

**DOCKETED**

<b>Docket Number:</b>	21-AFC-02
<b>Project Title:</b>	Gem Energy Storage Center
<b>TN #:</b>	243169
<b>Document Title:</b>	Application for Confidential Designation for AFC Data Adequacy Supplement Biological Resources Figures
<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>	5/19/2022 3:11:45 PM
<b>Docketed Date:</b>	5/19/2022



May 19, 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 the following biological resources figure, "Data Adequacy Biological Resources Supplement Observed Suitable Burrows," in support 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.*

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

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

<b>Title</b>	<b>Description of Information for Which Confidential Designation is Requested</b>	<b># of Confidential Pages</b>
Data Adequacy Biological Resources Supplement Observed Suitable Burrows	Locational information regarding potential suitable burrows for certain biological resources.	2

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 and common species 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 the substance of the information contained within the application for certification (“AFC”) Section 5.2 Biological Figures have been provided as part of the AFC, 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 the Applicant’s employees or consultants working on behalf of the GESC, and may be accessible by 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 GESC.

*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: May 19, 2022

ELLISON SCHNEIDER HARRIS & DONLAN LLP

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

Samantha G. Neumyer  
Jeffery D. Harris

Attorneys for the Applicant