

DOCKETED

Docket Number:	19-SPPE-04
Project Title:	SJ2
TN #:	232514
Document Title:	Response Application Confidential Letter re Cultural Resources Data of the San Jose Data Center Project
Description:	N/A
Filer:	Liza Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	3/24/2020 10:56:17 AM
Docketed Date:	3/24/2020



March 24, 2020

Mr. Jerry Salamy
Jacobs
2485 Natomas Park Dr.
Sacramento, CA 95833

**APPLICATION FOR CONFIDENTIAL DESIGNATION: CULTURAL
RESOURCES DATA, DOCKET NO. 19-SPPE-04**

Dear Mr. Salamy:

The California Energy Commission (CEC) is in receipt of Microsoft Corporation's (Applicant) Application for Confidentiality covering the following Cultural Resources Reports:

- 1) Cartier, Robert *Cultural Resource Investigation in Support of the San Jose Data Center Project, prepared by Paleowest Archaeology dated January 3, 2020* and all associated appendices; and
- 2) Figure DR12-1 *NWIC Literature Search Map*.
1980 Archaeological Site Record for CA-SCL-430/H (P-43-433).

The application states that the reports should be kept confidential indefinitely to protect potential cultural resources and sites. According to your application, if the descriptions and locations of the sites are released to the public domain, there is potential for unauthorized collection or looting of the sites. The application also states that the public interest will be served by nondisclosure by preventing looting of the cultural resources and sites described in the reports, because such looting would preclude scientific study of the sites to gain data about the cultural resources of the area.

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 California Energy Commission to keep the record confidential."

Mr. Jerry Salamy
March 24 , 2020
Page 2

The California Public Records Act provides for the nondisclosure of archaeological site information and reports as well as records of Native American places, features, and objects. (Gov. Code §§6254(r), 6254.10.) The Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code §6254(k).)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations must be kept confidential in order to preserve them. (16 U.S.C. sec. 470hh.)

Protection of cultural resources location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. Therefore, the requested confidentiality of location information contained in the cultural resource reports is granted in its entirety. Resource location data will be kept confidential for an indefinite period. Portions of the reports that do not provide location information or otherwise disclose information that would allow one to locate the archaeological resource may be publically disclosed.

Any subsequent submittals related to cultural resources can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Jared Babula at (916) 651-1462 or Jared.Babula@energy.ca.gov.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the Executive Director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, or raising, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

Sincerely,



Drew Bohan
Executive Director