

DOCKETED

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July 26, 2023

Via Email

Samantha Neumyer
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**Application for Confidential Designation
Morton Bay Geothermal Project
Docket No. 23-AFC-01**

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received Morton Bay Geothermal Project (applicant) Application for Confidentiality, dated June 20, 2023 (TN 250686) covering the following records:

- 1) Figure DA 5.2-1 Desert Pupfish Habitat.
- 2) Report titled, *Distribution and Occupancy of Yuma Ridgway's rails within Proposed Geothermal Development Areas in Imperial Valley, California* dated September 7, 2022.

A properly filed application for confidentiality 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."

Figure DA 5.2-1 Desert Pupfish Habitat

This figure contains a one-page map showing the various waterways in which the Desert Pupfish has been identified. The application notes that the map includes details regarding special status and common species occurrences and locations in the areas surveyed on behalf of the MBGP obtained from the California Natural Diversity Database ("CNDDDB"), in addition to information obtained from surveys conducted on behalf of the applicant.

The application also notes that California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest in disclosure. The public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive biological resources sites by entities conducting unauthorized

collection or disturbance of such resources. The application also notes that a public version of the biological resource's maps was filed into the proceeding's docket.

Executive Director's Determination

CEC biological resources staff has reviewed Figure DA 5.2-1 and consulted with the California Department of Fish and Wildlife (CDFW) regarding this map. Based on review of the map and consultation with CDFW, CEC staff determined that public disclosure of the map would not present a risk to biological resources on and near the project site at the map's scale and it is appropriate to publicly release the map. Therefore, the application for confidentiality is denied and staff will docket the map.

Report titled, *Distribution and Occupancy of Yuma Ridgway's rails within Proposed Geothermal Development Areas in Imperial Valley, California*

This report contains an analysis of the Yuma Ridgway's rails along with eight figures comprising various maps. The applicant identifies the same basis for confidentiality as with the Figure DA 5.2-1 that the public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive biological resources sites by entities conducting unauthorized collection or disturbance of such resources. The application also notes that a public version of the biological resource's maps was filed into the proceeding's docket.

Executive Director's Determination

CEC biological resources staff reviewed the report and found that the report does not present a threat to biological resources because the location information is not of sufficient detail to allow one to locate sensitive resources. With regards to the eight maps contained in the report labeled Figures 1-8, staff did find that Figures 6 and 8 contain maps of sufficient detail to potentially locate Yuma Ridgway's rails, a special status species. Therefore, the application for confidentiality is denied as to the report except for Figures 6 and 8. A redacted report with Figures 6 and 8 removed will be docketed by staff with the maps maintained as confidential indefinitely.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, 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 procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

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Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director