

DOCKETED

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May 17, 2024

Via Email

Scott Galati
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**Application for Confidential Designation: AVAIO Pittsburg Backup Generating Facility
Docket No. 24-SPPE-01**

Dear Scott Galati:

The California Energy Commission (CEC) has received two Applications for Confidentiality from Pittsburg Data Hub, LLC - AVAIO (applicant), docketed March 1, 2024 (TNs 254760, 254763) covering the following records:

- AVAIO Cultural and Historical Resources Report – PBGF
- AVAIO Appendix D Figure 10 Biology – PBGF

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."

Cultural and Historical Resources Report:

The applicant states the Cultural and Historical Resources Report should be granted confidentiality under California Government Code sections 7927.000, 7927.305 and 7927.705 because the records specifically identify areas of potential cultural and historical significance. The applicant requests that the records be confidential in their entirety and for an indefinite period of time to protect potential cultural resources and sites. The applicant states that the public interest in nondisclosure is outweighed by the interest in disclosure as disclosing the documents could lead to looting and destruction of cultural resources and sites.

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects 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, §§ 7927.000, 7927.005.)

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

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.

Executive Director's Determination

Protection of cultural and archeological resource location information to prevent looting and unauthorized collection is in the public interest and expressly covered under the law. The applicant has made a reasonable claim for confidential designation of the Cultural and Historical Resources Report. As such, applicant's request is granted. The Cultural and Historical Resources Report is designated 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.

Appendix D Figure 10 Biology:

Appendix D Figure 10 Biology consists of a map indicating the potential location of special status species located on the project site. The application states this map should be kept confidential indefinitely to protect the potential locations of sensitive biological resources. The map is sourced from the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB). The CNDDDB contains language within the database that restricts public disclosure of maps of certain resolution and CDFW has met with CEC staff to confirm the need to protect these maps. Consistent with this direction from CDFW, CEC staff directed the applicant to submit maps of certain resolution under confidential cover.

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 application asserts that 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 CNDDDB biological maps and GIS shape files showing location information 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.

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.

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 long horizontal stroke extending to the right.

Drew Bohan
Executive Director