

DOCKETED

Docket Number:	01-EP-14C
Project Title:	Border Project - Compliance
TN #:	245674
Document Title:	MRP Border Application for Confidential Designation CR Report Appendices Part 1 of 12
Description:	N/A
Filer:	Deric Wittenborn
Organization:	Ellison Schneider Harris & Donlan LLP
Submitter Role:	Applicant Representative
Submission Date:	8/24/2022 11:57:29 AM
Docketed Date:	8/24/2022



August 22, 2022

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

RE: **Border Peaker Project (01-EP-14C): Application for Confidential Designation for Confidential Cultural Resources Report and Appendices (Appendix A, Parts 1-12) Submitted in Support of Petition for Post-Certification Amendment**

Dear Mr. Bohan:

Pursuant to Sections 2501 *et seq.*, of Title 20 of the California Code of Regulations, CalPeak Power-Border LLC (the "Applicant") hereby submits this *Application for Confidential Designation* for Confidential Cultural Resources Report and Appendices (Appendix A, Parts 1-12) submitted in support of the Petition for Post-Certification Amendment of the Border Peaker Project.

Please contact us at (916) 447-2166 should you have any questions or require additional information. Thank you.

Sincerely,

/s/

Samantha G. Neumyer
Jeffery D. Harris
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant

Cc: Linda Barrera, CEC Chief Counsel

APPLICATION FOR CONFIDENTIAL DESIGNATION
Border Peaker Project, (01-EP-14C)

1. *Specifically indicate those parts of the record which should be kept confidential.*
 - a. *Title, date, and description (including number of pages) of the information or data for which you request confidential designation.*
 - b. *Parts of the information or data for which you request confidential designation*

CalPeak Power-Border LLC (the “Applicant”) seeks confidential designation for the following cultural resources information (“Information”):

Title	# of Confidential Pages
Appendix A Part 1	372
Appendix A Part 2	188
Appendix A Part 3	86
Appendix A Part 4	87
Appendix A Part 5	88
Appendix A Part 6	80
Appendix A Part 7	66
Appendix A Part 8	111
Appendix A Part 9	161
Appendix A Part 10	72
Appendix A Part 11	64
Appendix A Part 12	161

The Information should be kept confidential in its entirety as it contains sensitive information regarding the location of certain cultural resources.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

The Information should be held confidential indefinitely.

3. *Cite and discuss:*
 - (a) *the provisions of the Public Records Act or other law that allow the Commission to keep the information or data confidential, and explain why the provision applies to the material.*
 - (b) *the public interest in nondisclosure of the material submitted for confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please 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 Information includes details regarding special status and locations in the areas surveyed on

behalf of the Border Peaker Project.

California Government Code Section 6255 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure. The public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive cultural resources sites by entities conducting unauthorized collection or disturbance of such resources.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Applicant considered whether it would be possible to aggregate or mask the Cultural Resources Report. However, the Cultural Resources Report does not consist of the types of data or programmatic reporting that generally lends itself to the types of masking and aggregation the Applicant believes is contemplated by Section 2505(a)(E), thus making aggregation or masking infeasible in this circumstance.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The Information is accessible only to the Applicant's employees or consultants working on behalf of the Border Peaker Project, and regulatory agencies that have regulatory oversight or other responsibilities over either the Information or the Border Peaker Project.

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 belief. I am authorized to make this Application and Certification on behalf of the Applicant.

Dated: August 22, 2022

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By: /s/

Samantha G. Neumyer
Jeffery D. Harris

Attorneys for the Applicant