

DOCKETED

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September 12, 2013

VIA E-FILING (W/OUT ATTACHMENTS) AND HAND-DELIVERY

El Segundo Energy Center Petition to Amend (00-AFC-14C) Siting Committee
Commissioner Karen Douglas – Presiding Member
Commissioner Janae A. Scott – Associate Member
Paul Kramer – Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: El Segundo Energy Center Petition to Amend (00-AFC-014C)
Application for Confidential Designation of Cultural Resources Records

Dear Committee Members:

El Segundo Energy Center LLC ("**ESEC LLC**" or "**Applicant**") submits this Application for Designation of Confidential Records ("**Application**") with respect to the attached information pertaining to Cultural Resources (Attachment A) (the "**Confidential Information**"). ESEC LLC is submitting this Application in response to the Commission's Data Requests Nos. 68 - 82 (the "**DR Response**") for ESEC LLC's Petition to Amend (the "**Petition**") the El Segundo Energy Center ("**ESEC**") project (00-AFC-014C) (the "**Project**"). ESEC LLC's Petition and the DR Response address Cultural Resources in detail.

ESEC LLC hereby requests confidential designation of the attached Confidential Information under Title 20, California Code of Regulations, section 2505. ESEC LLC understands that, pursuant to Title 20, California Code of Regulations sections 2505(a)(2) and (a)(3)(B), the attached information will not be publicly disclosed while this Application for Confidential Designation, or any appeal of the Commission's determination regarding this Application, remains pending.

ESEC LLC provides the following information in support of its Application:

(a) *Description/Separation of the Confidential Records.*

Attachment A, which is marked "Confidential," is the subject of this Application and pertains to cultural resources in and around the Project area, and which might be impacted by

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the Project. This material includes information regarding cultural resources field surveys, literature searches, maps of resources, and results of construction monitoring.

(b) Specific Indication of Those Parts of the Record to be Kept Confidential.

Applicant requests that the Commission designate the attached record as confidential in its entirety. A summary of the cultural resources in the Project area and an analysis of the potential impacts to those resources are presented in Section 3.3 of the Petition and in non-confidential portions of the DR Response.

(c) The Length of Time the Record Should be Kept Confidential.

The Confidential Information in Attachment A should be kept confidential permanently. The information contained therein assists in identifying potential locations of culturally sensitive resources in the Project area. Consequently, any disclosure of this information could heighten the risk of unauthorized excavation of such resources, and/or unauthorized removal of the same from locations of potential resources referenced in the report. This concern would still exist with respect to the general Project location, even after the conclusion of this amendment procedure and construction of approved modifications to the ESEC facility.

(d) Provisions of Law Allowing the Commission to Keep the Record Confidential: Disclosure of the Information is Against the Public Interest.

As previously noted, the Confidential Information assists in identifying the potential significance of cultural resources that might be present in and around the proposed Project site and the ESEC facility in general. The Commission may designate a record as confidential and require that it not be publicly disclosed if the California Public Records Act provides for that record to be treated as confidential, and if the party giving the Commission custody of such record provides certain information about that record. (20 CCR §2505(a)(1).) The Public Records Act protects the confidentiality of any records that are exempted from disclosure under provisions of the California Evidence Code relating to privilege, including Evidence Code section 1040. (Govt. Code §6254(k).) Evidence Code section 1040 sets forth a privilege that entitles public entities to refuse to disclose official information acquired in confidence by a public employee in the course of his or her duties, when disclosure of the information is against the public interest because there is a need to preserve the confidentiality of the information that outweighs the need for disclosure in the interest of justice. This privilege applies here to protect the Confidential Information from disclosure.

(e) Aggregation and Masking of the Confidential Information.

Masking of the Confidential Information is not necessary because, as discussed above, the potential cultural resources, the review undertaken, and the mitigation measures identified are contained within Section 3.3 of the Petition and in the Data Responses to Data Requests 68 through 82.

(f) *The Submitted Record Is Presently Confidential.*

Consultant has not disclosed the cultural resources information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting Applicant with efforts related to the Petition. Furthermore, Applicant has not released any of the information contained in Attachment A to any member of the general public and has prohibited its employees, affiliate employees, consultants and attorneys from releasing to the public any portion of such information at any time.

I certify under penalty of perjury that the information contained in this Application is true, correct, and complete to the best of my knowledge. As an attorney for ESEC LLC, I am authorized to make the above certification and to submit this Application on behalf of ESEC LLC.

Locke Lord LLP

By: 

John A. McKinsey
Attorneys for El Segundo Energy Center LLC

JAM: awph

Enclosure

DECLARATION OF SERVICE

I, Dee Hutchinson, declare that on September 12, 2013, I served and filed copies of the Application for Confidential Designation of Cultural Resources Records dated September 12, 2013. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

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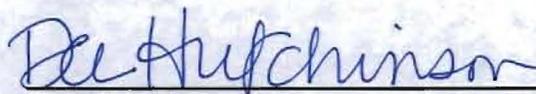
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: September 12, 2013



Dee Hutchinson

Proof of Service List

Docket: 00-AFC-14C

Project Title: El Segundo Power Redevelopment Project Compliance

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