

DOCKETED

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December 1, 2022

Via Email

Scott Galati
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**Application for Confidential Designation
Results of Literature Review for the Walsh Bowers Data Center Project, City
of Santa Clara, Santa Clara County, California
Bowers Backup Generating Facility
Docket No.: 22-SPPE-01; TN 246330**

Dear Scott Galati:

The California Energy Commission (CEC) has received GI Partners', as owners of the Bowers Backup Generating Facility (Bowers or applicant) application for confidential designation, dated and filed October 3, 2022 (TN 246330), covering the following documents:

Results of the Literature Review for the Walsh Bowers Data Center Project, City of Santa Clara, Santa Clara County, California.

The application states that the report should be kept confidential indefinitely to protect potential cultural resources and sites. According to the application, if the descriptions of the locations of the sites are released to the public domain, there is potential for the looting of the site. The application further states the report identifies areas of potential cultural and historical significance and is thus protected under Government Code sections 6254(e) and 6254(k), and that by being analogous to Native American sacred places, is confidential under 6254(r) of the Government Code. As such, the public interest is served by non-disclosure in that non-disclosure reduces the risk of looting, and looting can preclude the scientific study of the site. The application states the specific site-related information is not suitable for aggregation, which would hinder a complete CEC analysis, and that GI Partners does not disclose the information in the report to anyone outside of the employees and contractors of the applicant working on this project.

The *Results of the Literature Review for the Walsh Bowers Data Center Project, City of Santa Clara, Santa Clara County, California* contains a summary of the cultural and historical features of the proposed site and nearby locations, including supporting documentation, as described by the applicant.

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 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).)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations must be kept confidential to preserve them. (54 U.S.C. § 306131.)

The applicant has made a reasonable claim that the protection of cultural resource location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. Therefore, the requested confidentiality of location information contained in the cultural resources report is granted in its entirety. 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 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 forth in the 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 set forth in California Code of Regulations, title 20, section 2505(a)(4).

Scott Galati
December 1, 2022
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If you have any questions concerning this matter, please email Kari Anderson, senior staff counsel, at kari.anderson@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