

**DOCKETED**

<b>Docket Number:</b>	21-AFC-02
<b>Project Title:</b>	Gem Energy Storage Center
<b>TN #:</b>	240820
<b>Document Title:</b>	Application for Confidential Designation for Confidential Appendices to the AFC Appendix 53B Cultural Resources
<b>Description:</b>	N/A
<b>Filer:</b>	Amanda Cooley
<b>Organization:</b>	Ellison Schneider Harris & Donlan LLP
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	12/3/2021 3:39:39 PM
<b>Docketed Date:</b>	12/3/2021



December 3, 2021

Mr. Drew Bohan  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

RE: **Gem Energy Storage Center (21-AFC-02) Application for Confidential Designation for Confidential Appendices to the AFC Appendix 5.3B Cultural Resources Technical Report for the Hydrostor A-CAES Project, Kern County, California**

Dear Mr. Bohan:

Pursuant to Sections 2501 *et seq.*, of Title 20 of the California Code of Regulations, GEM A-CAES, LLC (the "Applicant") hereby submits this *Application for Confidential Designation* for confidential appendices to the Appendix 5.3B, *Cultural Resources Technical Report for the Hydrostor A-CAES Project, Kern County, California*, of the Application for Certification of the Gem Energy Storage Center.

Please contact us at (916) 447-2166 should you have any questions or require additional information. Thank you.

Sincerely,

/s/

\_\_\_\_\_  
Samantha G. Neumyer  
Jeffery D. Harris  
Ellison Schneider Harris & Donlan LLP

Attorneys for Applicant

Cc: Linda Barrera, CEC Chief Counsel

**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**Gem Energy Storage Center, (21-AFC-02)**

1. *Specifically indicate those parts of the record which should be kept confidential.*
  - a. *Title, date, and description (including number of pages) of the information or data for which you request confidential designation.*

GEM A-CAES, LLC (the “Applicant”) seeks confidential designation for the following, which collectively are referred to as “Cultural Resources Information” in this Application:

<b>Title</b>	<b>Description</b>	<b># of Pages</b>
Appendix 5.3B, <i>Cultural Resources Technical Report for the Hydrostor A-CAES Project, Kern County, California</i> , Appendix A. Records Search Results Maps	Maps of the study area with locations of cultural resources depicted.	9
Appendix 5.3B, <i>Cultural Resources Technical Report for the Hydrostor A-CAES Project, Kern County, California</i> , Appendix C. Map Showing Location of Survey Area and Identified Cultural Resources Within Project Area	Maps of the study area with locations of cultural resources depicted.	3
Appendix 5.3B, <i>Cultural Resources Technical Report for the Hydrostor A-CAES Project, Kern County, California</i> , Appendix D. DPR Forms	Copies of the DPR Forms for cultural resources located in the study area.	1,697
Appendix 5.3B, <i>Cultural Resources Technical Report for the Hydrostor A-CAES Project, Kern County, California</i> , Appendix E. Previous Studies Conducted within 0.25 Miles of Project Area	Copies of previous cultural resources studies conducted within 0.25 miles of the project area.	2,155

Please note that for the purposes of uploading the document to the CEC’s e-filing system, Appendix D. DPR Forms and Appendix E. Previous Studies Conducted within 0.25 Miles of Project Area have been divided into 30MB or smaller sized files.

- b. *Parts of the information or data for which you request confidential designation.*

The Cultural Resources Information should be kept confidential in its entirety as it contains sensitive and confidential information regarding cultural resources, including tribal cultural resources and archaeological resources.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

This information should be held confidential indefinitely in order to protect the cultural resources identified therein.

3. *Cite and discuss:*

- (a) *the provisions of the Public Records Act or other law that allow the Commission to keep the information or data confidential, and explain why the provision applies to the material.*

The Public Records Act exempts from disclosure (1) information regarding Native American places, features, and objects and (2) archaeological site information and reports maintained by or in the possession of agencies. (See, Govt. Code §§ 6254(r), 6254.10.) These provisions apply to the Cultural Resources Information as the documents contain information regarding both Native American places, features and objects, and archaeological site information and reports maintained as confidential by the California Office of Historic Preservation and California Department of Parks and Recreation.

- (b) *the public interest in nondisclosure of the material submitted for confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.*

Section 6255 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 cultural resources sites by thieves, vandals, or persons conducting unauthorized collection of materials.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

The Applicant considered whether it would be possible to aggregate or mask the information contained within the Cultural Resources Information. However, the information does not consist of the types of data or programmatic reporting that generally lends itself to the types of masking and aggregation the Applicant believes is contemplated by Section 2505(a)(E), thus making aggregation or masking infeasible in this circumstance. Information within the Cultural Resources Information that can be publicly disclosed is provided in the Cultural Resources section of the AFC and in Appendix 5.3B.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

The Applicant has not disclosed any of the subject information to anyone other than its employees, attorneys and consultants working on the project.

*I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and belief. I*

*am authorized to make this Application and Certification on behalf of the Applicant.*

Dated: December 3, 2021

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By: /s/ \_\_\_\_\_

Samantha G. Neumyer  
Jeffery D. Harris

Attorneys for the Applicant