

DOCKETED

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VIA E-FILING

El Segundo Energy Center Petition to Amend (00-AFC-14C)
Christine Stora, Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: El Segundo Energy Center Petition to Amend (00-AFC-014C)
Supplemental Information Regarding Project Owner's Responses to Biological
Resources Conditions of Certification Proposed in Preliminary Staff Assessment

Dear Ms. Stora:

On May 13, 2014, California Energy Commission (the "**CEC**") staff ("**Staff**") docketed at the CEC (as TN# 202327) its Preliminary Staff Assessment ("**PSA**") of El Segundo Energy Center LLC's ("**Project Owner**") Petition to Amend the El Segundo Energy Center ("**ESEC**") (00-AFC-14C) project (the "**Project**"). ESEC LLC commented on the PSA in that certain correspondence to the CEC dated and docketed May 5, 2014 as TN# 202293 (the "**Responses**"). Recently, Staff requested an expanded explanation of Project Owner's comments regarding four of the Biological Resources ("**BIO**") Conditions of Certification ("**COC**") proposed in the PSA: BIO COCs **BIO-9**, **BIO-10**, **BIO-16** and **BIO-17**. Project Owner accordingly expounds upon its existing comments below.

The facility site is a fully developed and operating power plant that contains no sensitive species or habitat. COC BIO-9 was added along with BIO-10 when the project was modified. At such time, it was proposed that Project Owner might deliver major components to the site via barges, necessitating access through the beach. Beach delivery was never utilized and is no longer a possible activity of the Project. Nevertheless, COCs BIO-9 and -10 can remain, but it should be clear that they only apply to construction activities. In addition, Project Owner believes that COC BIO-9, as modified, eliminates any possible need for COC BIO-17. Project Owner responds to each of Staff's requests for additional information below, in the order in which each request was made.

1. **BIO-9**. Project Owner has proposed important changes to BIO-9 to clarify the manner in which this COC will apply during construction activities.

a. Beach Delivery. The inclusion of language regarding beach delivery was an inadvertent typographical error. Project Owner intended to mirror Staff's deletion of that language in the Responses.

b. Construction Phase. Beach delivery of major, oversized generation equipment components was added as an option for construction of the initial repowering of ESEC; however, beach delivery was never used and was eliminated from the initial repowering of ESEC. Major, oversized generation equipment was delivered to the site via the widened site access road that allowed truck transport of such equipment and other oversized ESEC components during the construction phase. When Staff removed the reference to beach delivery from this COC, Project Owner found it necessary to insert replacement language clarifying that this condition would "apply to construction only." The Project will also reply upon truck transport of oversized generation equipment and other oversized Project components via the widened site access road; therefore, beach delivery is not a component of the Project and COC BIO-9 should only be triggered by construction activities.

c. Item 6—Nesting Birds. Project Owner deleted COC BIO-17, because it was redundant with COC BIO-9. To reassure Staff that Project Owner intends to incorporate a plan for measures to avoid or minimize impacts to sensitive, nesting avian species, Project Owner expressly included a reference to nesting birds in COC BIO-9, Item 6.

d. Items 9 and 10—Performance Standards. Project Owner has re-examined its protests to these items and withdraws its objections to their continued presence in BIO-9; however, the performance standards imposed by this COC would only be necessary if sensitive biological resources were present on site.

e. Item 15—Plantings. BIO-9 was added to the 2010 license for ESEC, and was specific to beach delivery. Beach delivery would have occurred offsite, directly west of the facility, and would have required restoration of beach areas that include habitat for seacliff buckwheat. This requirement of the BRMIMP was intended to be specific to the restoration of beaches offsite if a beach delivery method was employed during construction. The onsite areas of the facility have specific planting requirements, including use of native, non-invasive, and drought tolerant species. Project Owner's proposed language is consistent with the COCs for Visual Resources. For these reasons, Project Owner opposes continued inclusion of specific species in BIO-9.

f. Item 16—Scale. Project Owner objected to this requirement because, as written, it creates a subjective standard for an expensive procedure, instead of providing clear parameters for the scale of the required photography.

g. Item 17—Sightings. The California Department of Fish and Wildlife already requires qualified, mandated reporters to record and submit field observations of Threatened, Endangered, or Special Concern species. By imposing this requirement as a COC, this requirement could be misinterpreted as requiring persons who are not mandatory reporters to report any such sightings, resulting in over-reporting and/or incorrect reports.

2. **BIO-10**. Project Owner proposes limiting BIO-10 so that it does not apply during operations, because there is no potential for significant impacts to biological resources during operations.

As previously mentioned, no sensitive biological resources have been documented on the Project site. Therefore, there is no apparent need for Project Owner to develop and implement an intensive training and record-keeping program for the protection of such biological resources during power plant operations when those operations will not significantly impact sensitive biological resources.

3. **BIO-16.** Project Owner proposed several changes to language in BIO-16.

a. Item 1—General Impact and Avoidance Measures. Project Owner proposes deleting this item because it is redundant with the COC BIO-9, Item 6 requirement for Project Owner to develop a plan containing “[d]etailed descriptions of all measures that will be implemented to avoid and/or minimize impacts to sensitive species and reduce habitat disturbance.”

b. Item 5—Procedure for Reporting Animal Deaths. Project Owner is willing to comply with the majority of this new COC. However, because the requirement to report all animal deaths on site has no basis in applicable laws and regulations, Project Owner has refocused this component on protected species.

c. Item 10 and 11—Weed Abatement. Project Owner is already following its landscaping plan, as required under COC VIS-2. After construction of the Project portion of the facility, Project Owner will have implemented any additional landscaping required for the Project, and will be maintaining this new landscaping as well as the facility’s existing landscaping. These efforts will minimize the spread and propagation of nonnative, invasive weeds and obviate the need for the weed abatement measures required by Items 10 and 11.

4. **BIO-17.** Project Owner proposes that Staff delete this COC because it requires redundant efforts to those required by COC BIO-9, and focuses solely upon nesting birds. Item 6 of COC BIO-9 affects a broader range of species than birds and already requires Project Owner to implement a system like that prescribed in BIO-17 should such circumstances apply. Accordingly, Project Owner has suggested expanding the language of COC BIO-9, Item 6 to expressly encompass nesting birds, instead of adding a separate COC for nesting birds. Further, except for beach construction-related activities, there is not any potential to impact nesting birds.

Please contact me or my colleague Allison Harris to discuss questions about any of the foregoing explanations.

Locke Lord LLP

By: 

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JAM: awph