

DOCKETED

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VIA E-FILING

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-14C)
Application for Confidential Designation of Biological Resources Record

Dear Committee Members:

El Segundo Energy Center LLC (“**ESEC LLC**”) submits this Application for Designation of Confidential Records (“**Application**”) with respect to the attached information pertaining to Biological Resources (Attachment A) (the “**Confidential Information**”). Concurrently with the submission of this Application and the enclosed Confidential Information, ESEC LLC is submitting supplemental responses to Data Request 61 (the “**BIO Response**”) regarding ESEC LLC’s Petition to Amend (the “**PTA**”) the El Segundo Energy Center (“**ESEC**”) project (00-AFC-14C) (the “**Project**”). ESEC LLC’s PTA and the BIO Response address Biological 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.

In support of its Application, ESEC LLC provides the following information:

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

Attachment A, which is marked “Confidential,” is the subject of this Application and pertains to the locations of biological resources in and around the Project area. This material

includes detailed information about special-status species and their habitats in and around the Project area.

(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 biological resources in the Project area and an analysis of the Project's potential impact on those resources are presented in Section 3.2 of the PTA, and in non-confidential portions of the BIO 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 sensitive and/or protected species and their habitats in and around the Project area. Consequently, any disclosure of this information could heighten the risk of harm to such resources, and/or unauthorized removal of the same from the depicted locations. This concern would still exist 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.

The Confidential Information contains data obtained from the California Natural Diversity Database that assists in identifying the potential locations of biological resources that might be present in and around the proposed Project site and the ESEC facility in general. California Natural Diversity Database Data Use Guidelines advise against publishing maps that depict special species or habitat locations at a scale larger than 1:350,000 (specifically, maps that contain information in the "polygon" layer), to prevent others from using the detailed information to harm a special status species or its habitat. (See <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=27285&inline=1>, last viewed December 19, 2013.) 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. Due to the aforementioned California Natural Diversity Database Data Use Guideline regarding maps at a scale larger than 1:350,000, this privilege applies here to protect the Confidential Information from disclosure.

(e) *Aggregation and Masking of the Confidential Information.*

The Confidential Information cannot be masked or aggregated without rendering it useless. Applicant provided the Commission with Figure 3.2-1, a similar map containing less-accurate and obsolete information regarding special-status species, in Section 3.2 of the PTA. This Confidential Information is designed to replace Figure 3.2-1.

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

Consultant has not disclosed the biological resources information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting ESEC LLC with efforts related to the PTA. Furthermore, ESEC LLC 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

APPENDIX A

See attached.