

**DOCKETED**

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<b>Project Title:</b>	Morton Bay Geothermal Project (MBGP)
<b>TN #:</b>	251173
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July 26, 2023

**Via Email**

Samantha Neumyer  
Ellison Schneider Harris & Donlan, LLP  
2600 Capitol Ave, Suite 400  
Sacramento, California  
[sgn@eslawfirm.com](mailto:sgn@eslawfirm.com)

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

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received two Morton Bay Geothermal Project (applicant) Applications for Confidentiality, dated April 18, 2023 (TN 249772) and April 26, 2023 (TN 249878) covering the following records:

Filed April 18, 2023 (TN 249772)

- Appendix 5.2B CNDDDB Figures 1A, 1B, 2A, 2B and 3

Filed April 26, 2023 (TN 249878)

- Biological Resources Geographic Information System (GIS) Files

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."

**Appendix 5.2B, California Natural Diversity Database Figures**

Appendix 5.2B contains five maps labeled, Figures 1A, 1B, 2A, 2B, and 3. Notations on Figures 1A and 1B indicate these two maps are from the California Natural Diversity Database (CNDDDB).

The California Department of Fish and Wildlife's (CDFW) CNDDDB contains detailed maps reflecting the location of biological resources based on surveys and sightings. The CNDDDB contains language within the database that restricts public disclosure of maps of certain resolution. The application notes the confidential information includes details regarding special status and common species occurrences and locations in the areas surveyed around the project site and obtained from the CNDDDB, in addition to information obtained from surveys conducted on behalf of the applicant.

The application 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**

CDFW has reviewed Figures 1A and 1B and confirmed to CEC staff the need to restrict public access to these maps to protect the location of special status species such as the Yuma Ridgeway's rail. The CEC biological resources staff has also reviewed Figures 2A, 2B, and 3 which show burrowing owl and Yuma Ridgeway's rail locations at a detailed scale and require the same level of protection as Figures 1A and 1B.

The applicant has made a reasonable claim that the biological maps, Figures 1A, 1B, 2A, 2B and 3, show detailed location information of special status species and should be maintained as confidential indefinitely which is consistent with the directions from CDFW. As such, the applicant's request for confidential designation of the detailed biological maps is granted.

### **Biological Resources GIS Files**

The application states the GIS files include details regarding special status and common species occurrences and locations in the surveys obtained from the CNDDDB, and in the surveys conducted on behalf of the applicant.

The application 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 of 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.

### **Executive Director's Determination**

The applicant has made a reasonable claim that the GIS shape files showing detailed location information of special status species, such as the Yuma Ridgeway's rail and burrowing owl, should be maintained as confidential indefinitely which is consistent with the directions from CDFW. As such, the applicant's request for confidential designation of the GIS shape files is granted.

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.

Samantha Neumyer  
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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](mailto: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