

DOCKETED

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March 18, 2025

Via Email

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**Applications for Confidential Designation Los Esteros Critical Energy Facility
Biological Resources Information
Docket No. 03-AFC-02C**

Dear Samantha G. Neumyer and Jeffery D. Harris:

The California Energy Commission (CEC) has received two applications for confidential designation from Los Esteros Critical Energy Facility (applicant), docketed January 24, 2025 (TNs 261281 and 261284). The applications request confidential designation for the following records containing biological resources and cultural resources information:

- Tanager BESS Project - Biological Environmental Setting Assessment: Figures BIO-5a, BIO-5b, and BIO 6.
- Cultural Resources Assessment and Literature Search Results

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."

Biological Environmental Setting Assessment

Figures BIO-5a, BIO-5b, and BIO 6 of the Biological Environmental Setting Assessment contain maps 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 data to the public without permission from CDFW unless it is displayed in a such a way that viewers cannot determine the precise location of the resources. The information submitted includes specific location information that if disclosed would allow the public to determine the location of a special status species. 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

Protection of sensitive species and habitat location information to protect against intentional harm clearly outweighs the interest in public disclosure of the submitted maps. The applicant has made a reasonable claim that the submitted maps sourced from the CNDBB can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation is granted. The applicant has submitted a non-confidential version of the Biological Environmental Setting Assessment to docket 03-AFC-02C (TN 261280).

Cultural Resources Assessment and Literature Search Results

The submitted Cultural Resources Assessment and Literature Search Results contains information related to the location of cultural resources, archaeological resources, and Native American 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.)

The 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 clearly outweighs the interest in disclosure and expressly covered under the law. The applicant has made a reasonable claim that the documents identified above, which contain information on cultural and archeological resources, records, reports, and maps, can be maintained as confidential indefinitely. As such, the applicant's request for confidential designation of the documents listed above 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 G. Neumyer
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If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', with a stylized, flowing script.

Drew Bohan
Executive Director