

DOCKETED	
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Project Title:	Gem Energy Storage Center
TN #:	242801
Document Title:	GEM Application for Confidential Designation for AFC Data Adequacy Supplement Biological Resources Figures
Description:	N/A
Filer:	Amanda Cooley
Organization:	Ellison Schneider Harris & Donlan LLP
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April 25, 2022

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 AFC Data Adequacy Supplement Biological Resources Figures**

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 biological resources figures and information contained within the Data Adequacy Supplement No. 1 for 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.

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

Per the direction set forth in Attachment B to *Gem Energy Storage Center, Staff's Data Adequacy Recommendation (21-AFC-02)*, GEM A-CAES, LLC (the "Applicant") seeks confidential designation for the following biological resources information ("Information"):

Title	Description of Information for Which Confidential Designation is Requested	# of Confidential Pages
AFC Data Adequacy Supplement No. 1, Attachment DA5.2-1 Biological Technical Report	<ul style="list-style-type: none"> • PDF p. 88, Figure 7: CNDDDB Species • PDF p. 89, Figure 8: Special-status plant species • PDF, p. 90, Figure 9: Special-Status Wildlife • PDF, p. 118, Figure 2: Suitable Swainson's Hawk Nesting Substrate • PDF, p. 119, Figure 3: Swainson's Hawk Observations within the Survey Area • PDF, p. 154, Figure 2: Vegetation and Burrowing Owl Burrow Map • PDF, p. 155, Figure 2: Vegetation and Burrowing Owl Burrow Map • PDF, p. 156, Figure 2: Vegetation and Burrowing Owl Burrow Map • PDF, p. 157, Figure 2: Vegetation and Burrowing Owl Burrow Map • PDF, p. 158, Figure 2: Vegetation and Burrowing Owl Burrow Map • PDF, p. 159, Figure 2: Vegetation and Burrowing Owl Burrow Map • PDF, p. 160, Figure 2: Vegetation and Burrowing Owl Burrow Map 	12
AFC Data Adequacy Supplement No. 1, Attachment DA5.2-3 Burrows	<ul style="list-style-type: none"> • Figure 9, Special-Status Wildlife 	1

The Information should be kept confidential in its entirety as it contains sensitive information regarding the location of certain biological resources.

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

for the length of time.

The Information should be held confidential indefinitely.

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.*
- (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.*

Attachment B to *Gem Energy Storage Center, Staff's Data Adequacy Recommendation (21-AFC-02)* directs the Applicant to submit the Information under confidential cover as the figures contain sensitive information regarding biological resources. The Information includes details regarding special status occurrences and locations in the areas surveyed on behalf of the Gem Energy Storage Center ("GESC") obtained from the California Natural Diversity Database ("CNDDDB"), in addition to information obtained from surveys conducted on behalf of the Applicant. California Government Code 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 biological resources sites by entities conducting unauthorized collection or disturbance of such resources.

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. Figures depicting general locations and other descriptive details contained within the Information have been provided as part of the Application for Certification, but at a less granular level of detail. This facilitates an understanding of the types and general locations of the biological resources in the study area without disclosing specific site information.

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 Information is accessible to Applicant's employees or consultants working on behalf of the GESC, biological resources professionals, and organizations with access to CNDDDB, and regulatory agencies that have regulatory oversight or other responsibilities over either the Information or the Project. A prior version of the Biological Resources section containing some of the figures contained within the Information was docketed as part of the Application for Certification for the Gem Energy Storage Center (TN#: 240751-8). Following directions from CEC Staff, Applicant resubmitted the Biological Resources section with amended figures suitable for public viewing. The prior version is no longer publicly accessible from the GESC docket.

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: April 25, 2022

ELLISON SCHNEIDER HARRIS & DONLAN LLP

By: /s/ _____

Samantha G. Neumyer
Jeffery D. Harris

Attorneys for the Applicant