

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

October 8, 2009

**DOCKET**  
**08-AFC-9**DATE OCT 08 2009RECD. OCT 12 2009

Marc Campopiano  
Latham & Watkins  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa, CA 92626-1925T

**RE: Revised Application for Confidentiality, Biological Mitigation Map  
City of Palmdale  
Docket No. 08-AFC-9**

Dear Mr. Campopiano:

On July 27, 2009, the City of Palmdale (Applicant) filed an Application for Confidentiality on behalf of the Palmdale Hybrid Power Plant (Docket No. 08-AFC-9). The Application was denied, for failure to provide a reasonable basis upon which confidentiality could be granted. On September 10, Applicant filed a revised Application for Confidentiality, which seeks confidentiality for Biological Mitigation Map for the City's Application for Certification.

The application state that the map:

. . . represents a compilation of information trade secret that was developed by the Applicant. The Mitigation Map provides the Applicant with an advantage over potential competitors who have not developed such a compilation of information. Disclosure of the Mitigation Map may materially harm the Applicant by impairing its acquisition of mitigation lands in a manner that would not occur if the Mitigation Map were not publicly disclosed.

Applicant claims that the Mitigation Map is trade secret, for the reasons discussed above. The application cites to California Government Code section 6254(k) (the Public Records Act) and California Evidence Code section 1060 in support of the claim that the information is trade secret, and therefore should be confidential.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "If the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy]

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Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .


(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The only explanation the application provides for why the Map is trade secret is quoted above. Applicant has not addressed the specific requirements of California Code of Regulations, title 20, section 2505(a)(1)(D), nor does Applicant state that the information contained in the Mitigation Map is not already public. For those reasons the application does not provide sufficient explanation upon which the Energy Commission may grant the requests, and the application for confidential designation of Applicant's Biological Mitigation Map is denied.

The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal of this decision must be filed within fourteen days from the date of my decision. During those fourteen days; the information will not be publicly disclosed. If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

  
MELISSA JONES  
Executive Director

cc: Docket Unit  
Felicia Miller, Energy Commission Project Manager