

DOCKETED

Docket Number:	01-EP-14C
Project Title:	Border Project - Compliance
TN #:	246269
Document Title:	CEC Response Letter for Cal-Peak Power-Border's Regarding Applications for Confidentiality
Description:	N/A
Filer:	Patty Paul
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	9/29/2022 11:14:39 AM
Docketed Date:	9/29/2022



September 29, 2022

Via Email

Samantha G. Neumyer
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
sgn@eslawfirm.com

**Application for Confidential Designation:
Cultural Resources Related Documents Technical Report
Border Peaker Project, Docket No. 01-EP-14C**

Dear Samantha G. Neumyer:

The California Energy Commission (CEC) has received CalPeak Power-Border, LLC's (applicant) applications for confidential designation, dated August 22, 2022, August 23, 2022, and August 24, 2022, covering the following cultural resources documents:

- 1) Appendix A Parts 1-50, California Historical Resources Information System (CRIS) studies within one mile of the project site
- 2) Appendix B, Native American Heritage Commission sacred land files results
- 3) Appendix C, Department of Parks and Recreation DPR-523 Forms
- 4) Appendix E, Cultural Resources Technical Report.

The application states that the cultural documents should be kept confidential indefinitely to protect potential cultural resources and sites. The application states 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.

In addition, the petition seeking to amend the project states the cultural documents should be held confidential because archaeological site locations are exempt from the California Public Records Act, as specified in Government Code 6254.10, and under the legal authority of both the National Historic Preservation Act (PL 102-574, Section 304(a)) and the Archaeological Resources Protection Act (PL 96-95, Section 9(a)).

A properly filed application for confidential designation 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 [California] 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 records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code sections 6254(r), 6254.10) The California Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code section 6254(k).)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resources site locations on public lands must be protected to preserve them. (54 U.S.C. section 306131.)

The applicant has made a reasonable claim that the protection of cultural resources location information to prevent loss or damage to cultural resources is in the public interest and expressly exempted from disclosure under the Public Records Act.

Executive Director’s Determination

For the reasons stated the cultural resource documents are designated confidential as follows:

Appendix A Parts 1-50, California Historical Resources Information System (CRIS) studies within one mile of the project site. These reports were obtained from the State Historical Resources Commission and the location information and detailed maps are confidential indefinitely.

Appendix B, Native American Heritage Commission (NAHC) sacred land files results. These documents consist of a completed NAHC form and a response letter from the NAHC containing tribal contact information. These documents do not contain any location information of cultural resources or other types of sensitive information and thus will not be designated confidential.

Appendix C, Department of Parks and Recreation DPR-523 Forms. These DPR-523 forms contain detailed location information and maps and are confidential indefinitely.

Appendix E, Cultural Resources Technical Report. This report contains a non-confidential narrative describing the environmental setting and history of the region. The portion of the report, Section 5.3 Field Survey, pages 35-41, does

contain detailed maps and location information of onsite or nearby cultural resources and therefore these pages with maps are confidential indefinitely. Please docket a redacted version of Appendix E consistent with this determination within 14 days of receiving this letter.

You may request that the CEC determine the confidentiality of records that the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in California Code of Regulations, title 20, section 2508.

Be advised that under California Code of Regulations, title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, 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 criteria for disclosing or releasing documents previously designated confidential and procedures for acting upon petitions or motions are set in California Code of Regulations, title 20, sections 2506-2508.

You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the executive director by following the procedures in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Jared Babula at jared.babula@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director