

DOCKETED

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**CALIFORNIA
ENERGY COMMISSION**



March 15, 2022

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**Application for Confidential Designation:
Archaeological Resources Assessment in Support of the 1849 Fortune
Drive and 2400 Ringwood Avenue (Project), City of San Jose, Santa Clara
County, California
STACK Backup Generating Facility, Docket No. 21-SPPE-02**

Dear Scott Galati:

The California Energy Commission (CEC) has received STACK Infrastructure's application for confidential designation, dated March 4, 2022, and received March 8, 2022, covering the following cultural resources report documents (Archaeological Assessment):

Archaeological Resources Assessment in Support of the 1849 Fortune Drive and 2400 Ringwood Avenue (Project), City of San Jose, Santa Clara County, CA, by PaleoWest, dated February 2, 2022

The application states that the Archaeological Assessment should be kept confidential indefinitely to protect potential cultural and historical resources and sites. According to the application, if the descriptions and locations of the sites are released to the public, the looting of sensitive cultural resources could occur and ultimately would preclude a scientific study of the sites.

A properly filed application for confidential designation 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 [California] Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential."

Confidentiality Claims

Native American Cultural Resources

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 sections 6254(r), 6254.10) The California Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code section 6254(k))

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

The application for confidential designation covers the Archaeological Assessment, which contains descriptions of a records search, a Native American Heritage Commission outreach, surveys, and an archival review of the project area and vicinity.

Thus, the applicant has made a reasonable claim that the protection of Native American cultural resources location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law.

Geological and Geophysical Data

The California Public Records Act provides for the nondisclosure of geological and geophysical data. (Gov. Code section 6254(e)) The application for confidential designation covers the Archaeological Assessment, which does not contain geological or geophysical data.

Thus, the applicant has not made a reasonable claim that the archaeological Assessment can be withheld as geological or geophysical data because the Archaeological Assessment does not contain geological and geophysical data that fall under the description of exempt records in Government Code section 6254(e)).

Executive Director's Determination

For the reason stated above, the applicant has made a reasonable claim that the protection of Native American cultural resources location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. (Gov. Code sections 6254(r), 6254.10, 6254(k); 16 U.S.C. section 470hh) Thus, the CEC agrees to keep the location information contained in the Archaeological Assessment confidential for an indefinite period. Those portions of the Archaeological Assessment that do not provide location information or otherwise disclose information that would allow one to locate the archaeological resource will not be kept as confidential, and the CEC may disclose them.

Be advised that under California Code of Regulations, Title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under California Code of Regulations, Title 20, section 2507, 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 criteria for disclosing or releasing documents previously designated confidential and procedures for acting upon petitions or motions are set forth in the California Code of Regulations, Title 20, sections 2506-2508.

You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the executive director 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 Jennifer Baldwin, senior attorney, at jennifer.baldwin@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director