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California Energy Commission <b>DOCKETED</b> <b>11-AFC-3</b>
TN # 67724 OCT. 15 2012

STATE OF CALIFORNIA  
State Energy Resources  
Conservation and Development Commission

In the Matter of: ) 11-AFC-03  
)  
QUAIL BRUSH GENERATION ) **STATUS REPORT OF INTERVENOR**  
PROJECT ) **HOMEFED FANITA RANCHO, LLC**  
\_\_\_\_\_ )

**INTRODUCTION**

Intervenor, HomeFed Fanita Rancho, LLC, ("HomeFed") hereby submits its Status Report pursuant to the October 2, 2012 Revised Committee Scheduling Order and the October 2, 2012 Notice of Status Conference. In this Status Report, HomeFed will (1) specifically address the topic raised in the Notice of Status Conference of the impact of the City of San Diego's effectively denying the applicant's zoning change request; (2) raise HomeFed's intention to move for extension of the discovery period; and (3) generally update the Committee on HomeFed's upcoming participation as a party opposing the proposed project.

**THE IMPACT OF THE CITY OF SAN DIEGO'S EFFECTIVELY DENYING THE APPLICANT'S ZONING CHANGE REQUEST**

As this Committee is well aware, on September 24, 2012, the City Council denied the applicant's appeal of the Planning Commission's denial of the applicant's zoning change request by a unanimous vote, effectively ending the applicant's attempt to change the area land use from open space to industrial use. HomeFed submitted letters in opposition to both the Planning Commission and the City Council, which it attaches hereto for the Committee's ease of reference. As HomeFed pointed out in those letters, the applicant's proposed conversion of open space to industrial purposes did not satisfy the three initiation criteria contained in General Plan Policy LU-D.10, as the proposed change conflicted with General Plan and East Elliot Community Plan goals regarding the preservation of land designated for Open Space. Both the Council and the Planning Commission agreed that the proposed project does not satisfy the three initiation criteria, and effectively put an end to the applicant's attempt. The Committee is now faced with a dilemma: any approval of the proposed project will be in conflict with the local land use laws, ordinances, regulations and standards ("LORS") and as a consequence also will have significant direct unmitigated environmental impacts. Section 25525 of the Warren-Alquist Act

specifies findings that must be made before approving a project that does not comply with state or local LORS. In addition, CEQA prohibits a public agency from approving a project it finds to have one or more significant effects on the environment unless the Committee makes certain findings pursuant to Pub. Resources Code § 21081. Both sections focus upon whether the proposed project is required for public convenience and necessity and whether there are not more prudent and feasible means of achieving public convenience and necessity. HomeFed respectfully submits that the proposed project is not required for public convenience and necessity, and requests that the proceedings either be dismissed or suspended until the applicant presents a more prudent and feasible means of achieving public convenience and necessity.

### **HOMEFED'S INTENTION TO MOVE FOR EXTENSION OF THE DISCOVERY PERIOD**

Should the Committee agree that the proceedings either be dismissed or suspended, this will moot an upcoming request by HomeFed for an extension of the discovery period. However, if the proceedings should continue after the October 16, 2012 Status Conference, then HomeFed will be seeking an extension based on its need for information concerning, among other things, (1) the significant proposed project changes and design alternatives; (2) what the impact of the City Council's decision and the applicant's response to this Committee's inquiry regarding it; (3) the applicant's continuing lag in responding to the staff's data requests and its inability to respond to both the staff and the parties regarding technical areas at the last workshop; and (4) project economics and feasibility. HomeFed would also like to point out a discrepancy between the latest Revised Committee Scheduling Order and the May 14, 2012 Committee Order on Intervenor's Motion For Extension of Discovery Period. By HomeFed's calculation, per the May 14 Order the current deadline is Monday, October 29, 2012 to present requests for information (60 days from the date the applicant filed its Supplement No. 3, which was August 30, 2012). The Scheduling Order has listed October 31, 2012 as the final date for exchange of information (discovery). HomeFed notes that on October 11, CEC staff submitted data requests to the applicant to which written responses are due on or before November 12. HomeFed anticipates filing its motion within a week, and should the motion be granted its concerns about the upcoming discovery deadline will be mooted.

### **UPDATE ON HOMEFED'S PARTICIPATION AS A PARTY OPPOSING THE PROPOSED PROJECT**

In its August 15, 2012 Status Report Letter, HomeFed recounted that on July 6, 2012, the Committee granted HomeFed's Petition to Intervene and at that time it was still awaiting the Applicant's Supplement #3 to the AFC, (then due June 22, 2012). However, because as of August 15, 2012, Supplement #3 was not available, HomeFed's stated its status to be "on hold."

As noted, at the end of August, the applicant finally filed Supplement #3, detailing its changes to the proposed project. As indicated above, in part because of the significant proposed project changes, and in part because of the technical information and reports continuing to come in from the applicant, HomeFed will be seeking an extension of the discovery deadline and will be submitting data requests to the applicant. HomeFed was a participant at the October 3 Staff Workshop and anticipates it will be participating at the October 19 Staff Workshop as well. HomeFed intends on commenting on the Preliminary Staff Assessment, and will be compiling

evidence, developing reports, and designating both percipient and expert witnesses in anticipation of the Commission's evidentiary hearings.

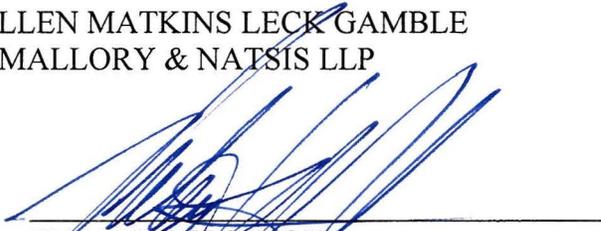
**CONCLUSION**

HomeFed appreciates the Committee's consideration of its Status Report, and will be attending the October 16 Status Conference.

Dated: October 15, 2012

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:



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June 27, 2012

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City of San Diego Planning Commission  
1222 First Avenue, 4th Floor  
San Diego, CA 92101

**Re: Quail Brush Community Plan Amendment Initiation;  
Project No. 270282; June 28, 2012 Agenda Item No. 7**

Dear Chairperson Naslund and Planning Commission Members:

This firm represents HomeFed Fanita Rancho, LLC ("HomeFed"), the owner and developer of the 2,600 acre master-planned community known as Fanita, located approximately 2 ½ miles from the proposed power plant site. The City of Santee has approved the development of Fanita to include approximately 1400 residential units, 15 acres of commercial uses, a community center, 10 acre lake, fire station, as well as a native open space preserve of more than 1400 acres, among other uses.

HomeFed wishes to express its strong opposition to the proposed Community Plan Amendment Initiation proposed by the applicant, Quail Brush Genco, LLC. Contrary to the recommendation contained in the staff report, the proposed conversion of open space to industrial purposes does not satisfy the three initiation criteria contained in General Plan Policy LU-D.10. The staff report itself acknowledges that the initiation conflicts with General Plan and East Elliot Community Plan goals regarding the preservation of land designated for Open Space.

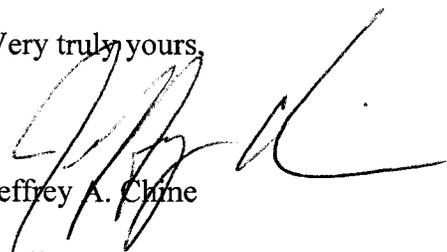
The proposal to construct a power plant with 11 stacks, each 100 feet in height, at this location will have dramatic negative visual and aesthetic impacts upon the surrounding communities, including the future residents of Fanita. Moreover, the proposed industrial use will result in a host of negative impacts to natural resources and subject nearby residents to potential adverse health consequences. Simply put, this is the wrong place for an industrial power plant.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

City of San Diego Planning Commission  
June 27, 2012  
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For these reasons, HomeFed urges the Planning Commission to deny the requested Community Plan Amendment initiation.

Very truly yours,

  
Jeffrey A. Chime

JAC:cam

cc: Paul Borden, President & CEO, HomeFed, via e-mail  
Kent Aden, Vice President, Sr. Development Manager, HomeFed, via e-mail  
Chris Foulger, Vice President, HomeFed, via e-mail

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September 20, 2012

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City Council,  
City of San Diego  
202 C Street, MS #10A  
San Diego, CA 92101

**Re: Quail Brush Community Plan Amendment Initiation;  
Project No. 270282; September 24, 2012 Agenda Item No. 200**

Dear Council President Young and Council Members:

This firm represents HomeFed Fanita Rancho, LLC ("HomeFed"), the owner and developer of the 2,600 acre master-planned community known as Fanita, located approximately 2 ½ miles from the proposed power plant site. The City of Santee has approved the development of Fanita to include approximately 1,400 residential units, 15 acres of commercial uses, a community center, 10 acre lake, fire station, as well as a native open space preserve of more than 1,400 acres, among other uses.

HomeFed wishes to express its continuing strong opposition to the proposed Community Plan Amendment Initiation proposed by the applicant, Quail Brush Genco, LLC. Contrary to the recommendation contained in the staff report (No. PC-12-027, dated March 7, 2012), the proposed conversion of open space to industrial purposes does not satisfy the three initiation criteria contained in General Plan Policy LU-D.10. The staff report itself acknowledges that the initiation conflicts with General Plan and East Elliot Community Plan goals regarding the preservation of land designated for Open Space. As this Council is aware, the Planning Commission agreed that the proposed project does not satisfy the three initiation criteria, and on July 19, 2012, voted 4-1-2 to deny the proposed Community Plan Amendment Initiation. Quail Brush Genco's Statement of Grounds for Appeal adds nothing to rebut this and raises no compelling reason to override the Planning Commission's ruling.

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In the proceedings before the California Energy Commission, Quail Brush Genco has recently proposed a project change of reducing the height of the stacks from 100 feet to 70 feet and grouping them in two bundles of 6 and 5, respectively, for a total of 11.<sup>1</sup> However, despite this change, the proposal to construct a power plant with 11 stacks, each 70 feet in height, at this location will still have dramatic negative visual and aesthetic impacts upon the surrounding communities, including the future residents of Fanita. Moreover, the proposed industrial use will result in a host of negative impacts to natural resources and subject nearby residents to potential adverse health consequences. Simply put, this is the wrong place for an industrial power plant, as it will have an overbearing presence on the area.

For these reasons, HomeFed urges the City Council to likewise deny the requested Community Plan Amendment initiation.

Very truly yours,



Jeffrey A. Chine

JAC:jtk

cc: Paul Borden, President & CEO, HomeFed, via e-mail  
Kent Aden, Vice President, Sr. Development Manager, HomeFed, via e-mail  
Chris Foulger, Vice President, HomeFed, via e-mail  
Jeff O'Connor, Director, Operations, HomeFed, via e-mail

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<sup>1</sup> Overall, the total number of stacks remains the same.



**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 10/08/2012)**

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DECLARATION OF SERVICE

I, John T. Kaup, declare that on 10-15, 2012, I served and filed a copies of the attached Status Report dated 10-15, 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](mailto: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  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[michael.levy@energy.ca.gov](mailto:michael.levy@energy.ca.gov)

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