

DOCKETED

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VIA E-FILING

El Segundo Energy Center Petition to Amend (00-AFC-14C)
Camille Remy Obad, J.D. LEED AP, Compliance Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: **El Segundo Energy Center Petition to Amend (00-AFC-14C)
Response to Staff's Responses to Project Owner's FSA Part A Comments**

Dear Ms. Remy Obad:

Thank you for providing El Segundo Energy Center LLC ("Project Owner"), the owner of the El Segundo Energy Center (00-AFC-14C) ("ESEC"), a copy of Staff Responses to Project Owner's FSA Part A Comments on January 13, 2015. Project Owner appreciates the effort to identify areas of agreement, clarify Staff's position for maintaining certain language, and identify areas where supplemental information may allow for narrower conditions of certification. Project Owner thanks the Staff for reviewing and accepting its comments on Compliance, Visual Resources and Waste Management. Project Owner looks forward to Staff's proposed clarifying changes to COM-14 and COM-15. Project Owner also appreciates Staff's agreement to certain changes to Biological Resources Conditions of Certification ("COCs").

To continue the open dialogue on matters of concern, Project Owner submits the following comments to narrow the scope of identified issues on Biological and Cultural Resources COCs ahead of the Prehearing Conference. As explained below, it appears that the only substantive areas of disagreement remaining between the Project Owner and CEC staff are over delegation language in BIO-8 regarding duties of the Biological Monitor, the timing trigger in the verification requirement of BIO-12, and the cultural resources monitoring required in CUL-6. Project Owner also disagrees with a statement found in Staff's response regarding the need for a Scientific Collecting Permit; however, Project Owner does not believe its disagreement with Staff necessitates any further resolution on that issue as Staff's position does not create obligations on the Project Owner.

Staff's Responses to Requested Biological Resources COCs Changes

- Project Owner proposed changes to BIO-7 which would permit the Designated Biologist to direct site personnel on how to perform certain duties related to biological resources. Staff indicated that this condition is strictly related to the DB's duties and the duties

described can only be delegated to approved Biological Monitors. Project Owner accepts the Staff's position and withdraws its comments regarding this issue.

- Project Owner proposed deleting language regarding special status species and sensitive biological resource areas in Items 2 and 3 of BIO-7. Staff has indicated that this is standard COCs language and already exists within ESEC's current COCs. Project Owner accepts the Staff's position and withdraws its comments regarding this issue.
- Project Owner proposed changes to BIO-7, BIO-8, BIO-9, and BIO-16 that would limit the applicability of those COCs to the construction phase of the project. Staff believes that biological resources monitoring and reporting should occur during all project phases and does not agree with making these COCs inapplicable to ESEC demolition, operation and closure activities. Staff notes that the proposed COCs largely track the applicability language in the existing COCs. Staff clarifies that a Designated Biologist does not have to be onsite during operation or closure unless issues with biological resources occur. Project Owner accepts the Staff's position and withdraws its comments regarding this issue.
- Staff has proposed changing the verification language of BIO-7 to clarify when record summaries must be included in the Annual Compliance Report. Project Owner believes such language is helpful and supports such a change.
- Project Owner proposed a change to BIO-8 that would add the Biological Monitors as responsible parties for the bulleted duties of the Designated Biologist. Staff noted that this additional language is unnecessary because the COC allows the Designated Biologist to delegate duties to a Biological Monitor.

The exact language of the BIO-8, however, states:

"If the Designated Biologist is unavailable for direct consultation, the Biological Monitor shall act on behalf of the Designated Biologist."

This language leaves some question as to what it means for the Designated Biologist to be "unavailable for direct consultation." The language also suggests that the Designated Biologist must be shown to be unavailable every time a Biological Monitor performs a Designated Biologist duty. Project Owner believes that Biological Monitors should be able to perform duties even when the Designated Biologist is available. In light of Staff's response to BIO-7, in which Staff indicated that a proposed change to allow site personnel to perform certain Biological Resources duties was unnecessary because the Designated Biologist can delegate those duties to Biological Monitors, Project Owner requests that BIO-8 explicitly permit the Designated Biologist to delegate duties to Biological Monitors at any time.

- Staff proposed that, in order to facilitate the use of Biological Monitors, an additional COC is necessary to address Biological Monitor qualifications for approval. Project Owner agrees. Project Owner also suggests that this COC might be an appropriate place to include language that allows the Designated Biologist to delegate duties to Biological Monitors at any time per the above comment regarding BIO-8.

- Project Owner proposed a change to allow either the Designated Biologist or a Biological Monitor to report biological resource incidents to the CPM. Staff notes that the Designated Biologist is the main point of contact with the CPM and opposes such a change. Project Owner accepts the Staff's position and withdraws its comments regarding that issue.
- Project Owner proposed deletion of Item 11 of BIO-9 which requires the Biological Resources Mitigation Implementation and Monitoring Plan ("BRMIMP") to include a discussion of biological resource related facility closure measures. Project Owner's rationale is that closure will be addressed in the site closure plan required by COM-15. Staff notes that Item 11 is a requirement of the current ESEC COCs and continues to be necessary as a separate requirement from the closure plan. Project Owner accepts the Staff's position and withdraws its comments regarding that issue.
- Staff changed BIO-12 to convert it from being a condition related only to the never-used beach delivery construction option for the new Units 5, 6, 7 & 8. Project Owner had recommended deletion of the condition because beach delivery was not used and was now obsolete. Staff's changes, however, created a timing issue, because, whereas the original application of BIO-12 would have been at the outset of the project, the possible application of BIO-12 now will only be if and when a federal consultation occurs that produces biological conditions or limitations. If such consultation occurs it could very well occur long after the start of activities at the site that would constitute construction under the Warren-Alquist Act. Project Owner had proposed modifying the verification language of BIO-12 to clarify the timing of when a Federal-agency Biological Opinion might be necessary by specifying the timing trigger is site mobilization activities related to decommissioning the once-through cooling facilities for Units 3 and 4 and related in-water forebay work. Staff responded by noting that it is still undetermined whether USFWS-consultation is necessary for impacts from nitrogen deposition in connection with the issuance of a Prevention of Significant Deterioration (PSD) Permit.

Project Owner accepts this comment by Staff but notes that the way BIO-12 is written into the FSA still presents a timing trigger issue if such consultation is required. As it is written now, BIO-12 requires that the Federal-agency recommendations be provided to the CPM 30 days prior to "site mobilization." However, that is not likely to be feasible or workable. Further, given that there are two possible reasons that consultation might occur, Project Owner believes that Project Owner believes it is appropriate to set the trigger as "No more than 30 days after completing any formal or informal consultation with USFWS or USACE, project owner must provide the CPM..." Such a change will ensure that at any point where conditions are applied by a federal agency that should be incorporated into the BRMIMP, that Project Owner will be obligated to promptly inform the CEC and proposed such conforming changes to the BRMIMP as well.

- Project Owner proposed deleting the BIO-16 requirement that the Project Environmental Compliance Manager be notified if injured or dead wildlife is detected by personnel during the operational phase of the project. Staff notes that, because neither the Designated Biologist nor a Biological Monitor is likely to be on-site during operations, personnel must know who needs to be notified. Project Owner accepts the Staff's position and withdraws its comments regarding that issue.

- Staff's response to the proposed change to BIO-16 additionally indicated that the California Fish and Game code requires Project Owner to obtain a Scientific Collecting Permit from the CDFW. Project Owner does not agree with Staff in this regard. A Scientific Collecting Permit is not necessary as any take would not be for scientific, educational, or non-commercial propagation purposes.

Staff's Responses to Requested Cultural Resources COCs Changes


- Project Owner had requested in the PTA, given the disturbed nature of the ESEC site, that CUL-6 be deleted and replaced with a condition reducing monitoring obligations. Staff did not agree with this position in the PSA. In response, Project Owner proposed use of the COC from the Huntington Beach Energy Project Commission Decision. The proposed change only required monitoring if a California Register of Historical Resources-eligible cultural resources discovery is made. In response, Staff expressed concern that, for certain project components, it does not have sufficient information about the depth of proposed excavation, depth of previous excavation, and the depth of disturbed fill. Staff requested that information for the following project components: the access road; the natural gas compression station; the forwarding pump; the demolition of Units 3 and 4; and the removal and remediation of retention basins. Staff indicated that it believed that without additional information, the COC must assume that the depth of excavation will exceed the depth of disturbed soils in those areas and therefore require monitoring.

Project Owner does not agree with this assessment and position. Project Owner believes that all requested information has been provided and that substantial information exists regarding the existing conditions at the site and the ESEC site is substantially disturbed and lacks sensitivity. It is extremely unlikely that the project will encounter significant cultural resources in these locations. The construction of Units 5, 6, 7, & 8, access road and gas compressor building and the associated excavation and monitoring associated with the installation of underground utilities, and the excavation/remediation activities associated with the north and south tank demonstrated this to be the case. Monitoring is a mitigative measure that should be employed only where a factual likelihood is evident for impact to historical resources. For all of these reasons, Project Owner's position continues to be that the change proposed to CUL-6 in Project Owner's FSA Comments is an appropriate approach that ensures the project will conform to all applicable LORS and also not have an unmitigated significant impact.

Conclusion

Project Owner recognizes, and appreciates, the hard work and diligence of the Staff in their assessment of this PTA. Project Owner believes that significant progress has been made and hopes that these comments help narrow the issues ahead of the Prehearing Conference.

Locke Lord LLP

By: 

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