

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	227502
Document Title:	NRG, Inc.'s Application for Confidential Designation
Description:	Application of Confidential Designation CRR for Carlsbad Energy Center LLC's
Filer:	Scott Seipel
Organization:	NRG, Inc.
Submitter Role:	Applicant
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April 4, 2019

Anwar Ali, Ph.D.
Compliance Project Manager
Carlsbad Energy Center Project (07-AFC-06C)
California Energy Commission
1516 Ninth Street (MS-2000)
Sacramento, CA 95814

**RE: CARLSBAD ENERGY CENTER PROJECT, DOCKET NO. 07-AFC-06C
CONDITION OF CERTIFICATION, CUL-4, APPLICATION FOR
CONFIDENTIAL DESIGNATION OF CULTURAL RESOURCES DATA**

Dear Dr. Ali:

On behalf of Carlsbad Energy Center LLC ("CEC LLC" or "Project Owner"), we submit this Application for Designation of Confidential Records ("Application") with respect to the attached Cultural Resources Report (CRR) prepared by PaleoWest Archaeology (the "Confidential Information"). The Confidential Information pertains to cultural resources located at and in the vicinity of the amended Carlsbad Energy Center Project (ACECP) located at 4600 Carlsbad Boulevard, Carlsbad, California. California Energy Commission ("CEC") Conditions of Certification CUL 1 through 8 for the Project (the "Cultural COCs") require Project Owner to submit a CCR following completion of the Project's ground disturbing activities. Accordingly, CEC LLC submits this Application in satisfaction thereof. CEC LLC's Application for Certification of the Project and the Cultural COCs addressed cultural resources in detail.

CEC LLC hereby requests confidential designation of the Confidential Information under Title 20, California Code of Regulations, section 2505. CEC LLC understands that, pursuant to Title 20, California Code of Regulations sections 2505(a)(2) and (a)(3)(B), the 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.

CEC LLC provides the following information in support of its Application:

(a) Description/Separation of the Confidential Records.

The Confidential Information pertains to cultural resources in and around the Project area that were located during CEC LLC's construction of the Project and related facilities. This information includes confidential data, photographs and maps of cultural resource sites, confidential results of field observations and archival research related to those cultural resources.

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

Applicant requests that the Commission designate the Confidential Information as confidential in its entirety. A summary of the cultural resources in and around the Project area, and an analysis of the Project's impacts to those resources are presented in the CCR.

(c) The Length of Time the Record Should be Kept Confidential.

The Confidential Information 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 unauthorized removal of the same from locations of potential resources referenced in the CCR. This concern would still exist with respect to the general Project location, even after the conclusion of this compliance phase of the Project.

(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 present in and around the 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 or removal of cultural resources.

(e) Aggregation and Masking of the Confidential Information.

The Confidential Information cannot be masked or aggregated without rendering it useless because, as discussed above, the CCR discloses the exact types and locations of cultural resources and the actions undertaken to locate, study and preserve them.

(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 Applicant with efforts related to compliance with the CEC's Cultural COCs. Furthermore, Applicant has not released any of the information contained in the CCR 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 a representative of the operations and maintenance operator for ACECP, I am authorized to make the above certification and to submit this Application on behalf of CEC LLC.

After the Project Owner receives the California Energy Commission's approval of the confidential CCR, the Project Owner will make appropriate submittals to the Department of Parks and Recreation, the California Historical Resources Information System, and the State Historic Preservation Officer.

If you have any questions or comments, please contact me at (909) 648-5008.

Sincerely,



Scott Seipel
Environmental Manager
NRG California Peaker Operations LLC

Enclosure

cc (w/out encl.): Shawn Pittard, CEC
Clint Helton, PaleoWest
Ralph Wagner, NRG
Sean Beatty, NRG
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