear to be available to serve the proposed increase in density/intensity, or their provision will be addressed as a component of the amendment process." (*City of San Diego General Plan*, March 2008 ("General Plan"), Land Use and Community Planning Element, p. LU-27 to LU-28).

If, after reviewing an initiation request in light of these Initiation Criteria, the Planning Commission denies the initiation request, the applicant may appeal the denial to the City Council as contemplated by General Plan Policy LU-D.8. (General Plan, p. LU-27; Manual, p. 3 and 5. Pursuant to General Plan Policy LU-D.9, the City Council may approve initiation "without demonstration of meeting the initiation criteria." (General Plan, p. LU-27). Once the initiation has been approved, the amendment request is forwarded to the City's Development Services project manager. At this point, the project processing timelines begin to run. (Manual, p. 3).



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

***APPLICATION FOR CERTIFICATION FOR THE
QUAIL BRUSH GENERATION PROJECT***

**DOCKET NO. 11-AFC-03
PROOF OF SERVICE
(Revised 10/16/2012)**

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DECLARATION OF SERVICE

I, John T. Kaup, declare that on October 25, 2012, I served and filed copies of the attached DECLARATION OF VALENTINE S. HOY IN SUPPORT OF MOTION BY INTERVENOR HOMEFED FANITA RANCHO, LLC TO EXTEND DISCOVERY PERIOD, dated October 25, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at:
<http://www.energy.ca.gov/sitingcases/quailbrush/index.html>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked **"hard copy required"** or where no e-mail address is provided.

AND

For filing with the Docket Unit at the Energy Commission:

- by sending an electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-03
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

John T. Kaup

John T. Kaup