

DOCKETED

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August 18, 2014

VIA E-FILING

El Segundo Energy Center Petition to Amend (00-AFC-14C)
Robert Oglesby, Executive Director
Mary Dyas, Compliance Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: El Segundo Energy Center (00-AFC-014C)
Application for Confidential Designation of Cultural Resources Data
Corrections to Final Cultural Resource Monitoring Report

Dear Mr. Oglesby and Ms. Dyas:

On March 3, 2014, El Segundo Energy Center LLC ("**ESEC LLC**") filed an Application for Confidential Designation of Cultural Resources Records with respect to the final Cultural Resource Monitoring Report dated February 28, 2014 (the "**Initial Confidential Information**") prepared by John Minch and Associates, Inc. ("**Consultant**") (as CEC TN 201821) for the El Segundo Energy Center project (00-AFC-14C) (the "**Project**"). The California Energy Commission has maintained the confidential status of the Initial Confidential Information, but Mr. Oglesby has not formally designated the Initial Confidential Information record confidential by issuing a written confidential designation.

Since ESEC LLC filed the Initial Confidential Information, Consultant has determined that Page 26 and Figures 4 and 5 of the Initial Confidential Information contained incorrect data. Consultant has corrected these pages and includes them in Attachment A hereof, which is incorporated by this reference (collectively, the "**Confidential Information**"). The Confidential Information pertains to cultural resources located at and in the vicinity of the Project. This Information is substantially similar to the Initial Confidential Information, should be deemed confidential as well, and handled accordingly.

Title 20, Section 2505 of the California Code of Regulations allows subsequent filings related to information protected by an initial confidential designation to be protected by the same confidential designation so long as (a) the Commission's Executive Director designates them as confidential and (b) the project owner or applicant certifies, under penalty of perjury, that the new information is substantially similar to the Initial Confidential Information. As Mr. Oglesby has not issued a written determination granting the Initial Confidential Information confidential

treatment, then under Title 20, California Code of Regulations, section 2505, ESEC LLC submits this Application for Confidential Designation of Cultural Resources Data with respect to the Confidential Information contained in Attachment A hereof.

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 that were located during ESEC LLC's construction of Project Units 5 through 8 and related facilities. This information includes confidential data and maps of cultural resource sites, confidential results of field observations and archival information related to those cultural resources.

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

Applicant requests that the Commission designate the attached Confidential Information as confidential in its entirety. A summary of the cultural resources in and around the Project area, and a portion of an analysis of the Project's impacts to those resources are presented in the enclosed Attachment A.

(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 compliance phase of the Project.

(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 cultural resources present in and around the Project site. 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 in order to guard against potential unauthorized excavation or removal of cultural resources.

(e) Aggregation and Masking of the Confidential Information.

The Confidential Information cannot be masked or aggregated without rendering it useless because, as discussed above, the Cultural Resources Report discloses the exact types and locations of cultural resources and the actions undertaken to locate, study and preserve them.

(f) The Submitted Record Is Presently Confidential.

ESEC LLC's consultant has not disclosed the enclosed, confidential, cultural resources information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting ESEC LLC with efforts related to the Project. 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 letter 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 letter on behalf of ESEC LLC.

Dated: August 18, 2014

Locke Lord LLP

By: 

John A. McKinsey

Attorneys for El Segundo Energy Center LLC

JAM: awph

Enclosure

ATTACHMENT A
**CORRECTED PAGES OF FINAL CULTURAL RESOURCE MONITORING REPORT
FOR THE EL SEGUNDO ENERGY CENTER PROJECT**

Prepared by John Minch and Associates, Inc.

(See attached.)