



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

California Energy Commission

DOCKETED
12-CAI-03

TN # 67098

SEP 13 2012

IN THE MATTER OF

**COMPLAINT AGAINST THE EL SEGUNDO
ENERGY CENTER PROJECT**

Docket No. 12-CAI-03

Docket No. 00-AFC-14C

Order No. 12-0912-03

COMMISSION ORDER ADOPTING THE SETTLEMENT AGREEMENT AMONG THE PARTIES TO THE COMPLAINT AGAINST THE EL SEGUNDO ENERGY CENTER

On July 3, 2012, Michelle Murphy and Bob Perkins (Complainants) filed a formal complaint pursuant to Title 20, California Code of Regulations, section 1237. They live on 45th Street in the city of Manhattan Beach, immediately to the south of the El Segundo Energy Center (ESEC) site. Their complaint alleges that the ESEC is being constructed in violation of several conditions of certification relating to the landscape and lighting design of the project.

Commission staff filed its analysis of the complaint on August 2, 2012, recommending that the Energy Commission conduct a hearing on several elements of the complaint. A hearing was scheduled on August 29, 2012. At the request of the Complainants and ESEC, the hearing was postponed until the September 12, 2012 business meeting. Petitions to intervene in the proceeding were filed by Lyle and Elsie Cripe on July 27, 2012, and Doris and Richard Nickelson on July 30, 2012.

On September 5, 2012, a Joint Statement of Agreement (Joint Statement), executed by ESEC, Complainants and the proposed intervenors, was submitted to the Commission. A copy of the Joint Statement is attached to this Decision as Attachment A. In the Joint Statement, ESEC 1) affirms its commitment to conform construction of its project to previously approved landscaping plans, with specified revisions to adjust the slope and height of a berm and set the location of the final southern perimeter fence, and 2) acknowledges three features that vary from those plans, and agrees to remedy those variances.

The Joint Statement requests that this Commission order ESEC to comply with the terms of the Joint Statement.

Following consideration of the Joint Statement and additional comment from those persons and the public both in writing and at the hearing, we find the proposed settlement appropriate and reasonable.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The project owner of the El Segundo Energy Center shall comply with the terms of the September 5, 2012 Joint Statement of Agreement, attached to this Order as Attachment A and incorporated herein by this reference.
2. The petitions to intervene filed by Lyle and Elsie Cripe and Doris and Richard Nickelson are denied as moot in light of the settlement reflected in the Joint Statement.
3. This Order is adopted, issued, effective, and final on the date it is docketed.
4. The docket file for this proceeding shall be closed on the effective date of this Order.
5. Judicial review of this Order is governed by Public Resources Code section 25901.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on September 12, 2012.

AYE: Weisenmiller, Douglas, Peterman, McAllister

NAY: None

ABSENT: None

ABSTAIN: None

Dated: September 12, 2012, at Sacramento, California.

Original Signed By:

Harriet Kallemeyn
Secretariat
California Energy Commission

Joint Statement of Agreement

Whereas, El Segundo Energy Center LLC (ESECL) is the project owner of the El Segundo Energy Center (ESEC) project under the jurisdiction of the California Energy Commission (CEC). ESEC (00-AFC-14) was approved by the CEC on February 2, 2005 (CEC Order).

Whereas, ESECL is currently constructing the ESEC project.

Whereas, the CEC Order imposed certain specific Conditions of Certification (COCs) to resolve community concerns regarding possible adverse effects of the ESEC project on the adjoining community of El Porto in the City of Manhattan Beach.

Whereas, Robert Perkins and Michelle Murphy (MP) have jointly filed a complaint (Complaint) with the CEC alleging violations of some COCs dated July 3, 2012 and titled "Complaint re El Segundo Power Redevelopment Project, (00-AFC-14)."

Whereas, other persons have petitioned to intervene in the Complaint including Elsie and Lyle Cripe and Doris and Nick Nickelson

Whereas, representatives of ESECL and MP and the other community members have met and conferred to reach agreement on a mutually-satisfactory resolution of the specific items in the Complaint.

Whereas, MP acknowledges that ESECL has made good faith and reasonable efforts to respond to the Complaint.

Therefore, MP and ESECL (The Parties) do hereby agree to the following:

1) ESECL acknowledges that certain elements of project construction have varied from the requirements contained in the landscaping plan under COC Visual-2 "***Perimeter Screening and On-Site Landscaping – VIS-2***" and the landscaping plan under COC Visual-9 "***Temporary Landscaping and 45th St. Berm – Vis-9***" (the two landscaping plans hereinafter referred to jointly as the "Landscaping Plans"). ESECL affirms its commitment to conform construction to these plans except as noted below.

- a. The Parties jointly agree that the steepness of slope of the new 45th Street berm shall be increased in the area of the existing potable water valve and existing palm trees so the toe of the slope does not reach the trees and that the existing palm trees shall be retained and incorporated into the landscaping. A general depiction of intended location of the toe of the slope is provided in Attachment A to this document.
- b. The Parties jointly agree that the final, permanent fence along 45th Street should be set back from the property line eight feet typical so as to maintain an area

similar to historic fence location. The Parties recognize that the exact location of the fence was never strictly decided in the past and that documents differed on its location. The Parties also acknowledge that a temporary fence on the southern property line is necessary during construction of the southern area landscaping features but that it will be replaced with the permanent fence promptly upon completion of the landscaping along the southern perimeter. A general depiction of the intended location of the fence is provided in Attachment A to this document.

- c. The Parties jointly agree that the set back area south of the final, permanent fence should be landscaped with low lying vegetation.
 - d. MP acknowledges that the grading within the set back area will be such that surface water and storm water does not exit the property onto 45th Street, but instead is directed to flow into the property's storm water collection system.
- 2) ESECL specifically acknowledges the following features of the Landscaping Plans that have varied from elements of project construction but will be consistent going forward:
- a. The south portion of the the "existing" tank farm berm (Tank Farm Berm) extending west from the foot of the new 45th Street berm was to have been maintained at its original elevation of 49 feet. ESECL inadvertently lowered the elevation several feet but will restore it to its original height.
 - b. The concrete spillway installed in the Tank Farm Berm will be removed as soon as possible after a concurring order resolving the Complaint is issued by the CEC.
 - c. The area between and including the top of the Tank Farm Berm and the property line along the southern perimeter and southwest corner was to be landscaped and was not to include paved paths or gravel roads. ESECL will ensure it is landscaped as required in the Landscaping Plans. The Parties acknowledge that drainage features installed in the area north of the south property line to collect stormwater will be retained but that landscaping will surround them.
- 3) ESECL affirms a commitment to pursue and complete the 45th Street berm and landscaping promptly and quickly upon resolution of the Complaint.
- 4) ESECL affirms its intent to complete the landscaping required along Vista Del Mar Avenue in accordance with the Landscaping Plans.
- 5) ESECL agrees to prepare and submit to the City of Manhattan Beach, the City of El Segundo and the Parties for comment and then to the Compliance Project Manager (CPM) for approval, a revised 45th Street Berm Drawing (Appendix B to the ***Temporary Landscaping and 45th St. Berm – Vis-9*** landscaping plan) that reflects the increased slope steepness to pull the slope back from the existing palm trees. The drawing should be consistent with the sketch provided as Attachment A.

- 6) ESECL agrees to prepare and submit to the City of Manhattan Beach, the City of El Segundo and the Parties for comment and then to the CPM for approval a revised sheet number 4 to Appendix A of the ***Temporary Landscaping and 45th St. Berm – Vis-9*** landscaping plan showing the revised berm slope and exact final location of the permanent fence along the southern property line. The drawing should be consistent with the sketch provided as Attachment A.
- 7) ESECL agrees the project is subject to the noise ordinances of the Cities of El Segundo and Manhattan Beach and affirms it will comply with those ordinances at all times.
- 8) Based on the foregoing agreement, the Parties jointly request the following:
 1. CEC staff concurrence with this agreement and
 2. an order from the CEC resolving the Complaint that directs ESECL to conform to the terms of this agreement.

Signed, (may be executed in counterparts)

By: _____
El Segundo Energy Center LLC

By: _____
Bob Perkins & Michelle Murphy

Title: _____

Date: _____

Date: _____

By: _____
Lyle & Elsie Cripe

By: _____
Nick & Doris Nickelson

Date: _____

Date: _____

0' 5' 10' 20' 30'

SCALE: 1" = 10'

NORTH



DESIGNED					
R. POLLACK					
DRAFTED					
JRS					
CHECKED					
R. POLLACK	REV	DATE	DESCRIPTION	BY	APP'D

BENCHMARK: Y11332

"LACO BM TAG IN W CB 3M (10 FT) S/O BCR @ SW COR
DRWY ENT TO SCE GENERATING STA #301 VISTA DEL MAR
11.6M (38FT) W/O & 21.6M (71 FT) S/O C/L INT"

AS STATED BY LOS ANGELES COUNTY PUBLIC WORKS

ELEV. 90.760 ADJUSTMENT 2005



301 VISTA DEL MAR BOULEVARD
EL SEGUNDO, CALIFORNIA
(310) 615-6041

PROPOSED SOUTH SLOPE:



301 VISTA DEL MAR BOULEVARD
EL SEGUNDO ENERGY CENTER

CITY OF EL SEGUNDO

COUNTY OF LOS ANGELES

STATE OF CALIFORNIA

DATE:	9/4/12
SCALE:	1" = 10'
PROJECT NUMBER	2NRG010101

HEET

F _____

- 6) ESECL agrees to prepare and submit to the City of Manhattan Beach, the City of El Segundo and the Parties for comment and then to the CPM for approval a revised sheet number 4 to Appendix A of the *Temporary Landscaping and 45th St. Berm – Vis-9* landscaping plan showing the revised berm slope and exact final location of the permanent fence along the southern property line. The drawing should be consistent with the sketch provided as Attachment A.
- 7) ESECL agrees the project is subject to the noise ordinances of the Cities of El Segundo and Manhattan Beach and affirms it will comply with those ordinances at all times.
- 8) Based on the foregoing agreement, the Parties jointly request the following:
 1. CEC staff concurrence with this agreement and
 2. an order from the CEC resolving the Complaint that directs ESECL to conform to the terms of this agreement.

Signed, (may be executed in counterparts)

By: _____
El Segundo Energy Center LLC

Title: _____

Date: _____

By: _____
Lyle & Elsie Cripe

Date: _____

By: _____
Bob Perkins & Michelle Murphy

Date: _____

By: *R. L. "Nick" & Doris Nickelson*
Nick & Doris Nickelson

Date: 9-5-2012

- 6) ESECL agrees to prepare and submit to the City of Manhattan Beach, the City of El Segundo and the Parties for comment and then to the CPM for approval a revised sheet number 4 to Appendix A of the *Temporary Landscaping and 45th St. Berm – Vis-9* landscaping plan showing the revised berm slope and exact final location of the permanent fence along the southern property line. The drawing should be consistent with the sketch provided as Attachment A.
- 7) ESECL agrees the project is subject to the noise ordinances of the Cities of El Segundo and Manhattan Beach and affirms it will comply with those ordinances at all times.
- 8) Based on the foregoing agreement, the Parties jointly request the following:
 1. CEC staff concurrence with this agreement and
 2. an order from the CEC resolving the Complaint that directs ESECL to conform to the terms of this agreement.

Signed, (may be executed in counterparts)

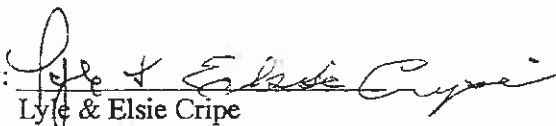
By: _____
El Segundo Energy Center LLC

By:  
Bob Perkins & Michelle Murphy

Title: _____

Date: 9/5/2012

Date: _____

By: 
Lyle & Elsie Cripe


By: _____
Nick & Doris Nickelson

Date: 9-5-12

Date: _____

- 6) ESECL agrees to prepare and submit to the City of Manhattan Beach, the City of El Segundo and the Parties for comment and then to the CPM for approval a revised sheet number 4 to Appendix A of the ***Temporary Landscaping and 45th St. Berm – Vis-9*** landscaping plan showing the revised berm slope and exact final location of the permanent fence along the southern property line. The drawing should be consistent with the sketch provided as Attachment A.
- 7) ESECL agrees the project is subject to the noise ordinances of the Cities of El Segundo and Manhattan Beach and affirms it will comply with those ordinances at all times.
- 8) Based on the foregoing agreement, the Parties jointly request the following:
 1. CEC staff concurrence with this agreement and
 2. an order from the CEC resolving the Complaint that directs ESECL to conform to the terms of this agreement.

Signed, (may be executed in counterparts)

By: 
El Segundo Energy Center LLC

Title: Vice President

Date: 9/5/2012

By: _____
Lyle & Elsie Cripe

Date: _____

By: _____
Bob Perkins & Michelle Murphy

Date: _____

By: _____
Nick & Doris Nickelson

Date: _____