

DOCKETED

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Project Title:	Martin Backup Generating Facility (MBGF)
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December 28, 2022

Via Email

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**Application for Confidential Designation
Cultural Resource Assessment for the 651 Martin Avenue Project, City of
Santa Clara, Santa Clara County, California
Martin Backup Generating Facility
Docket No.: 22-SPPE-03**

Dear Scott Galati:

The California Energy Commission (CEC) has received Martin Avenue Properties, LLC (applicant) Application for Confidentiality (TN 247384), dated November 10, 2022, covering the following cultural resources report:

Cultural Resource Assessment for the 651 Martin Avenue Project, City and County of Santa Clara, California, dated October 2022

Applicant states that the report in its entirety should be kept confidential indefinitely to protect potential cultural resources and sites. According to the application, if the descriptions and locations of the sites are released to the public domain, there is potential for looting of the sites. Applicant asserts that the public interest will be served by nondisclosure because disclosure and the attendant risk of looting would preclude the scientific study of the sites to gain data about the cultural resources of the area. Applicant has not disclosed any of the subject information to anyone other than its employees, attorneys and consultants working on the Martin Backup Generating Facility on a “need to know” basis.

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.”

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 California Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code § 6254(k).)

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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.)

Executive Director's Determination

Protection of cultural resource location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. Applicant has made a reasonable showing that the location information contained in the cultural resources report should be maintained as confidential. 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 disclosed.

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 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 about this matter, please email Tanner Kelsey, staff attorney at tanner.kelsey@energy.ca.gov.

Sincerely,



Drew Bohan
Executor Director