

Ella Foley Gannon
Direct Phone: +1.415.393.2572
Direct Fax: +1.415.262.9251
ella.gannon@bingham.com

November 29, 2012

Siting Committee
Raoul Renaud, Hearing Officer
Eric Solorio, Project Manager
California Energy Commission
Docket No. 11-AFC-3
1516 9th Street
Sacramento, CA 95814

**Re: Cogentrix Quail Brush Generation Project - Docket Number 11-AFC-03,
Response to CEC Staff Data Requests 90 through 93**

Docket Clerk:

Pursuant to the provisions of Title 20, California Code of Regulations, and on behalf of Quail Brush Genco, LLC, a wholly owned subsidiary of Cogentrix Energy, LLC, Bingham McCutchen LLP hereby submits *Responses to CEC Staff Data Requests 90 through 93*. The Quail Brush Generation Project is a 100 megawatt natural gas fired electric generation peaking facility to be located in the City of San Diego, California.

The topics addressed in this letter include the following:

- Biological Resources

If you have any questions regarding this submittal, please contact Rick Neff at (704) 525-3800 or me at (415) 393-2572.

Sincerely yours,



Ella Foley Gannon

cc: Lori Ziebart, Cogentrix
John Collins, Cogentrix
Rick Neff, Cogentrix
Proof of Service List

Beijing
Boston
Frankfurt
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

T +1.415.393.2000

F +1.415.393.2286

bingham.com

A/75269514.1



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 11/19/2012)

APPLICANT

Cogentrix Energy, LLC
C. Richard "Rick" Neff, Vice President
Environmental, Health & Safety
9405 Arrowpoint Boulevard
Charlotte, NC 28273
rickneff@kogentrix.com

Cogentrix Energy, LLC
John Collins, VP Development
Lori Ziebart, Project Manager
Quail Brush Generation Project
9405 Arrowpoint Blvd.
Charlotte, NC 28273
johncollins@kogentrix.com
loriziebart@kogentrix.com

APPLICANT'S CONSULTANTS

Tetra Tech EC, Inc.
Connie Farmer
Sr. Environmental Project Manager
143 Union Boulevard, Suite 1010
Lakewood, CO 80228
connie.farmer@tetrattech.com

Tetra Tech EC, Inc.
Barry McDonald
VP Solar Energy Development
17885 Von Karmen Avenue, Ste. 500
Irvine, CA 92614-6213
barry.mcdonald@tetrattech.com

Tetra Tech EC, Inc.
Sarah McCall
Sr. Environmental Planner
143 Union Boulevard, Suite 1010
Lakewood, CO 80228
sarah.mccall@tetrattech.com

COUNSEL FOR APPLICANT

Bingham McCutchen LLP
Ella Foley Gannon
Camarin Madigan
Three Embarcadero Center
San Francisco, CA 94111-4067
ella.gannon@bingham.com
camarin.madigan@bingham.com

INTERVENORS

Roslind Varghese
9360 Leticia Drive
Santee, CA 92071
roslindv@gmail.com

Rudy Reyes
8655 Graves Avenue, #117
Santee, CA 92071
rryes2777@hotmail.com

Dorian S. Houser
7951 Shantung Drive
Santee, CA 92071
dhouser@cox.net

Kevin Brewster
8502 Mesa Heights Road
Santee, CA 92071
lzpup@yahoo.com

Phillip M. Connor
Sunset Greens Home Owners
Association
8752 Wahl Street
Santee, CA 92071
connorphil48@yahoo.com

Mr. Rob Simpson, CEO
Helping Hand Tools
1901 First Avenue, Suite 219
San Diego, CA 92101
rob@redwoodrob.com

*Sierra Club, San Diego Chapter
Robert W. Wright
c/o Law Office of Robert W. Wright
716 Castro Street
Solana Beach, CA 92075
bob.wright@mac.com

HomeFed Fanita Rancho, LLC
Jeffrey A. Chine
Heather S. Riley
Allen Matkins Leck Gamble
Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101
jchine@allenmatkins.com
hriley@allenmatkins.com
jkaup@allenmatkins.com
vhoy@allenmatkins.com

Preserve Wild Santee
Van Collinsworth
9222 Lake Canyon Road
Santee, CA 92071
savefanita@cox.net

Center for Biological Diversity
John Buse
Aruna Prabhala
351 California Street, Suite 600
San Francisco, CA 94104
jbuse@biologicaldiversity.org
aprabhala@biologicaldiversity.org

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

City of Santee
Department of Development Services
Melanie Kush
Director of Planning
10601 Magnolia Avenue, Bldg. 4
Santee, CA 92071
mkush@ci.santee.ca.us

*indicates change

INTERESTED AGENCIES (cont.)

Morris E. Dye
Development Services Dept.
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101
mdye@sandiego.gov

Mindy Fogg
Land Use Environmental Planner
Advance Planning
County of San Diego
Department of Planning & Land Use
5510 Overland Avenue, Suite 310
San Diego, CA 92123
mindy.fogg@sdcountry.ca.gov

ENERGY COMMISSION –
DECISIONMAKERS

KAREN DOUGLAS
Commissioner and
Presiding Member
karen.douglas@energy.ca.gov

ANDREW McALLISTER
Commissioner and
Associate Member
andrew.mcallister@energy.ca.gov

Raoul Renaud
Hearing Adviser
raoul.renaud@energy.ca.gov

Eileen Allen
Commissioners' Technical
Adviser for Facility Siting
eileen.allen@energy.ca.gov

Galen Lemei
Advisor to Commissioner Douglas
galen.lemei@energy.ca.gov

Jennifer Nelson
Advisor to Commissioner Douglas
jennifer.nelson@energy.ca.gov

David Hungerford
Advisor to Commissioner McAllister
david.hungerford@energy.ca.gov

Patrick Saxton
Advisor to Commissioner McAllister
patrick.saxton@energy.ca.gov

ENERGY COMMISSION STAFF

Eric Solorio
Project Manager
eric.solorio@energy.ca.gov

Stephen Adams
Staff Counsel
stephen.adams@energy.ca.gov

ENERGY COMMISSION –
PUBLIC ADVISER

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.ca.gov

DECLARATION OF SERVICE

I, Margaret Pavao, declare that on November 29, 2012, I served and filed copies of the attached Response to CEC Staff Data Requests 90 through 93, dated November 29, 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
1516 Ninth Street MS-14
Sacramento, CA 95814
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.



Margaret Pavao



Quail Brush Genco, LLC

A Project Company of Cogentrix Energy, LLC

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

November 29, 2012

Siting Committee
Raoul Renaud, Hearing Officer
Eric Solorio, Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

**Re: Quail Brush Generation Project (11-AFC-03),
Response to CEC Staff Data Requests 90 through 93**

Dear Members of the Siting Committee and Mr. Solorio:

Responses to CEC Staff Data Requests 90 through 93 are included below.

TECHNICAL AREA BIOLOGICAL RESOURCES:

90. Data Request: Please provide a map showing the existing MHPA boundary, as approved in the MSCP, the proposed encroachment (in red) and proposed addition (in green).

Response:

The requested map is included as Attachment A.

91. Data Request: Please provide an MHPA exchange table showing (by habitat tier and acreage) what is proposed to be removed and what is proposed to be added to the MHPA as well as the net change in acreage. The table should include the following columns/rows or equivalent: a) Tier; b) Habitat; c) Existing MHPA; d) Proposed Encroachment; e) Proposed Addition; and f) Net Change.

Response:

The requested exchange table is included as Attachment B.

92. Data Request: Please provide a written analysis of the adjustment's consistency with the six boundary adjustment criteria listed below:

- a. Effects on significantly and sufficiently conserved habitats (i.e., the exchange maintains or improves the conservation, configuration, or status of significantly and sufficiently conserved habitats, as defined in Section 4.2.4 of the MSCP);
- b. Effects on covered species (i.e., the exchange maintains or increases the conservation of covered species);
- c. Effects on habitat linkages and function of preserve areas (i.e., the exchange maintains or improves any habitat linkages or wildlife corridors);
- d. Effects on preserve configuration and management (i.e., the exchange results in similar or improved management efficiency and/or protections of biological resources);
- e. Effects on ecotones or other conditions affecting species diversity (i.e., the exchange maintains topographic and structural diversity and habitat interfaces of the preserve);
- f. Effects on species of concern not on the covered species list (i.e., the exchange does not significantly increase the likelihood that an uncovered species will meet the criteria for listing under either the federal or state Endangered Species Acts).

Response:

MHPA Boundary Adjustment

The parcel that the power plant site will be located on is currently within the boundary of the MHPA established by the City of San Diego Subarea Plan. Because the plant site will require development beyond the 25 percent development limit imposed for private land within the MHPA, a boundary adjustment to the MHPA will be required.

Section 5.4.2 of the MSCP Plan provides a process for adjustments to the boundaries of the MHPA. Adjustments to the MHPA boundaries may be made without the need to amend the City of San Diego Subarea Plan if the adjustment will result in the same or higher biological value of the [MHPA]. The CEC, with the concurrence of the USFWS and CDFG, have developed a proposed mitigation strategy to allow project related impacts to be mitigated by habitat conservation within the MHPA boundary.

The MSCP Plan's Section 5.4.2 provides six biological factors necessary to evaluate biological value in a boundary change process. These factors are listed in

Table 1 along with an evaluation of these factors with respect to the project site.

Table 1: MSCP Biological Evaluation Factors

Factor Listed in MSCP Section 5.4.2	Power Plant Site Parcel Evaluation
Effects on significantly and sufficiently conserved habitats (i.e., the exchange maintains or improves the conservation, configuration, or status of significantly or sufficiently conserved habitats, as defined in [the MSCP Plan] Section 4.2.4.	The power plant site is located within a dense stand of low to moderate quality non-native grasslands between the Sycamore Land Fill to the north and adjacent development to the south. There are few small patches of low quality Diegan coastal sage scrub along the south-facing slopes. The exchange will increase the value of the MHPA by conserving a higher quality piece of the MHPA.
Effects to covered species (i.e., the exchange maintains or increases the conservation of covered species);	Covered species located on the project site are limited to the San Diego barrel cactus and variegated dudleya. These individuals will be transplanted to the preserved portion of the biological survey area.
Effects on habitat linkages and function of preserve areas (i.e., the exchange maintains or improves a habitat linkage or wildlife corridor);	The exchange greatly increases the function of the preserve by conserving higher value habitat, while disturbing lower quality habitat that is not associated with any wildlife corridor.
Effects on preserve configuration and management (i.e., the exchange results in similar or improved management efficiency and/or protection for biological resources);	The exchange preserves a more efficient parcel of land that is necessary for the function and value of the preserve.
Effects on ecotones or other conditions affecting species diversity (i.e., the exchange maintains topographic and structural diversity and habitat interfaces of the preserve); and/or	The exchange increases the amount of ecotone habitat within the preserved. The project site has little to no ecotone and provides minimal species diversity.
Effects to species of concern not on the covered species list (i.e., the exchange does not significantly increase the likelihood that an uncovered species will meet the criteria for listing under either the federal or state Endangered Species Acts).	The exchange will greatly benefit the covered species identified within the project site by conserving suitable habitat. The project site provides minimal habitat for a couple of sensitive plant species, but the exchange parcel provides suitable habitat and foraging opportunities for a number of sensitive wildlife species.

By satisfying the requirements of an MHPA boundary line adjustment, the project will ensure no significant impacts to the MHPA

As part of the base-line biological surveys, fourteen potential mitigation parcels surrounding the project site were surveyed to document the existing conditions and to determine if the mitigation parcels were of higher or lower quality than the proposed project site. Also taken into consideration was the location of the proposed mitigation parcel with regard to existing and proposed conservation areas within the MHPA boundary.

93. Data Request: Please discuss the project's potential to introduce invasive plants and animals harmful to the MHPA, and possible measures to mitigate any risk that is identified.

Response:

Invasive Plants and Wildlife

The introduction of non-native invasive plant and wildlife species can be a potentially significant indirect impact. Invasive species can often be spread from project site to project site. Although the majority of the survey area is comprised of low to moderate quality coastal sage scrub and dense non-native grasslands, there are a few patches of native grasslands. An increase in non-native weedy species may indirectly affect native grasslands, which is considered a sensitive plant community within the City of San Diego. Introduction of invasive weedy species during project construction could be a significant impact. Potentially significant impacts associated with invasive plants are adequately mitigated through implementation of Mitigation Measure BIO-5 and Mitigation Measure BIO-11.

Invasive wildlife species are commonly associated with the introduction of residential development. Unwanted feral cats and exotic wildlife species, such as red-eared sliders, boa constrictors, and iguanas, are often released in the wild and can have potentially significant impacts on the existing native plant and wildlife species. However, due to the nature of the proposed development, it is highly unlikely that the development of a peaker plant will have any increase in invasive wildlife species, and therefore should not be considered a significant impact.

MM BIO-5. The project owner's Construction/Operation Manager shall act on the advice of the Biological Monitor(s) to ensure conformance with the biological resources conditions of certification. If required by the Biological Monitor(s) the project owner's construction/operation manager shall halt all site mobilization, ground disturbance, grading, construction, and operation activities in areas specified by the Biological Monitor. The Biological Monitor(s) shall:

1. Require a halt to all activities in any area when determined that there would be an unauthorized adverse impact to biological resources if the activities continued;
2. Inform the project owner and the Construction/Operation Manager when to resume activities; and
3. Notify the CEC Compliance Project Manager if there is a halt of any activities, and advise the CEC Compliance Project Manager of any corrective actions that have been taken, or would be instituted, as a result of the work stoppage.

Verification: The project owner shall ensure that the Biological Monitor notifies the CEC Compliance Project Manager immediately (and no later than the following morning of the incident, or Monday morning in the case of a weekend) of any non-compliance or a halt of any site mobilization, ground disturbance, grading, construction, and operation activities. The project owner shall notify the CEC Compliance Project Manager of the circumstances and actions being

taken to resolve the non-compliance. Whenever corrective action is taken by the project owner, a determination of success or failure would be made by the CEC Compliance Project Manager within five working days after receipt of notice that corrective action is completed, or the project owner would be notified by the CEC Compliance Project Manager that coordination with other agencies would require additional time before a determination can be made.

MM BIO-11. Prior to construction, weeds should be removed before seed production occurs. Several weed control methods may be used effectively prior to, during, and immediately following construction activities including truck washing, manual weed pulling, and/or selective herbicide applications.

Therefore, a maintenance crew must be prepared to respond to weed control needs rapidly and the restoration biologist must provide adequate supervision for maintenance personnel that may not be skilled at identifying and discriminating between weeds and native species. Herbicides must be applied selectively, and supervised by maintenance personnel familiar with native vegetation, to avoid damaging native plant species. The restoration biologist must approve any herbicide application in advance.

All vehicles should be cleaned at a designated wash area prior to initial grading of the project site. Vehicles should also be cleaned prior to leaving the site. This will prevent seeds from non-native weedy species from germinating on site.

Weed debris should be removed from the project area and disposed of as permitted by law. Pulled weeds should be placed on a tarp to prevent the seeds from touching the ground.

Target species that are typically detrimental to native revegetation are included, but not limited to, those listed in Table 2.

Table 2: Target Weed Species

Scientific Name	Common Name
<i>Ailanthus altissima</i>	Tree of heaven
<i>Atriplex semibaccata</i>	Australian saltbush
<i>Brassica</i> spp.	Mustard
<i>Brassica tournefortii</i>	Sahara mustard
<i>Polypogon monspeliensis</i>	Rabbit's foot grass
<i>Carduus</i> spp.	Thistle species
<i>Cirsium vulgare</i>	Bull thistle
<i>Cynara cardunculus</i>	Artichoke thistle
<i>Centaurea solstitialis</i>	Star thistle
<i>Centaurea melitensis</i>	Tocalote
<i>Lactuca serriola</i>	Prickly lettuce
<i>Pennisetum setaceum</i>	Fountain grass
<i>Medicago polymorpha</i>	Bur clover
<i>Melilotus</i> spp.	Sweet clover
<i>Nicotiana glauca</i>	Tree tobacco
<i>Raphanus sativus</i>	Wild radish
<i>Ricinus communis</i>	Castor bean
<i>Robinia pseudoacacia</i>	Black locust
<i>Salsola tragus</i>	Russian thistle
<i>Silybum marianum</i>	Milk thistle
<i>Sisymbrium irio</i>	London rocket
<i>Spartium junceum</i>	Spanish broom
<i>Tamarix</i> ssp.	Tamarisk
<i>Xanthium strumarium</i>	Cocklebur

Verification: At least 30 days prior to the start of project operation the project owner shall provide to the CEC Compliance Project Manager for approval, a weed eradication plan. Implementation of the plan will be reported in a Monthly Compliance Reports by the Biological Monitor. Within 30 days after completion of project construction, the project owner shall provide to the CEC Construction Project Monitor, for review and approval, a written construction termination report identifying how measures have been completed.

I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge.

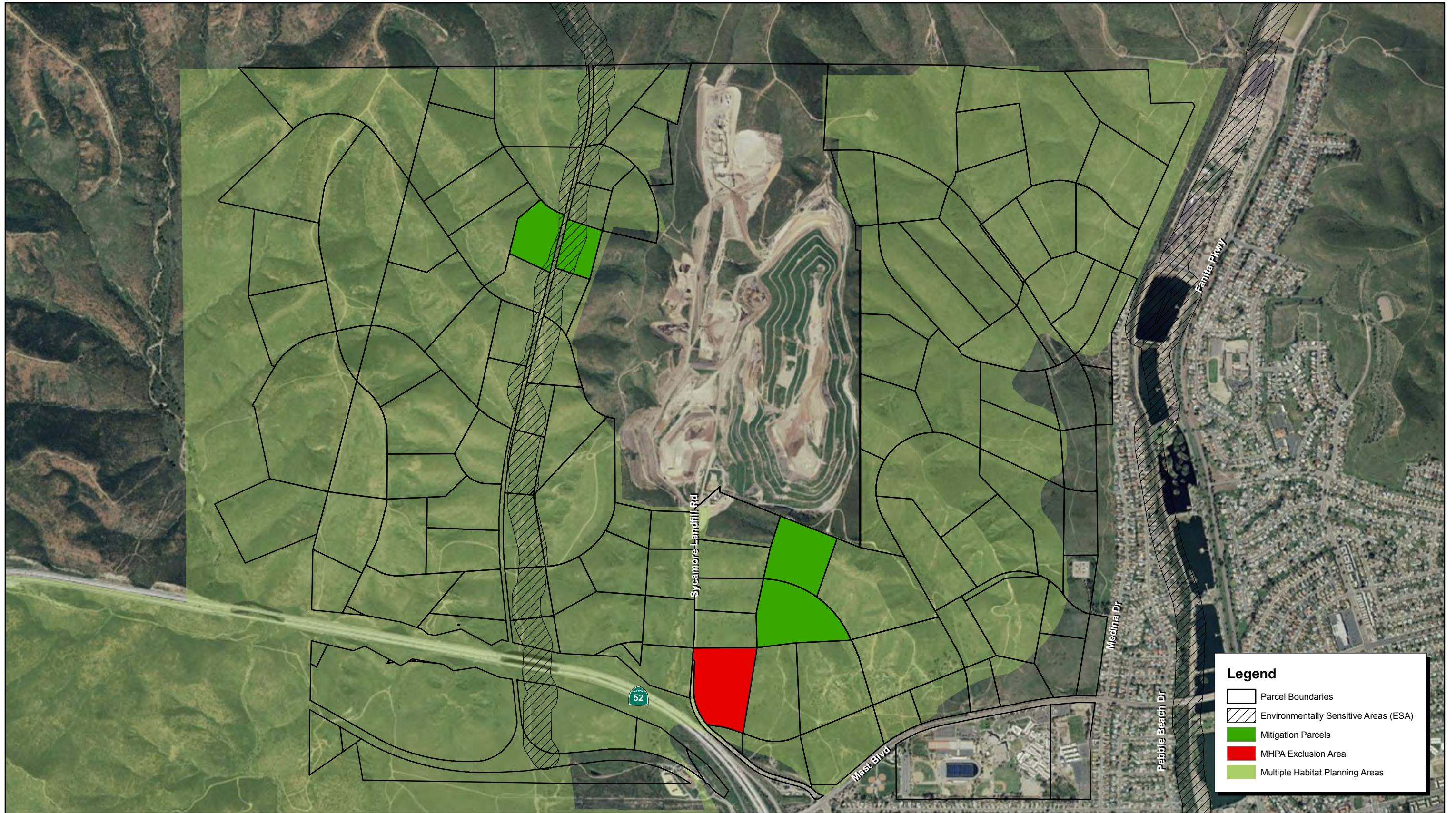
Regards,

A handwritten signature in black ink, appearing to read 'C. Richard Neff', written in a cursive style. The signature is positioned above a horizontal line.

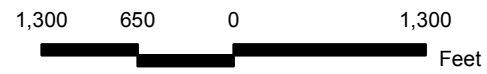
C. Richard Neff
Vice President

cc: Docket (11-AFC-3)

ATTACHMENT A



Source: ESRI Aerial Imagery. Tetra Tech 2012, MBA Field Survey and GIS Data, 2012.



17510009 • 11/2012 | 4_MHPA_Mitigation_parcels.mxd

Exhibit 4 MHPA Exclusion Area and Mitigation Parcels

TETRA TECH EC, INC. • QUAIL BRUSH PROJECT
MITIGATION ANALYSIS REPORT

ATTACHMENT B

Table 8: MHPA Exchange

Habitat / Vegetation Community	Tiers	Existing MHPA Acres*	Proposed Encroachment	Proposed Addition	Net Change
Diegan Coastal Sage Scrub	Tier II	1,186.90	1.53	15.27	+13.74
Diegan Coastal Sage Scrub/non-native grassland	Tier II	0	0	11.61	+11.58
Disturbed Habitat	Tier IV	0.51	0	1.18	+0.71
Granitic Chamise Chaparral	Tier III	512.52	0	5.21	+5.21
Coastal Sage Scrub/Chaparral	Tier II	2.08	0	0	0
Native Grassland	Tier I	0	0	0.98	+0.92
Non-Native Grassland	Tier III	347.24	19.77	22.45	+2.68
Non-Vegetated Channel	Tier I equivalent	22.58	0	0.59	+0.59
Riparian Woodlands	Tier I equivalent	1.55	0	0	0
Southern Coast Live Oak Riparian Forest	Tier I equivalent	6.52	0	0	0
Southern Mixed Chaparral	Tier III	0.46	0	0	0
Southern Riparian Scrub	Tier I equivalent	0.17	0	0	0
Southern Sycamore-alder Riparian Woodland	Tier I equivalent	16.64	0	0	0
Urban/Developed	Tier IV	0.92	0.22	0	-0.22
Totals		2,098.09	21.52	57.29	+35.21
Notes: *Based on San Diego County Vegetation Map.					