

DOCKETED	
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Project Title:	Corby Battery Energy Storage System Project
TN #:	260923
Document Title:	CEC Response to Corby's Application for Confidentiality - Mapped Bio
Description:	N/A
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January 08, 2025

Via Email

Scott Galati
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**Application for Confidential Designation: Corby Battery Energy Storage System
Docket No. 24-OPT-05**

Dear Scott Galati:

On November 4, 2024, North Bay Interconnect, LLC and Corby Energy Storage, LLC, wholly owned subsidiaries of NextEra Energy Resources (applicant), submitted an application for confidentiality (TN 259892) to the California Energy Commission (CEC). The applicant is seeking confidential designation for the following documents:

- Appendix 4.4-1: Biological Resources Reports
- Appendix 4.4-B: CNDBB Plant and Habitat Records Search
- Appendix 4.4-C: CNDDDB Wildlife Records Search

The applicant is requesting the documents be granted confidentiality in their entirety. Further, the applicant requests confidentiality be granted indefinitely to protect the potential locations of certain biological resources. The applicant states that the documents are required to be submitted under confidential cover, referencing applicable requirements. (Cal. Code Regs., tit. 20, Appendix B(g)(2)(C).) The applicant also states that the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.) According to the applicant, disclosure of this information may enable the location of sensitive biological resources sites by entities conducting unauthorized collection or disturbance of such resources.

Confidentiality Claims

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."

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.

Discussion

The California Department of Fish and Wildlife (CDFW) has recommended the release of the Appendices 4.4-B and 4.4-C (CNDDDB maps) with modifications. CDFW requests that species name labels be removed from individual polygons, and instead a list of the species present can be included on the map. Standard CNDDDB symbology (red for animals, green for plants) should be used. Additionally, CDFW requests that the following disclaimer be added to the maps:

- "CNDDDB version MM/YYYY. Please Note: The occurrences shown on this map represent the known locations of the species listed here as of the date of this version. There may be additional occurrences or additional species within this area which have not yet been surveyed and/or mapped. Lack of information in the CNDDDB about a species or an area can never be used as proof that no special status species occur in an area."

Due to CDFW's recommendation for release, confidentiality is denied for the CNDDDB maps.

For Appendix 4.4-1: Mapped Species Figures, nondisclosure of this information will protect these resources from looting or other damage and will be consistent with the federal Archaeological Resources Protection Act. (54 U.S.C. § 306131.) Confidentiality is granted for Appendix 4.4-1: Mapped Species Figures.

Executive Director's Determination

The applicant has made a reasonable claim that Appendix 4.4-1, which contain information on biological resources, can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of Appendix 4.4-1 is granted.

Per CDFW's recommendation, the CNDDDB maps may be released with modifications. As such, confidentiality is denied for the CNDDDB maps. Please modify the CNDDDB maps per CDFW's request and resubmit these maps to the docket.

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,

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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 stylized flourish at the end.

Drew Bohan
Executive Director