

DOCKETED

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Project Title:	Carlsbad Energy Center - Compliance
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Document Title:	Application for Confidential Designation
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Filer:	Matthew Braun
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February 9, 2015

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

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

Dear Mr. Oglesby:

Energy Commission staff submits this Application for Designation for Confidential Records with respect to the attached information pertaining to Cultural Resources (Attachment A). Staff is submitting this information as a result of the subsurface archaeological inventory that was conducted from January 19- January 30 at the Carlsbad Energy Center Project site.

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

Staff provides the following information in support of its Application:

(a) Description/Separation of the Confidential Records

Attachment A, which is marked as "Confidential", is the subject of this Application and pertains to cultural resources in 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 subsurface archaeological inventory.

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

Staff 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 project impacts to those resources is presented in the Final Staff Assessment.

(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 the 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. 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 undertake, and the mitigation measures identified are contained within the Final Staff Assessment.

(f) *The Submitted Record is Presently Confidential*

Staff has not disclosed the cultural resources information to anyone other than its sub-contractors, who are assisting with efforts related to the amendment. Furthermore, Staff has not released any of the information contained in Attachment A to any member of the general public.

I certify under penalty of perjury that the information contained in this Application is true, and complete to the best of my knowledge. As Energy Commission Cultural Resources Staff, I am authorized to make the above certification and to submit this Application.

Dated: February 9, 2015

Matthew Braun
Energy Commission Cultural Resources Analyst

Enclosures (5 compact discs containing the Confidential Information)