

DOCKETED

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September 4, 2015

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VIA HAND DELIVERY

Mr. Robert Oglesby, Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814

**Re: Huntington Beach Energy Project (12-AFC-2C)
Application for Designation of Confidential Cultural Resources Records**

Dear Mr. Oglesby:

On behalf of AES Southland Development, LLC ("AES Southland"), we submit this Application for Designation of Confidential Records ("Application") with respect to the attached information pertaining to Cultural Resources ("**Attachment A**").¹ AES Southland is submitting this Application as part of its Petition to Amend the Final Decision of the Huntington Beach Energy Project, which addresses the topic area of Cultural Resources.

Through this letter, AES Southland requests confidential designation of the attached information under Title 20, California Code of Regulations, section 2505. In addition, AES Southland 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.

AES Southland provides the following in support of its Application:

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

Attachment A is the subject of this Application and pertains to cultural resources within the Project area, and which may be impacted by the Project. This information may include, but is

¹ AES Southland includes herewith one (1) paper copy of and five (5) discs containing the confidential cultural resources information, all of which is marked "Confidential."



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not limited to, confidential maps of cultural resources sites and confidential results of a field survey, literature search, and archival research regarding potential cultural resources.

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

With respect to Attachment A, AES Southland requests that the Commission designate the records as confidential in their entirety. A summary of the cultural resources in the Project area and an analysis of potential impacts to those resources are presented in Section 5.3 of the Petition to Amend and any related appendices.

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

The information attached hereto assists in identifying potential locations of culturally sensitive resources in the Project area. Accordingly, disclosure of such 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 exist with respect to the general vicinity around the Project even after the conclusion of this amendment proceeding and construction of an approved facility on the proposed site pursuant to a certificate to construct and operate. Thus, Attachment A should be kept confidential in perpetuity.

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

Attachment A contains information that assists in identifying any cultural resources that might be present in and around the area of the proposed Project site. Evidence Code section 1040 sets forth a privilege entitling 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 necessity to preserve the confidentiality of the information that outweighs the need for disclosure in the interest of justice. Evidence Code section 1040 applies here to protect this information from disclosure in order to guard against potential unauthorized excavation and/or removal of cultural resources. In addition, the California Public Records Act protects the confidentiality of any records that are exempted from disclosure under provisions of the Evidence Code relating to privilege, such as Evidence Code section 1040. (Gov't. Code § 6254(k).)



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(e) Aggregation and Masking of the Confidential Information.

Masking is not necessary because, as discussed above, the cultural resources potential, the review undertaken, and the mitigation measures identified are contained within Section 5.3 of the Petition to Amend.

(f) The Submitted Information is Presently Confidential.

AES Southland has not disclosed Attachment A to anyone other than its employees, affiliate employees, consultants, and attorneys assisting AES Southland with its efforts related to the Petition to Amend concurrently docketed herewith. Furthermore, AES Southland 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 Attachment A 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 AES Southland, I am authorized to make the above certification and to submit this Application on the behalf of AES Southland.

Dated: September 4, 2015

Stoel Rives LLP

By: _____

Melissa A. Foster
Attorneys for AES Southland Development, LLC