

DOCKETED

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January 23, 2020

Attention: Mr. Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Subject: Application for Confidential Designation for the San Jose Data Center (19-SPPE-04)

Dear Mr. Bohan

I am requesting on behalf of Microsoft Corporation (Applicant) that the attached information be designated confidential pursuant to 20 California Code of Regulations (CCR) Section 2505. This information is being supplied to the California Energy Commission for the San Jose Data Center (SJC02) Small Power Plant Exemption (SPPE) (19-SPPE-04). In connection with the foregoing SPPE application, pursuant to Title 20, California Code of Regulations (CCR) Section 2505 *et seq.*, the Applicant hereby submits this Application for Confidential Designation to the California Energy Commission (CEC) for the report entitled *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 Figure DR12-1 *NWIC Literature Search Map*. The basis for this request is set forth below.

1(a). Title, date and description (including number of pages) of the record for which you request confidential designation.

"*Cultural Resource Investigation in Support of the San Jose Data Center Project*," and Figure DR12-1 *NWIC Literature Search Map*, both prepared by Paleowest Archaeology dated January 3, 2020. We request that these documents, in their entirety, be granted confidential designation.

1(b). Specify the part(s) of the record for which you request confidential designation.

The report and figure identified above in 1(a), in their entirety.

2. State and justify the length of time the Commission should keep the record confidential.

The report and figure identified above should be kept confidential indefinitely to protect potential cultural resources, other culturally sensitive materials and sites. If the descriptions of the locations of the sites are released to the public domain, there is potential for looting of, destruction and/or damage to those sites and related potential cultural resources and other culturally sensitive materials located thereon.

3(a). State the provisions of the Public Records Act or other law that allows the Commission to keep the record confidential and explain why the provision(s) apply to the record.

The report and figure identified above specifically identify and describe culturally sensitive materials, other potentially significant cultural resources and the location of same as part of a cultural resources analysis that has been conducted in connection with the above-referenced SPPE

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application. This report and figure are thus protected under Government Code Sections 6254(e) and 6254(k). Protection provided is analogous to that given to Native American sacred places under Section 6254(r) of the Government Code

3(b). Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The public interest will be served by nondisclosure by preventing looting of and/or damage or destruction to potential cultural resources and other culturally sensitive materials at the identified sites described in the report or figure. Such looting, damage and/or destruction would preclude scientific study of the sites to gain data about the cultural resources of the area as well as be contrary to the significant public policy goals of protecting cultural resources, particularly tribal cultural resources.

4. State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

We do not believe aggregation is appropriate as aggregation of the information would hinder a complete CEC analysis and could subject the potential cultural resources, other culturally sensitive materials and the sites they are located thereon to the risk of looting, damage and/or destruction.

5. State how the record is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

Microsoft Corporation, as the Applicant, and its cultural resources consultant who prepared the subject report and figure have not disclosed any of the subject information to anyone other than the applicant's employees, attorneys, and other consultants working on the SJC02 Small Power Plant Exemption Application, on an as-needed basis only. Moreover, the Applicant will continue to protect this information from disclosure to the extent feasible by not disclosing it to any other persons employed by or working on behalf of the except on a limited "need to know" basis. Specifically, the Applicant is marking this information "Confidential," and instituting a policy that segregates this information from other files for purposes of restricting access such that only designated confidential information manager(s) within Microsoft Corporation or its attorneys.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct and complete to the best of my knowledge and I am authorized to make the application and certification on behalf of the applicant.

Sincerely,



Jerry Salamy
Project Manager