

STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

In the Matter of:)	Docket No. 07-AFC-8
)	
Application for Certification)	April 17, 2009
for the Carrizo Solar Energy Farm)	
<u>by Carrizo Energy, LLC</u>)	

**Staff Response to Applicant’s
Motion for a Protective Order**

On April 16, 2009, Carrizo Energy, LLC, the applicant for the Carrizo Solar Energy Farm Project (project), filed a **Motion of Carrizo Energy, LLC for a Protective Order to Maintain the Confidentiality of Corridor Location Results of the Wildlife Corridor Study, and to Designate Entities Having Access to the Corridor Location Results** with the Siting Committee (Committee) assigned to the project. In the Motion, the Applicant identifies several sections of the California Public Records Act (Govt. Code, § 6250 et seq.) that it asserts justify a Committee decision to prevent public disclosure of certain information identified in the Motion. In addition, the Motion identifies the parties and entities that the Applicant believes should be entitled to access the data, upon execution of a confidentiality agreement. Staff is filing this response to support the applicant’s request that the Committee address the need for confidential treatment of results of the Wildlife Corridor Study. The information that is the subject of the Motion does not yet exist, but will be created soon as part of a staff-funded analytical effort conducted at the request of other state and federal agencies that are coordinating their review of this project with the staff analysis.

By way of background, staff contracted with South Coast Wildlands to conduct a modeling exercise to identify the contribution of the project, along with that of two other photovoltaic projects proposed nearby, to impacts to animal movement, dispersal, and migration. In the second and third phases of this analysis, South Coast Wildlands will identify the attributes of land used by the three projects that is or could otherwise be utilized by the animals for movement, dispersal, and migration, and specific parcels of land that could be used for mitigation purposes, based on their habitat attributes. These results will be considered by the California Department of Fish and Game and the United

State Fish and Wildlife Service in assessing the extent of all three projects' impacts as well as compliance with mitigation requirements contained in programs that they administer. The County of San Luis Obispo will also use the results in conducting its environmental analysis of the two photovoltaic projects.

South Coast Wildlands has completed the first phase of this analysis, and identified baseline conditions of habitat suitability and connectivity for each of the three focal species being used in this analysis. They are now prepared to begin the second phase of the analysis, which, as noted above, will allow the identification of individual parcels of land and their habitat characterization. The applicant has explained in its motion its belief that if this information becomes public knowledge, property owners may be able to gain a marketing advantage in transactions with the project developers, who need to purchase land for mitigation and to meet the requirements of the federal and state Endangered Species Acts (16 U.S.C.A. § 1531 et seq., Fish & Games Code, § 2050 et seq.).

In its most recent status report, staff identified confidentiality of the modeling results as a potential issue needing Committee resolution. Some of the Interveners in this matter have already voiced opposition to this concept. However, staff notes that in past siting cases, the Commission has granted applications for confidential treatment of information about a project developer's negotiations for emission reduction credits and water supply rights, in an effort to ensure that one party does not gain an unfair economic advantage in negotiations. As the party that will own and control the results of the analysis, staff believes that the Committee should determine whether the information that will result from the South Coast Wildlands analysis is entitled to protection under the Public Records Act (Govt. Code, § 6250 et seq.) or other applicable law, and if so, whether and how the information should be used in this proceeding. In doing so, staff urges the Committee to provide all interested individuals and entities with the opportunity to brief and address the Committee on the important policy and legal considerations associated with use of this information.

Dated: April 17, 2009

Respectfully submitted,

/S/

CARYN J. HOLMES
Staff Counsel IV
California Energy Commission
1516 9th St.
Sacramento, CA
Ph: (916) 654-4178
E-mail: cholmes@energy.state.ca.us