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June 5, 2008

## VIA OVERNIGHT MAIL

Melissa Jones  
Executive Director  
California Energy Commission  
1516 9th Street  
Sacramento, CA 95814

COMPLETED

DOCKET	
08-AFC-3	
DATE	JUN 05 2008
RECD.	JUN 06 2008

**Re: Request for Confidential Designation of Confidential Cultural Resources Reports provided in connection with the Marsh Landing Generating Station Application for Certification (Docket NO. 08-AFC-3)**

Dear Ms. Jones:

Pursuant to Title 20 California Code of Regulations § 2505, Mirant Marsh Landing, LLC, ("Mirant Marsh Landing") hereby submits this application for confidential designation for the attached *Appendices L1 and L3 Confidential Cultural Resources Reports* ("Cultural Resources Reports"), which were prepared by URS for submission as part of the Application for Certification ("AFC") for the Marsh Landing Generating Station ("MLGS"). The AFC was submitted on May 30, 2008.

Mirant Marsh Landing requests that the California Energy Commission ("Commission") designate and maintain the Cultural Resources Reports as confidential. This request is made in accordance with Appendix B, Section (g)(2) of the Commission's Rules of Practice and Procedure and Power Plant Site Certification Regulations, which requires that cultural, historical and archaeological information be submitted to the Commission under a request for confidentiality. The Cultural Resources Reports contain confidential information regarding the archaeological reconnaissance (Appendix L1) and cultural resources records search (Appendix L3) that were performed within the MLGS project vicinity. This information is set forth in Sections 2.2 and 3.5 through 6.1, as well as Appendix A and B of Appendix L1 and Appendix L3. The Cultural Resources Reports comprise a total of 242 pages.

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Mirant Marsh Landing requests that the Commission keep the Cultural Resources Reports confidential permanently. The requested time frame is consistent with the definition of public records contained in California Government Code Section 6254.10, which specifies that:

Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

*Id.* The Cultural Resources Reports disclose information regarding the potential for archaeological sites to be located in the MLGS project vicinity. In addition, California Government Code Section 6254(r) authorizes public agencies to refrain from disclosing information regarding Native American graves, cemeteries and sacred places. *Id.* The Cultural Resources Reports also discuss the potential for such sites to be located in the project vicinity. The California Public Records Act also recognizes the confidentiality principles of federal law. (California Gov. Code, § 6254(k).) The federal Archaeological Resources Protection Act, 16 U.S.C. § 470hh(a), establishes a national legal policy that all types of archaeological and cultural resource site locations must be kept confidential in order to preserve them and states.

Government Code Sections 6254.10, 6254(r) and 6254(k) authorize the Commission to maintain the enclosed Cultural Resources Reports as confidential. The Cultural Resources Reports disclose the results of the search for sensitive cultural resources in the MLGS project vicinity and provide information regarding the presence or suspected presence of archeological sites, Native American graves, cemeteries and sacred places, and other historically significant sites. Publication of the search results and accompanying analysis could invite curiosity and potentially lead to destruction or theft of cultural resources. The Commission therefore should maintain the Cultural Resources Report as confidential.

Mirant Marsh Landing has provided the information contained in the Cultural Resources Reports in a non-confidential, aggregated form in the Cultural Resources section of Mirant Marsh Landing's AFC. Further aggregation of the information is unnecessary. Masking the information in the Cultural Resources Reports would not be a useful exercise, as the best document to inform the public of Mirant's investigation on this subject is the AFC, which contains aggregated information and does not disclose specific information regarding specific research and reconnaissance results.

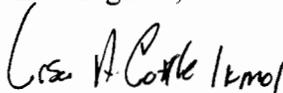
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The Cultural Resources Reports have not been disclosed and are known only to Mirant personnel and Mirant's outside consultants, engineers and attorneys. These Cultural Resources Reports have not been publicly disclosed. The Cultural Resources Reports have been marked as "CONFIDENTIAL" and have maintained on a secure document management website. Only persons with permission and an access password have access to the website.

For the reasons specified above and the specific statutory protection provided for cultural records, the Commission should designate the Cultural Resources Reports as confidential.

I certify under penalty of perjury that the information contain in this application for confidential designation is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to make this application and certification on behalf of Mirant Marsh Landing.

Best regards,



Lisa A. Cottle

Attachment

cc: Mike Monasmith, California Energy Commission (w/o attachment)  
Jon Sacks, Mirant Marsh Landing, LLC (w/o attachment)  
Anne Connell, URS (w/o attachment)