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March 18, 2008

COMPLETED

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

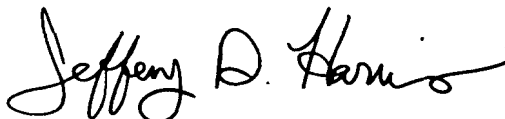
RE: The Los Medanos Energy Center – 98-AFC-1C  
Application for Confidential Designation: Cultural Resources

Dear Ms. Jones:

Pursuant to Title 20 California Code of Regulations (CCR) Sections 2501 *et seq.*, Los Medanos Energy Center, LLC (the “Applicant”) hereby submits this “Application for Confidential Designation,” for cultural resources.

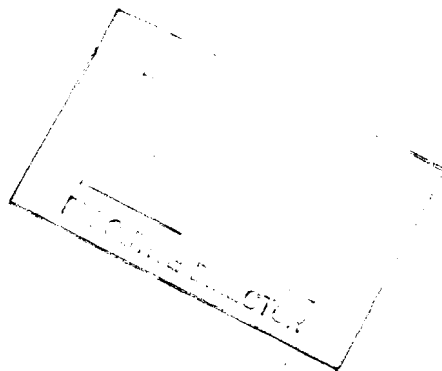
I am submitting the Application and confidential material directly to you without docketing at the Docket Unit. Enclosed are twelve copies plus an original of this request and five copies of the confidential information it concerns. Please feel free to contact me at (916) 447-2166 should you have any questions or require additional information. Thank you for your consideration of our request.

Sincerely,



Jeffery D. Harris  
Attorneys for the Applicant

enc.



<b>DOCKET</b>	
98-AFC-1C	
DATE	MAR 18 2008
RECD.	MAY 05 2008

**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**Los Medanos Energy Center 98-AFC-1C**  
**Los Medanos Energy Center, LLC (the "Applicant")**

**Cultural Resources**

1. *Specifically indicate those parts of the record which should be kept confidential.*

Cultural Resources Records Search Report from the California Historical Resources Information System (CHRIS) Northwest Information Center at Sonoma State University

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

Consistent with applicable law, this information should be held confidential indefinitely in order to protect the cultural resources identified therein.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

The Commission's regulations require that this information be submitted under a request for confidential designation. Calif. Code of Regulations, Title 20, Chapter 5, Appendix B, section (g)(2). The information is exempt from disclosure under the Public Records Act pursuant to applicable law, including but not limited to, Government Code sections 6254(r) and 6254.10. The public interest in nondisclosure is that disclosure may enable location of these resources by thieves, vandals, or persons conducting unauthorized collection of materials.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Applicant considered whether it would be possible to aggregate or mask the information. However, no feasible method of aggregating or masking the information could be identified that would not either disclose the information or render the information provided useless.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

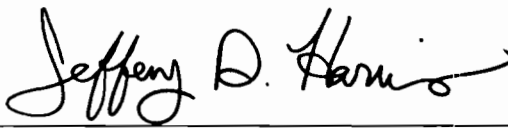
Applicant has not disclosed any of the subject information to anyone other than its employees, attorneys and consultants working on the Los Medanos Energy Center. Moreover, this information has not been disclosed to persons employed by or working for

Applicant except on a “need-to-know” basis. It is my understanding that the Applicant is marking this information as “confidential,” instituting a policy that it be segregated from other Los Medanos Energy Center files, and requiring that access to it be restricted to a designated confidential information manager within Applicant or its attorneys, consultants, and agents.

*I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I am authorized to make the Application and Certification on behalf of Applicant.*

Dated: March 18, 2008

ELLISON, SCHNEIDER & HARRIS LLP

By: 

Jeffery D. Harris  
Ellison, Schneider & Harris L.L.P.  
Attorneys for Applicant

**1. Partial “De Minimus” Exception for Small Projects in Small Watersheds.**

- 1.1. Amend Section \_\_\_ of the Policy to create a “de minimus” exception from application of the Minimum Bypass Flow and Maximum Cumulative Diversion regional criteria. We propose the following exception.
- 1.2. If the project is located above the Upper Point of Anadromy (UPA) and in a watershed smaller than [100 acres?], and the project, together with all other existing diversions, would divert less than [3? 4?] percent of the average annual volume of estimated runoff at the nearest downstream watersheds of [0.5, 1.0, and 2.5?] square miles, then the proposed project shall not require Minimum Bypass Flow and Maximum Cumulative Diversion terms for the protection of anadromous fish, provided however that:
  - 1.2.1. If there is a Class I or Class II stream between the Point of Diversion and the nearest downstream confluence then a Minimum Bypass Flow term is required for the protection of non-anadromous fish and other aquatic resources, unless a variance is granted.
    - 1.2.1.1. The MBF regional criterion formula for the protection of shall non-anadromous fish and other aquatic resources may be the February Median flow or another flow designated by SWRCB with the concurrence of the Department of Fish and Game and the Regional Boards.
    - 1.2.2. The permit shall require continuous monitoring and reporting of water diversions and stream flows and temperatures below the POD and at the nearest downstream Point of Anadromy.
    - 1.2.3. The permit shall specifically reserve authority to revisit the question of whether terms and conditions for minimum bypass and maximum rate of diversion should be imposed or adjusted if the prediction that operating the reservoir under this partial exception would cause no measurable impairment to fish habitat proves untrue.
    - 1.2.4. The policy requirements for Season of Diversion and the location of On-stream Dams (including requirements for gravel or woody-debris mitigation, if any) shall apply.
- 1.3. Amend Section 10 of the Policy to state that evaluation of the “de minimus” exception will be a subject of the Five Year Effectiveness Review.