

DOCKETED

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Project Title:	Morton Bay Geothermal Project (MBGP)
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Document Title:	Application for Confidential Designation for AFC Cultural Resources Appendices
Description:	N/A
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Organization:	Ellison Schneider Harris & Donlan LLP
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April 18, 2023

Mr. Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814

RE: **Morton Bay Geothermal Project (23-AFC-01) Application for Confidential Designation for AFC Cultural Resources Appendices**

Dear Mr. Bohan:

Pursuant to Sections 2505 *et seq.*, of Title 20 of the California Code of Regulations, Morton Bay Geothermal, LLC (the “Applicant”) hereby submits this *Application for Confidential Designation* for certain appendices relating to cultural resources submitted in support of the Application for Certification of the Morton Bay Geothermal Project.

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

Sincerely,

/s/

Samantha G. Neumyer
Christopher T. Ellison
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant

APPLICATION FOR CONFIDENTIAL DESIGNATION
Morton Bay Geothermal Project, (23-AFC-01)

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

Morton Bay Geothermal LLC (the “Applicant”) seeks confidential designation for the following cultural resources information (the “Information”):

AFC Appendix Number	Title	AFC Subject Area/ Description	# of Confidential Pages
5.3A-B	Records Search Results Maps	Cultural Resources Maps that depict the locations of cultural resources.	All pages
5.3A-D	Map Showing Location of Survey Area and Identified Cultural Resources within Project Area	Cultural Resources Maps that depict the locations of cultural resources.	All pages
5.3A-E-1	DPR Forms Part 1 of 2	Cultural Resources Department of Parks and Recreation (“DPR”) Forms used to record and evaluate cultural resources.	All pages
5.3A-E-2	DPR Forms Part 2 of 2	Cultural Resources DPR Forms used to record and evaluate cultural resources.	All pages
5.3A-F	Previous Studies Conducted within 0.25 Mile of Project Area	Cultural Resources Studies, documents, and materials obtained from the California Historical Resources Information System (“CHRIS”).	All pages

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 in order to protect the cultural resources identified therein.

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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 Public Records Act exempts from disclosure (1) information regarding Native American places, features, and objects and (2) archaeological site information and reports maintained by or in the possession of agencies. (See, Govt. Code §§ 7927.000, 7927.005.) The Public Records Act (“PRA”) also provides a specific exemption from disclosure where “...on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov’t Code § 7922.000.)

The Information is exempt from disclosure under these provisions as the appendices may contain information regarding both Native American places, features and objects, and archaeological site information and reports maintained as confidential by the California Office of Historic Preservation and California Department of Parks and Recreation. Further, the public interest served in nondisclosure, protection of cultural resources, outweighs that of disclosure. Disclosing the Information may enable location of sensitive cultural resources by thieves, vandals, or persons conducting unauthorized collection of materials.

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 information. Figures and summaries depicting the substance of the Information have been provided as part of the Application for Certification, but at a less granular level of detail. This facilitates an understanding of the types and general locations of the cultural resources in the study area without disclosing specific site information. Certain portions

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 to employees or consultants working on behalf of the Applicant, cultural resources professionals that have access to CHRIS, and regulatory agencies that have regulatory oversight or other responsibilities over either the Information or the MBGP.

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.

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Morton Bay Geothermal Project, (23-AFC-01)**

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Dated: April 18, 2023

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By: /s/ _____

Samantha G. Neumyer
Christopher T. Ellison

Attorneys for the Applicant