

DOCKETED	
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May 6, 2024

Via Email

Scott Galati
1720 Park Place Drive
Carmichael, CA 95608
sgalati@dayzenllc.com

**Application for Confidential Designation: San Jose Data Center 04
Docket No. 22-SPPE-02**

Dear Scott Galati:

On April 5, 2024, the California Energy Commission (CEC) received Microsoft Corporation's (applicant) application for confidentiality (TN 255540) for the following document in its entirety:

- Cultural Resources Assessment Report for the San Jose 04 Data Center Project Report, March 2024 (report)

The report was submitted by the applicant in support of its Application for a Small Power Plant Exemption, docketed on September 12, 2022 (TN 245946). The report contains sensitive and confidential information concerning cultural resources and sites, including locational maps.

A properly filed application for confidentiality shall be granted under 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."

Discussion

The applicant states the report should be kept confidential indefinitely to protect cultural resources and sites. The applicant argues that if the descriptions of the locations of the sites are released to the public domain, there is potential for looting and destruction of the site, which would preclude scientific study of the sites to gain data about the cultural resources of the area. The applicant states the due to the report's specific identification of areas of potential cultural and historical significance, the report is protected under Government Code sections 7927.300 and 7927.705. Further, the applicant asserts that the protection provided is analogous to that given to Native American sacred places under section 7927.00 of the Government Code.

The applicant has not disclosed any of the subject information in the report to anyone other than its employees, attorneys, and consultants working on the project. The applicant is marking the information contained in the report as confidential and is instituting a policy that segregates the information from other project related files.

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

The California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure.

Executive Director's Determination

Protection of cultural and archeological resource location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. The applicant has made a reasonable claim that the report can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the report is granted indefinitely.

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, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals 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 questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director