

**DOCKETED**

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<b>Project Title:</b>	Henrietta Peaker Project Compliance
<b>TN #:</b>	247425
<b>Document Title:</b>	CEC Response Letter to Application for Confidentiality Regarding Henrietta Peaker Project (8-23-22)
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November 14, 2022

**Via Email**

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**Application for Confidential Designation  
Cultural Resources Technical Report and Appendix  
Henrietta Peaker Project  
Docket No. 01-AFC-18C**

Dear Samantha G. Neumyer:

The California Energy Commission (CEC) has received MRP San Joaquin Energy LLC's (applicant) application for confidential designation, dated August 23, 2022 (TN No. 245666), covering the following cultural resources documents:

- 1) Appendix A, Confidential South Coastal Information Center Records Search Results
- 2) Appendix E, Confidential 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 notes that 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. It further states that the public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive cultural resource sites by entities conducting unauthorized collection or disturbance of such resources.

In addition, the applicant's petition to amend the Henrietta Peaker Project states that the cultural documents should be held confidential because archaeological site locations are exempt from the California Public Records Act, as specified in Government Code, section 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 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 Commission to keep the record confidential."

The 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) and 6254.10.) The 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 resource 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 resource location information to prevent loss or damage to cultural resources is in the public interest and expressly exempt 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, South Coastal Information Center Records Search Results. These search results contain 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 E, Cultural Resources Technical Report. This report contains a non-confidential narrative describing the applicable regulations, conditions of certification for Henrietta Peaker Project, and the environmental setting and history of the region. The portion of the report, "Section 5 Results" pages 29-38, contains descriptions, detailed maps, and location information of onsite or nearby cultural resources. Therefore, these pages are confidential indefinitely. Please docket a redacted version of Appendix E consistent with this determination within 14 days of receiving this letter.

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

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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 Tanner Kelsey at [tanner.kelsey@energy.ca.gov](mailto:tanner.kelsey@energy.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan  
Executive Director