



TODD T. CARDIFF, Esq.
ATTORNEY AT LAW

1901 FIRST AVENUE
SUITE 219
SAN DIEGO CA
92101

T 619 546 5123
F 619 546 5133

todd@tcardiffllaw.com

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Delivered via Email and First Class Mail

San Diego Planning Commission
City Administration Building
202 "C" Street, 12th Floor
San Diego, CA 92101

dmmonroe@sandiego.gov

RE: Quail Brush Power Plant (CEC Docket No.: 11-AFC-03)
City of San Diego Project No. 270282
June 28, 2012 Agenda Item #7

Dear Planning Commission:

This office represents Robert Simpson and Helping Hand Tools, a California non-profit corporation, in opposition to the Quail Brush Power Plant (hereafter "Plant"). This letter opposes any action by the San Diego Planning Commission for construction in the East Elliot area of Santee and Mission Trails Regional Park and re-zoning of the area from open space to industrial without mandatory CEQA compliance.

**I. THE PLANNING COMMISSION MUST COMPLETE CEQA
REVIEW PRIOR TO INITIATING REZONING FOR THE
PROJECT**

The Planning Commission decision to vote to initiate a zoning amendment on June 28, 2012, violates CEQA. The lead agency is normally the agency with general governmental powers, such as a city. (14 CCR 15051(b)(1).) In this case, although the CEC is approving the permitting for the power plant, the land-use and environmental impacts are experienced by the City of San Diego. Therefore, because the City of San Diego is acting on the zoning first, it is the lead agency, and therefore must prepare an EIR. (14 CCR 15051(c).)

Further, environmental review is to occur at the "earliest feasible time." *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, (2000) 84 Cal. App. 4th 221, 229 citing *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal. 3d 779, 797. Here, the Planning Commission seeks to rezone for a natural gas power plant without first undertaking or analyzing any relevant environmental information prior to the decision. The City must prepare the EIR and consider the approval, because the voters should have the right to know the environmental ethics of their elected

officials and vote them out, if they do not agree with the approval of a power plant in an MSCP area.

II. THE PLANNING COMMISSION'S APPROVAL OF INITIATING A GENERAL PLAN AMENDMENT ENCOMPASSES A PROJECT UNDER CEQA.

The Planning Commission June 28, 2012, vote improperly evades CEQA review by incorrectly claiming that the amendment of the general plan does not constitute a project. CEQA Guidelines §15378(a)(1) says a "project" includes "enactment and amendment of zoning ordinances." There is simply no question this action qualifies as amending an existing open space zoning ordinance, and therefore, qualifies as a project.

In *Bozung v. Local Agency Formation Commission*, the Court ruled the foreseeability of indirect environmental effects factor into the determination of an agency decision constituting a project. *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 279-280. In another case, *Kaufman & Broad-South Bay, Inc. v. Morgan Hill*, the court relied on *Bozung* and said the cumulative effects "in physical change to the environment" go into the project determination process. *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal. App. 4th 464, 472 quoting *Bozung v. Local Agency Formation Commission*, 281.

Furthermore, the project that must be evaluated is the power plant, not just the act of changing the zoning from open space to industrial. (14 CCR 15378(d).) The City cannot avoid analyzing the impacts by claiming that changing the zoning has no environmental impact because it is just changing the legal designation of the parcel. It must analyze all the impacts of the construction and operation of the power plant.

The City cannot rely on 21080(b)(6), which appears to exempt the expenditures of public funds for planning, design or engineering purposes. While perhaps funding studies for planning may be exempt, the actual zoning change must be analyzed under CEQA. The City cannot avoid CEQA review by claiming that it is only "initiating a zoning change," and it is not a final approval. There does not appear to be any difference between "initiating" and "approving". There has been no indication by the Planning Commission that there will be subsequent hearings and a subsequent approval that will require CEQA. It appears that initiating constitutes "approval" for the purpose of CEQA, because it commits the City to a

course of action. (*Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 142.)

1. The Plant Will Negatively Affect the Environmentally Sensitive and Pristine Area.

The Plant involves moving more than 500,000 cubic yards of grading to complete construction of the 26.1 acre lot. This building process will alter the vast slopes of the area and create lateral support issues. Also, the Plant's 11 reciprocating engine generator sets releasing nitrogen oxides, methane, and carbon dioxide will impact nearby wetlands, federally protected Vernal Pools, and the San Diego River. It appears that vernal pools populate the site and there may be Quino Checkerspot Butterfly habitat at the site.

2. The Proposed Project Will Despoil Visual Beauty of the Area.

The visual impact of 11, 100-plus-foot generators is another concern. Recently, the California Energy Commission Comment acknowledged Cogentrix downplayed the impact:

The visual resources evaluation (Section 4.5) of the Application for Certification (August 2011) significantly understates the negative impact of the proposed power plant on the visual and aesthetic value of the surrounding area.

Additionally, the Plant construction is contrary to the City of San Diego's Mission Trails Design District Regulation. The City Planning Commission should follow this mandatory regulation and enforce against the visual / aesthetic damage.

III. THE ZONING CHANGE WILL VIOLATE THE SAN DIEGO GENERAL PLAN.

The Project will be built on what is currently open space in blatant contradiction of the San Diego General Plan (Res. No. R-303473). The pertinent part reads:

"This is the first General Plan in the City's continuing history that must address most future growth without expansion onto its open spaces."

The Planning Commission cannot be arbitrary and capricious in its zoning decisions, but must act to further the objectives and policies under the general plan. *Corona-Norco Unified School Dist. v. City of Corona*, (1993) 17 Cal. App.

4th 985, 994. This project is in complete disharmony with the San Diego General Plan and is in no way compatible, therefore, unacceptable. *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal. App. 4th 704, 717-718. The Plant will also impair adjacent open space with carbon emissions, pollutants, and other damaging particulates. As this vote is inconsistent with the general plan, it will be "invalid when [if] passed." *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698, 704.

Respectfully,



Todd T. Cardiff, Esq.

CC:

Daniel Monroe
City Planning
202 C Street, 4th Floor
MS-4A
San Diego, CA 92101
dmmonroe@sandiego.gov