

DOCKETED

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Document Title:	CEC Response to Application for Confidential Designation of Paleontological Resources Report
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CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



October 2 , 2013

Lisa A. Cottle
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111

RE: **Application for Confidential Designation of Paleontological Resources
Report for NRG Marsh Landing Generating Station, Condition of
Certification PAL-7
Docket No. 08-AFC-3C**

Dear Ms. Cottle:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of NRG Marsh Landing Generating Station ("Applicant"). The Application seeks confidential designation for the following document:

Marsh Landing Generating Station Paleontological Resources Report, Condition of Certification PAL-7

The application states:

. . . The Paleontological Resource Report discloses details regarding paleontological resource finds, including the precise location of the discoveries. Publication of these details could invite curiosity and potentially lead to destruction or theft of paleontological resources.

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 Energy Commission to keep the record confidential."

The California Public Records Act provides for the nondisclosure of archaeological site information and reports. Gov. Code, sec. 6254.10. The Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code, sec. 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

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kept confidential in order to preserve them. (16 U.S.C. sec. 470hh.) Non-disclosure of paleontological resources, such as the location information that you have submitted is expressly in the public interest. Therefore, Applicant's confidentiality application seeking confidentiality of paleontological resource site location information contained within the Marsh Landing Generating Station Paleontological Resources Report, Condition of Certification PAL-7 is granted in its entirety. Resource site location data will be kept confidential for an indefinite period.

Any subsequent submittals related to cultural resources can be deemed confidential as specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506. If you have any questions concerning this matter, please contact Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby
Executive Director

cc: Docket Unit
Christine Stora, Energy Commission Project Manager