

## DOCKETED

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<b>Project Title:</b>	Carlsbad Energy Center - Compliance
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<b>Document Title:</b>	Application for Confidential Designation of Cultural Resources Records
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<b>Organization:</b>	Locke Lord LLP
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October 30, 2014

VIA E-FILING AND HAND-DELIVERY

Robert Oglesby  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: Carlsbad Energy Center Petition to Amend (07-AFC-06C)  
Application for Confidential Designation of Cultural Resources Records

Dear Mr. Oglesby:

Carlsbad Energy Center LLC ("**Project Owner**") submits this Application for Designation of Confidential Records ("**Application**") with respect to the attached information pertaining to Cultural Resources (Attachment A) (the "**Confidential Information**"). Project Owner is submitting this Application in response to the Commission's Data Requests Nos. 31 and 32 (the "**DR Response**") for Project Owner's Petition to Amend (the "**Petition**") the Carlsbad Energy Center ("**CEC**") project (07-AFC-06C) (the "**Project**"). Project Owner's Petition and the DR Response address Cultural Resources in detail.

Project Owner hereby requests confidential designation of the attached Confidential Information under Title 20, California Code of Regulations, section 2505. Project Owner 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.

Project Owner 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, and which might be impacted by the Project. This information includes confidential maps of cultural resource sites and confidential results of a field survey, literature search, and archival research regarding cultural resources.

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

Project Owner requests that the Commission designate the attached record as confidential in its 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 and in non-confidential portions of the DR Response.

*(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 and the one mile buffer. 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 amendment procedure and construction of approved modifications to the CEC facility.

*(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 that might be present in and around the proposed Project site and the CEC facility in general. 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 and/or removal of cultural resources.

*(e) Aggregation and Masking of the Confidential Information.*

Masking of the Confidential Information is not necessary because, as discussed above, the potential cultural resources, the review undertaken, and the mitigation measures identified are contained within Section 5.3 of the Petition and in the Data Responses to Data Requests 31 and 32.

*(f) The Submitted Record Is Presently Confidential.*


Consultant has not disclosed the cultural resources information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting Project Owner with efforts

related to the Petition. Furthermore, Project Owner 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 Application is true, correct, and complete to the best of my knowledge. As an attorney for Project Owner, I am authorized to make the above certification and to submit this Application on behalf of Project Owner.

Dated: October 30, 2014

Locke Lord LLP

By:   
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John A. McKinsey  
Attorneys for Carlsbad Energy Center LLC

JAM:dh

Enclosures (2 compact disks containing the Confidential Information, to be hand-delivered – documents too large to upload)