

<b>DOCKETED</b>	
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<b>Project Title:</b>	Border Project - Compliance
<b>TN #:</b>	248244
<b>Document Title:</b>	CEC Response Letter re August 22 & Nov 22's Application for Confidential Designation
<b>Description:</b>	N/A
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December 28, 2022

**Via Email**

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**Application for Confidential Designation: Cultural Resources Report and  
Appendices  
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 (TN 245674) and docketed August 24, 2022, and (TN 247658) dated August 22, 2022, and docketed November 22, 2022 (TN 247658) covering the following cultural resources documents:

Application Docketed August 24, 2022 (TN 245674)

- Appendix A Part 1: California Historical Resources Information System Data Request Form
- Appendix A Part 2: Archeological Survey, Testing, and Surface Collection at SDI-5352
- Appendix A Part 3: Archeological Survey Report for Proposed State Route 125 from State Route 905 (Near the Second Border Crossing) to State Route 54 (Near the Sweetwater Reservoir), San Diego County, California
- Appendix A Part 4: Archeological Site Record
- Appendix A Part 5: Archeological Site Record
- Appendix A Part 6: Site Record Forms
- Appendix A Part 7: Study Area Map
- Appendix A Part 8: Archeological Testing for Sites CA-SDI-10,067, CA-SDI-12,880 and CA-SDI-12,881 Located Within Parcel NO. 646-130-042 Otay Mesa, San Diego, California
- Appendix A Part 9: Evaluation of A Prehistoric Resource Processing Site (CA-SDI-10,542), Historic Bird Ranch (CA-SDI-11,386H), And Water Conveyance System (CA-SDI-11,383H) for The Otay Valley Water Reclamation Plant (STP-1)

[REDACTED]

Appendix A Part 11: Historical/Archeological Survey and Test of Site CA-SDI-10218, Locus B for the Loma-Sorrento Partnership, City of San Diego, California DEP# 87-0211

Appendix A Part 12: Historical/Archeological Survey and Testing for CA-SDI-5352 and CA-SDI-12730 Otay Mesa, San Diego, California

Application Docketed November 22, 2022 (TN 247658)

Appendix A Part 10: Archeological Resource Studies

The applicant previously filed an application on August 24, 2022 (TN 245674) requesting confidentiality for the above-referenced documents. (Appendix A, Parts 1-12.) However, that application erroneously contained two copies of Appendix A, Part 9. The duplicate "Part 9" was erroneously labeled "Part 10." To correct this error, the applicant subsequently filed an application on November 22, 2022, containing only Part 10 for confidentiality.

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.

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, §§ 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 resources site locations on public lands must be protected to preserve them. (54 U.S.C. § 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 application for confidentiality is granted. Cultural resource location information will remain confidential indefinitely.

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 email Ashneil Randhawa, graduate legal assistant, at [ashneil.randhawa@energy.ca.gov](mailto:ashneil.randhawa@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director